

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

David Mabardy

v.

Case No. 13-cv-341-PB
Opinion No. 2014 DNH 005

Scott Sanders, et al.

O R D E R

The Town of Kensington, Officer Scott Sanders, Pamela Kehoe, and Detective Scott Cain (collectively the "Kensington Defendants") have filed a motion for judgment on the pleadings. The plaintiff, David Mabardy, has failed to object. Having reviewed Mabardy's complaint, I grant the motion for judgment on the pleadings with respect to all claims against the Kensington Defendants except plaintiff's claims against Officer Sanders for the reasons set forth in the defendants' motion.

In acting on a motion for judgment on the pleadings, I may not rely on disputed factual assertions made by a defendant in an answer or in other documents. Accepting Mabardy's factual claims as true for purposes of the present motion, and disregarding the other disputed facts proffered by the defendants in their answer, Mabardy has pleaded minimally

sufficient claims of excessive force and unlawful arrest. If plaintiff's assertions are true, and no mitigating factors are later established, Officer Sanders would not be entitled to either qualified immunity or official immunity. In denying the motion for judgment on the pleadings, I do so without prejudice to Officer Sanders' right to renew his arguments in a properly supported motion for summary judgment.¹

SO ORDERED.

/s/Paul Barbadoro
Paul Barbadoro
United States District Judge

January 14, 2014

cc: David Mabardy, pro se
Charles P. Bauer, Esq.

¹ I also take no view on whether abstention is a proper course of action in this case as the defendants have not argued that I should abstain from acting on plaintiff's complaint.