

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA,
Plaintiff

v.

ROBERT F. STROM as the Finance Director of
THE CITY OF CRANSTON,
THE CITY OF CRANSTON, and
COL. MICHAEL J. WINQUIST in his official
capacity as Chief of the CRANSTON POLICE
DEPARTMENT
Defendants

C.A. No. 15-525

PLAINTIFF’S MEMORANDUM IN SUPPORT OF HIS
MOTION TO AMEND THE COMPLAINT

Pursuant to F.R.C.P. 15(a)(2), Plaintiff hereby moves to amend the complaint in the form attached as an Amended Verified Complaint. The Rule provides that with respect to such a motion: “The court should freely give leave when justice so requires.” As one treatise has said, in such circumstances, “...the burden is usually on the party opposing the amendment to demonstrate why the amendment should not be permitted.” Baicker-McKee, Janssen, Corr, Federal Civil Rules Handbook 2016, p. 577 (Thomson Reuters 2016), citing Foman v. Davis, 371 U.S. 178 (1962); see also Hatch v. Department of Children, Youth & Families, 274 F.3d 12, 19 (1st Cir. 2001); Lacedra v. Donald W. Wyatt Detention Facility, 334 F.Supp.2d 114, 127-28 (D.R.I. 2004) (Lagueux, J.) (in civil rights cases, trial court should liberally allow amendments and apply “relation back” doctrine).

The proposed Amended Complaint would clarify that Plaintiff brings his claims against Defendant Michael Winquist individually and in his official capacity. It would also add as defendants other officers of the Cranston Police Department, both individually and in their

official capacities: Col Michael J. Winkquist, Capt. Russell Henry, Jr., Major Robert Quirk , Sgt. Brandon Barth, Officer John Mastrati, Officer Wayne Russell, Officer Austin Smith. The Amended Complaint would also add claims for violation of the Rhode Island Mental Health Law, R.I.Gen.L. § 40.1-5-1, et seq., as well as common law claims for trover and conversion.

Plaintiff seeks to amend the complaint because of arguments that Defendants made in response to Plaintiff's Motion for Partial Summary Judgment in Richer v. Parmalee, 189 F.Supp.3d 334 (D.R.I. 2016),, as well as the Court's Decision respecting that motion. Defendants in this case are represented by the same counsel and have filed a similar answer and affirmative defenses so Plaintiff anticipates similar arguments in this case as in *Richer*. Specifically, the existing Richer Defendants argued that the actions of the other police officers did not constitute the policies and practices of the North Smithfield Police Department. (See, e.g., ECF #18, pp. 7, 15; ECF #32, pp. 9-10). Similarly, here, Cranston has denied that it has a policy of seizing citizen's weapons for safekeeping and of not returning them without a court order. (Compare, ECF # 1, ¶¶ 20, 32, 34, 47, and ECF # 8, ¶¶ 6, 10) Accordingly, to the extent Cranston argues that the police officers involved were not acting pursuant to practices or policies of the Cranston Police Department, Plaintiff seeks to bring claims against those police officers involved in their individual capacities.

Lastly, all existing and proposed Defendants violated Plaintiff's rights under the Mental Health Law. The Rhode Island Supreme Court has already recognized that governmental officials may be subject to individual liability for violating this Law. In re Doe, 440 A.2d 712, 716 (R.I. 1982) (Weisberger, J.) ("[T]he failure of public officials to apply promptly for required judicial authorization to commit or retain involuntary patients may give rise to civil liability in the event that such a patient should be wrongfully deprived of his liberty.").

Defendants and proposed Defendants are not prejudiced by this motion as the Court had stayed discovery until it rendered its Decision on the Motion for Partial Summary Judgment in the Richer case. The Court issued that Decision on June 1, 2016. (ECF # 39 in Richer).

CONCLUSION

The Court should grant Plaintiff's motion to amend the complaint.

Respectfully submitted,
EDWARD A. CANIGLIA
By his attorneys,

/s/ Thomas W. Lyons
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CERTIFICATION

I hereby certify that on April 13, 2017 a copy of the foregoing was filed and served electronically on all registered CM/ECF users through the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

/s/ Thomas W. Lyons