

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v	:	CR 507-2021
	:	
ERIC DERR	:	
	:	
Defendant	:	

MEMORANDUM AND ORDER

Before the court is the Defendant's Omnibus Pretrial Motion for relief based on a petition for Writ of Habeas Corpus and Motion to Dismiss based upon the statute of limitations.

Factual And Procedural Background

Defendant Eric Derr was a police officer serving the Williamsport Police Department in Lycoming County, Pennsylvania. As part of his employment he was authorized access to the JNET computer network which would present an officer special access to review court and motor vehicle related information about any subject for which a criminal inquiry was necessary. Allegations were raised against the defendant asserting that he was improperly accessing the JNET database to obtain information about private individuals for his personal use and not for legitimate police criminal inquiries. The Commonwealth serves that such conduct violates the criminal provisions of 18 Pa.C.S.A. §7611(a)(2) which provides the following:

§ 7611. Unlawful use of computer and other computer crimes

(a) Offense defined.--A person commits the offense of unlawful use of a computer if he:
(1) accesses or exceeds authorization to access, alters, damages or destroys any computer, computer system, computer network, computer software, computer program, computer database, World Wide Web site or telecommunication device or any part thereof with the intent to interrupt the normal functioning of a person or to

devise or execute any scheme or artifice to defraud or deceive or control property or services by means of false or fraudulent pretenses, representations or promises;
(2) intentionally and without authorization accesses or exceeds authorization to access, alters, interferes with the operation of, damages or destroys any computer, computer system, computer network, computer software, computer program, computer database, World Wide Web site or telecommunication device or any part thereof; or
(3) intentionally or knowingly and without authorization gives or publishes a password, identifying code, personal identification number or other confidential information about a computer, computer system, computer network, computer database, World Wide Web site or telecommunication device.
(b) Grading.--An offense under this section shall constitute a felony of the third degree.
(c) Prosecution not prohibited.--Prosecution for an offense under this section shall not prohibit prosecution under any other section of this title.

A Preliminary Hearing was conducted on April 15, 2021 at which time a police investigator detailed evidence which showed that Defendant access the JNET database to obtain information about numerous individuals for which no criminal investigation could be related. The charges were bound over by the District Magistrate Judge in the within Omnibus Pretrial Motion was timely presented. A “Supplemental Omnibus Pretrial Motion” was filed on June 10, 2021, and the matter was set for argument.

In his Supplemental Motion argument Defendant brings to the court’s attention a recently issued United States Supreme Court decision in *Van Buren v. United States*, 141 S.Ct 1648 (2021), decided June 3, 2021. Interpreting the federal Computer Fraud and Abuse Act of 1986 (CFAA), 18 U.S.C. §1030, the court held that a police officer who had accessed the JNET database for personal use could not be held culpable under the CFAA.

Habeas Corpus

Clearly, Defendant is a trained police officer and was given access to the Williamsport Police Department laptops as well as was given login information particular to him to gain access to the JNET database. In this context the Defendant was not “hacking” to gain access but rather was an authorized user. The Commonwealth, however, asserts that the “authorization” carries with it the explicit condition that it was not to be accessed for personal use. They reiterate that Defendant was reminded of this condition both in his training, recurrent training, and a user

warning which popped up on the screen upon initial access to JNET. It would appear that this is a case of first impression regarding the interpretation of 18 Pa.C.S.A. §7611(a)(2).

The statute set forth above provides that a person commits the offense of unlawful use of a computer if he intentionally and without authorization accesses or exceeds authorization to access any computer. It is noteworthy that the provision speaks specifically about “access” and not “use”. Defendant had authorization to both “access” the computer device he employed and had authorization to access the JNET database. The interpretive context focuses on “exceeding authorization” and could be viewed in two different ways. The first would be for an individual who is authorized to use a computer including certain programs thereon but not on others. A violation would occur if the user accessed the computer to enter into programs for which he did not have authorization. The second would be for an individual who is authorized to access a computer including certain programs as well as programs for which there were certain rules or conditions, and he violated those rules or conditions when he entered into the programs. In *Van Buren*, the court discussed the distinction as follows:

Nathan Van Buren, a former police sergeant, ran a license plate search in a law enforcement computer database in exchange for money. Van Buren’s conduct plainly flouted his department’s policy, which authorized him to obtain database information only for law enforcement purposes. We must decide whether Van Buren also violated the Computer Fraud and Abuse Act of 1986 (CFAA), which makes it illegal to “to access a computer with authorization and to use such access to obtain or alter information in the computer that the accessor is not entitled so to obtain or alter.

He did not. This provision covers those who obtain information from particular areas in the computer ----such as files, folders, or databases----to which their computer access does not extend. It does not cover those who, like Van Buren, have improper motives for obtaining information that is otherwise available to them

Van Buren, 141 S.Ct. 1648, at 1652.

If the “exceeds authorized access” clause criminalizes every violation of a computer-use policy, then millions of otherwise law-abiding citizens are criminals. Take the workplace. Employers commonly state that computers and electronic devices can be used only for business purposes. So on the Commonwealth’s reading of the statute, an employee who sends a personal email or reads the news using her work computer has violated the statute. We find it hard to believe that the legislature intended to make a felony out of performing internet-based Christmas shopping on an employee’s lunch hour. In that regard the employee had access to the Internet but was violating a company policy.

Consistent with the foregoing we dismiss the refiled twenty-eight counts against the defendant charging him with violations of 18 Pa.C.S.A. §7611(a)(2).

Motion to Dismiss

Finally, Defendant moves to dismiss the Unlawful Use of Computer charges as untimely under the applicable Statute of Limitations, 42 Pa.C.S.A. §5551 et seq. He asserts that none of the charged incidents occurred in either the two or five years statute of limitations. He further argues that the exceptions set forth in §5552(c) for offenses committed by public officers or employees in the course of or in connection with their employment are not applicable. We disagree.

We hold that Defendant, a municipal police officer employed by the city of Williamsport, is a “public employee” for purposes of the extension of the statute of limitations. Further, the matters complained of were within the course of or in connection with his employment.

Consistent with the foregoing, the Motion to Dismiss is denied.

A handwritten signature in black ink, appearing to read "David C. Klementik", written over a horizontal line.

David C. Klementik, Senior Judge
Specially Presiding

Dated: January 11, 2022


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ERIC DERR	:	
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Defendant	:	

ORDER

AND NOW, this 11th day of January, 2022, for the reasons set forth in the foregoing Memorandum the Petition for Writ of Habeas Corpus is GRANTED, and the twenty-eight counts charging defendant with a violation of 18 Pa.C.S.A. §7611(a)(2) are DISMISSED.

BY THE COURT



David C. Klementik, Senior Judge
Specially Presiding

Cc: Robert Hoffa, Esq.
Rebecca Alo, Esq., AG's Office