

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

John E. Brown,)
)
 Plaintiff)
)
 v.) Civil Action No. 02-1686-KAJ
)
 Robert George, James Kid, and)
 Angel Malabet,)
)
 Defendants.)

MEMORANDUM ORDER

The Plaintiff, John E. Brown is a *pro se* litigant. Presently before me is Brown’s Motion for Leave to Amend the Complaint (Docket Item [D.I.] 36; the “Motion”). For the reasons that follow, Plaintiff’s Motion is GRANTED.

Plaintiff alleges violations of his Eighth and Fourteenth Amendment Due Process Rights. (D.I. 2.) Plaintiff states that on June 27, 2002, while incarcerated at the Sussex Violation of Probation Center (“SVOP”), Corporal James Kid yelled “Stop eyeball [expletive deleted] me” and ordered Plaintiff to go to an area in the prison called the “wood pile” or “rose garden” as punishment for speaking to another inmate and staring at Corporal Kid. (D.I. 2.) Plaintiff alleges that after entering the “wood pile” Corporal Kid ordered him to do a “crab walk” and a “mule kick.” (D.I. 2.) According to Plaintiff, the “crab walk” is performed when one places his/her legs and hands flat on the ground and walks like a crab with a log on his/her chest. Plaintiff describes the “mule kick” as performed when one gets down on his/her hands and knees, flat on the ground, and kicks a log around like a mule. (D.I. 2.) Plaintiff asserts that he tried to perform these tasks, but was unable to perform them. (D.I. 2.) Plaintiff alleges that Corporal Kid threatened to spray his face with mace if he did not continuing performing the

tasks. (D.I. 2.) After Plaintiff refused to continue performing the tasks, Corporal Kid allegedly punched Plaintiff in the shoulder and neck area and sprayed Plaintiff with mace. (D.I. 2.)

Plaintiff asserts that in an attempt to elude the mace, he moved away from Corporal Kid. (D.I. 2.) According to Plaintiff, he was met and apprehended by many SVOP Emergency Unit Correctional Officers moments after moving away from the mace. (D.I. 2.) Plaintiff states that after he was apprehended, handcuffed, and lying on the ground, Corporal Kid sprayed an entire can of mace in his face. (D.I. 2.) Immediately after Corporal Kid finished spraying Plaintiff with the mace, Correctional Officer Angel Malabet allegedly sprayed another entire can of mace in the Plaintiff's face. (D.I. 2.)

Plaintiff names seven correctional officers that he contends stood by and watched and/or participated in this incident. (D.I. 2.) Plaintiff further asserts that thirteen inmates witnessed the incident, and he named seven inmates that he was able to contact. (D.I. 2.) Plaintiff states that he has received severe physical injury to his left eye and currently has blurred vision. (D.I. 2.) He also asserts that he is being refused proper medical treatment for his eye. (D.I. 2.)

Corporal Kid admits that he ordered Plaintiff to the "wood pile," yet he denies the reasons for doing so stated by the Plaintiff. (D.I. 14.) Corporal Kid states that he gave Plaintiff "multiple direct orders" at the "wood pile" with which Plaintiff did not comply with "in a timely fashion." (D.I. 14.) Corporal Kid admits that he radioed for assistance and sprayed Plaintiff with pepper spray. (D.I. 14.) Corporal Kid also agrees that Officer Malabet sprayed Plaintiff with pepper spray. (D.I. 14.)

Plaintiff seeks leave to amend his complaint. (D.I. 36.) Specifically, he wishes to add as new Defendants Linwood Chatman, Dean Blade, Barbara Costello, Christina Eames, and Julie

Harriat as Defendants. (D.I. 36.) Plaintiff states that those individuals were officers of the SVOP Emergency Unit that responded to Corporal Kid's radio call for assistance on June 27, 2002. (D.I. 36.) Plaintiff seeks to add these officers because they allegedly struck Plaintiff about the head after he had been apprehended and because they refused to intervene while Corporal Kid and Officer Malabet sprayed Plaintiff with mace. (D.I. 36.)

Additionally, Plaintiff requests leave to amend the complaint in order to explain with greater particularity his allegations against Defendant Robert George. (D.I. 36.) Plaintiff alleges that George, the warden of the prison, refused to authorize an investigation into the incident after Plaintiff filed a complaint. (D.I. 36.) The Defendants characterize this allegation as claiming a violation of the Plaintiff's Fourteenth Amendment right to procedural and due process. (D.I. 32.)

Rule 15 of the Federal Rules of Civil Procedure ("Rules") states that a party may amend a pleading if granted leave of court. Fed. R. Civ. P. 15 (2003). "Leave shall be freely given when justice so requires." *Id.* The Supreme Court has counseled "lower federal courts to heed the liberal policy of amendment embodied in Rule 15(a)." *Callaway Golf Co. V. Dunlop Slazenger Group Americas, Inc.* 295 F.Supp.2d 430, *433 (D. Del., 2003). The Defendants oppose the Motion (D.I. 37); however, they have made no persuasive showing that they will suffer prejudice if the amendment is permitted. *American Lumber Corp. v. National R.R. Passenger Corp.* 886 F.2d 50, 54 (3d Cir., 1989) ("The touchstone is whether the non-moving party will be prejudiced if the amendment is allowed." (internal quotation marks and citations omitted)).

Accordingly, IT IS HEREBY ORDERED that

The Plaintiff's Motion for Leave to Amend the Complaint (D.I. 36) is GRANTED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

March 12, 2004
Wilmington, Delaware