

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
vs.)	Case No.:0707040937
)	
KENNETH A. BOYD,)	
)	
Defendant.)	

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FINAL ORDER AND OPINION ON DEFENDANT’S MOTION TO DISMISS

Kenneth A. Boyd, (hereinafter “Boyd” or the “defendant”), has filed a Motion to Dismiss (the “Motion”) the instant criminal charges filed against him in the above-captioned matter. Boyd does not cite as his authority Rule 12(b) of the *Criminal Rules Governing the Court of Common Pleas*. Boyd was charged on July 31, 2007 with One Count Unauthorized Access to a Computer System in violation of 11 *Del. C.* §932 and One Count Misuse of a Computer System in violation of 11 *Del. C.* §935. On September 24, 2007, Boyd pled “Not Guilty” to both charges and demanded a jury trial. This matter is currently pending a jury trial which has been continued pending disposition by the Court of Boyd’s Motion.¹

¹ The Court ordered Supplemental Briefing and requested counsel to address Delaware case law, or statutory authority detailing the legal standards that apply to defendant’s Motion to Dismiss.

FACTS

Boyd is a police officer with the Wilmington Police Department. Prior to being charged in this case, the Defendant brought a civil action against the police department in Federal Court. A jury trial in that matter was held in October, 2006. Sandra Wannamaker, (hereinafter “Wannamaker”) was one of the twelve (12) jurors selected for that trial. The verdict returned by the jury on October 10, 2007 and was not favorable to the Defendant. On October 13, 2006, the Defendant allegedly asked a radio room operator at the Wilmington Police Department to run a Department of Motor Vehicle DELJIS Inquiry (hereinafter “DMV”) inquiry on Wannamaker.²

After the Wannamaker information was allegedly accessed, Boyd allegedly appeared at Wannamaker’s home to speak with her. He thereafter allegedly contacted her via telephone on two separate occasions, and was also the alleged vehicle or mechanism for connecting Wannamaker with a civil trial attorney to discuss her experience as a juror in Boyd’s civil trial. Boyd was subsequently arrested for his alleged access to the Delaware Judicial Information System (“DELJIS”) and misuse of the Wilmington Police Department Computers pursuant to 11 *Del. C.* §232 (Unauthorized access to Computer System); 11 *Del. C.* §935 (Misuse of a Computer System).

THE DEFENDANT’S MOTION

The defendant seeks in his Motion to have both the Unauthorized Access to a Computer System and Misuse of a Computer System charges outlined above against him dismissed. In support of his Motion, Boyd asserts that the criminal charges against him

² According to the State’s version of the facts, “on October 13, 2006, the defendant [Boyd] asked a radio room operator at the Wilmington Police to run a DMV inquiry on the name “Sandra Wannamaker”. An :offline inquiry” concluded by the State Division of Identification that at 1:36 p.m. on October 13, 2006, Stephen Cousins, a radio room operator of the Wilmington Police, did, in fact, access the DMV information of Sandra Wannamaker” (¶2, State’s Response, November 29, 2007).

arise from the State's allegation that Boyd retrieved information from the DELJIS for purposes beyond the scope of his employment as a law enforcement officer with the Wilmington Police Department.

Boyd's legal argument is that because he was an police officer with WPD at the time of the alleged access he was authorized under 21 *Del.C.* § 305(b)(11) to employ DELJIS to access all DMV records. He further argues that the Delaware legislature only intended for the Unauthorized Access and Misuse of Information charges to apply to persons who had no authorization to access DELJIS. According to Boyd's argument, there is a distinction between those individuals who have no authority to access DELJIS (non- authorized users) and those individuals who allegedly have accessed the system outside of the scope of the use authorized by the statute (authorized users), with the restrictions of the statute only applying to the former. Because Boyd was a police officer with WPD during the period in question, he contends that he was therefore authorized to access DELJIS for DMV records and that his alleged acts outlined in the charging documents do not amount to a violation of the Criminal Law as set forth in Title 11 and charged by Informations by the Attorney General.

In its response to Boyd's Motion, the State asserts that Boyd's alleged access of Wannamaker's DMV records was not, in fact, authorized and was also an impermissible use of the State's computer systems and/or DELJIS. The State argues that 21 *Del.C.* §305 limits access to DMV information to particular individuals and only for specific authorized purposes. The State asserts that although a user may be authorized to access DELJIS under the statute, the use may be considered unauthorized if the user is obtaining information outside of the specific statutory uses detailed within the statute 21 *Del. C.*

§1305(b)(1-13). Implicit in the State's argument and the basis for the criminal charges is that Boyd was not accessing DELJIS for a permissible use under the statute which lists permissible uses. The State therefore contends the Motion to Dismiss should be denied because Boyd's alleged access of Wannamaker's DMV records was not in accordance with the permissible uses outlined in the statute. 21 *Del. C.* §305(b)(1-13).

The State further argues that in 1990 and 2005, Boyd signed documents prepared by DELJIS which sets forth the restrictions on accessing DELJIS motor vehicle records by authorized users. The State contends that the defendant acknowledged receipt of a document prepared by the State Department of Technology and Information which clearly prohibits impermissible uses of States computer systems. The State asserts that Boyd was aware his alleged access of DELJIS in the instant matter was beyond the scope of and not authorized by § 305(b)(1-13) because it was *inter alia*, for personal use to seek DMV records of a private individual, a juror, in a civil rights action in Federal Court; not as an authorized police officer for WPD.

In his reply brief, Boyd argues that Section 305 of Title 21 was intended by the legislature to be broadly interpreted, thereby giving law enforcement officers broad access to all DMV records contained in §305. Boyd also contends that there are no witnesses or evidence to support the State's allegation that he utilized the assistance of a radio room operator to obtain Wannamaker's DMV information.³ Boyd further argues that 21 *Del.C.* §305(b)(4) allows access of DMV records for use in relation to civil proceedings in federal court as a permissible use, in which case the officer's alleged

³ Whether or not there are witnesses or evidence to support the State's allegations is an evidentiary issue, or question of fact, for a jury Boyd shall select.

access of Wannamaker's DMV records in connection with his civil action should be considered a permissible use under the statute.

THE LAW

Defendant has been charged with Unauthorized Access to a Computer System in violation of 11 *Del. C.* § 932 and Misuse of a Computer System in violation of 11 *Del. C.* § 935. The relevant portion of Section 932 of Title 11 provides that one is guilty of this crime when... "the person accesses or causes to be accessed any computer system without authorization" and that person has knowledge he or she "is not authorized to do so". Section 935 states, in relevant part, that a one is guilty of misusing computer system information when one accesses a computer system and "...intentionally makes or causes to be made an authorized display, use, disclosure or copy, in any form, of data..." or "that person knowingly receives or retains data obtained in violation of subdivision (1) or (2) or that person uses or discloses any data which that person knows or believes was obtained in violation of subdivision (1) or (2) of this section".

The law governing the authority to access DELJIS/DMV records, and which uses of the DELJIS system are legally permissible is 21 *Del.C.* § 305, as outlined, in part, below:

(a) Except as provided in subsections (b), (d), (e) and (i) of this section, the Division of Motor Vehicles and any officer, employee or contractor thereof or any other person shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained by the Division in connection with a motor vehicle record.

(b) *Permissible uses.*--Personal information referred to in subsection (a) of this section shall only be disclosed for use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls or advisories; performance monitoring of motor vehicles,

motor vehicle parts and motor vehicle dealers by motor vehicle manufacturers; and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft of 1992 and the Clean Air Act. Personal information may be disclosed only upon proof of the identity of the person requesting the record(s) and sworn representation by such person that the released personal information will be strictly limited to 1 or more of the following described uses:

(1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a government agency, in carrying out its functions.

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls or advisories; performance monitoring of motor vehicles, motor vehicle parts and motor vehicle dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.

(3) For use in the normal course of business by a legitimate business or its agents, employees or contractors, but only:

a. To verify the accuracy of personal information submitted by the individual to the business or its agents, employees or contractors; and

b. If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by pursuing legal remedies against or recovering on a debt or security interest against the individual.

(4) For use in connection with any civil, criminal, administrative or arbitration proceeding in any federal, state or local court or agency or before any self-regulating body, including the service of process, investigation in anticipation of litigation and the execution or enforcement of judgments and orders or pursuant to an order of a federal, state or local court.⁴

(5) For use in research activities and for use in producing statistical reports, so long as the personal information is not published, redisclosed or used to contact individuals.

⁴ Boyd asserts this provision of the statute constitutes a permissible use.

(6) For use by any insurer or insurance support organization or by a self-insured entity or its agents, employees or contractors, in connection with claims investigation activities, anti-fraud activities, rating or underwriting.

(7) For use in providing notice to the owners or lien holders of towed or impounded vehicles.

(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986.

(10) For use in connection with the operation of private toll transportation facilities.

(11) Persons requesting their own records, law enforcement officers, judicial and other motor vehicle jurisdictions through the supporting information networks may have access to all records retained by the Division.

(12) Repealed by 72 L.2000, ch. 479, § 1, eff. July 26, 2000.

(13) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

(m) *Unlawful acts.*

(1) *Procurement for unlawful purposes.*--It shall be unlawful for any person knowingly to obtain or disclose personal information from a motor vehicle record for any use not permitted under this title. (Emphasis supplied).

(2) *False representation.*--It shall be unlawful for any person to make false representation to obtain any personal information from an individual's motor vehicle record.

DISCUSSION

A court's duty in construing a statute is to give effect to the intent of the legislature as clearly expressed in the language of the statute. *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del.1982). To ascertain the meaning of words in a statute the Court should consider the context and setting thereof. *Hutton v. Phillips*, 70 A.2d 15, 17 (Del. 1950). The critical issue as outlined in the briefs filed by both Boyd and the State in this

matter is whether Boyd's alleged use of the DELJIS system was an authorized permissible use under 21 *Del.C.* 305(b)(1-13). Boyd has been charged with the separate crimes of Unauthorized Access and Misuse of a Computer System. Both parties are correct in stating that these Criminal Code sections in Title 11 must be read in tandem with 21 *Del.C.* 305(b) for a more complete understanding of permissible uses of the DELJIS system. The Court notes, however, that other direct, indirect or extensive evidence subject to the Delaware Rules of Evidence may be admitted into evidence at trial. The Court must also note that the criminal Informations do not cite, or allege separate distinct violations of 21 *Del. C.* §305 must set forth clearly language of both criminal statutes.

Section 305(b)(1-13) of Title 21 sets forth an exhaustive list of what are considered authorized and permissible uses of the State's computer system or DELJIS. The State contends that this list exhibits the legislature's intention to limit the usage of the system to specific and limited purposes. For example, Section 305(b)(1) provides that the system may be used by "any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a government agency, in carrying out its functions." *Id.* This subject grants a broad spectrum of persons authorization to access DELJIS/DMV records, without any stated limitations on the permissible uses of the system.

There is no doubt that Boyd was a police officer at the time of the alleged incident, and, as a law enforcement officer, was intended by the legislature to be an authorized user under Section 305(b). Thus, clearly the disposition of this Motion turns on whether Boyd's alleged use was permissible under the statute. By its wording Section

305(b)(1) grants law enforcement officers, such as the defendant, broad discretion in their usage of the DELJIS/DMV system. However, the Court must note without commenting on the quality or quantity of evidence which may exist, or may not exist in the record, that it should not be inferred that those with authority to access DELJIS are permitted to abuse it. Nor can this Court include that Boyd's position as a police officer at the time of the alleged incident in no way permits him unfettered discretion to use the DELJIS system by accessing records for statutory reasons or listed authorized cases not associated with his position as a law enforcement officer of this State.

In construing Boyd's Motion to Dismiss, the Court notes that State's reference in paragraph four (4) of its Response that cites §305(6), "Permissible Uses", Section (b) provides, *inter alia*, "personal information referred to in subsection (a) of this section shall only be disclosed for use in connection with matters of motor vehicle or driver safety and theft; motion emissions, etc." (Emphasis Supplied). The State also points out the permissible uses in subsection (b) in paragraph four (4) of its brief the relevant portion of the statute provided; "...Personal information may be disclosed only upon proof of identity of the person requesting the record(s) and sworn representation by such person that the released personal information will be strictly limited to 1 or more of the following described uses:" (1-13). *Id.* In addition, 21 *Del. C.* §305(m)(1) specifically provides that "It shall be unlawful for any person knowingly to obtain or disclose personal information for a motor vehicle record for any use but permitted under this statute."

In supplemental briefing Boyd argues at page two (20) of his filing that this Court should apply rules of statutory construction and, *inter alia*, dismiss the instant

Informations. In essence, Boyd argues, as does the State that two (2) key words are “authorized” and “authorization”. Twenty-one *Del.C.* §305(b) defines the permissible “access to and use of motor vehicle records” Boyd argues for supplemental briefing that 21 *Del. C.* §305 “instructs us as to who has authorization”. DELJIS Directive I (Attached as Exhibit B to State’s Response), according to Boyd “advises authorized users of the restrictions with respect to motor vehicle information.” (Boyd’s Supplemental Response at 3). Boyd argues at page 5 that “...if he is accessed Wanamaker’s motor vehicle records he did in connection with his [private] civil action against the WPD.”

CONCLUSION

However, ultimately after this analysis this Court must conclude that it is a question of fact for a jury if this access by Boyd was permissible or authorized under the Delaware statute outlined above and/or violates the two (2) statute’s listed on the documents filed by the Department of Justice.

On June 27, 2005 Boyd also signed Exhibits “C” and “D” the State’s filing, “Network Acceptable Use Policy.” Defendant has requested this matter be heard before a jury. It is clearly a question of fact for a jury as to whether defendant violated breached these agreements, violated the two (2) statutes filed by the Attorney General, or went outside the parameters of §305(b)(1-13) in accessing Wannamaker’s personal DMV records.

Counsel is requested to file within ten (10) calendar days with this Judge’s Chambers prepared Jury Instructions, as well as confer with the Criminal Clerk and select a date to set this matter for a Jury trial. This judge shall retain jurisdiction to preside over the criminal jury trial the parties shall select.

OPINION AND ORDER

The Court hereby DENIES Boyd's Motion to Dismiss.

IT IS SO ORDERED this 3rd day of March 2008.

JOHN K. WELCH
Judge

cc: Theresa Bleakly, CCP Scheduling Supervisor