

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

SALEEM MUHAMMAUD,
Plaintiff,

v.

THERESA C. LANTZ, et al.,
Defendants.

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PRISONER
CASE NO. 3:10-cv-591 (VLB)

RULING ON MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

The plaintiff seeks leave to file an amended complaint adding one defendant, Captain Dennis Marinelli. He states that amendment is needed “to conform to the evidence.” The defendants object on the ground that the plaintiff seeks to assert a new claim that is unrelated to the incidents giving rise to this action. For the reasons that follow, the plaintiff’s motion is denied.

The court should grant leave to amend when justice so requires. Fed. R. Civ. P. 15(a)(2). Underlying this rule is an assumption that the amended complaint will clarify or amplify the original cause of action. See Klos v. Haskell, 835 F. Supp. 710, 715 n.3 (W.D.N.Y. 1993), aff’d, 48 F.3d 81 (2d Cir. 1995).

The original complaint concerned retaliation for an assault allegedly occurring while the plaintiff was in the custody of state judicial marshals in January 2008. The plaintiff reasserts this claim in the proposed amended complaint and adds an unrelated failure to protect claim regarding a incident with

another inmate occurring in March 2009. Captain Marinelli figures prominently in this new claim. Adding this new claim will not clarify or amplify the original cause of action.

The plaintiff states that he wants to amend the complaint to conform to the evidence. The provisions of Rule 15(b) permitting amendment to conform to the evidence applies after trial. See Gussack Realty Co. v. Xerox Corp., 224 F.3d 85, 94 (2d Cir. 2000). As no trial has yet been conducted, any request to amend pursuant to Rule 15(b) is premature.

The plaintiff's motion to amend [Doc. #20] is DENIED.

IT IS SO ORDERED.

/s/

Vanessa L. Bryant
United States District Judge

Dated at Hartford, Connecticut this 2nd day of November 2010.