IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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WILLIAM A. PARUS,

Plaintiff,

and

ALLSTATE INSURANCE COMPANY,

Intervening Plaintiff,

OPINION AND ORDER

v.

05-C-0063-C

ANDREW C. CATOR, THOMAS KROEPLIN, DAWN BRESNAHAN, individually and in her official capacity as an employee of the Town of Minocqua Police Department, TOWN OF MINOCQUA, WISCONSIN, CLAY KREITLOW, individually and in his capacity as an employee of the Town of Woodruff Police Department, and TOWN OF WOODRUFF, WISCONSIN,

Defendants.

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In this civil action for monetary relief, plaintiff William A. Parus contends that defendants Kreitlow and Town of Woodruff, Wisconsin, illegally obtained his personal information from the Department of Motor Vehicles database in violation of the Driver's

Privacy Protection Act of 1994, 18 U.S.C. § 2721. Jurisdiction is present under 28 U.S.C. § 1331.

This case is before the court on defendants Clay Kreitlow and Town of Woodruff's motion for summary judgment. (Intervening plaintiff Allstate Insurance Co. has not filed a response to defendants' motion. Because intervening plaintiff plays no role in the relevant facts of this case, all references to "plaintiff" will be to William A. Parus.) Defendants Thomas Kroeplin and Andrew Cator have filed separate motions for summary judgment. Each of those motions will be decided in separate orders.

Plaintiff and defendants Kreitlow and Town of Woodruff agree that on September 20, 2004, defendant Kreitlow obtained plaintiff's personal information from the Department of Motor Vehicles database. They disagree about defendant Kreitlow's reason for doing so. I conclude that resolution of the disagreement is material to the outcome of this lawsuit and therefore will deny defendants' motion.

From the parties' proposed findings of fact, I find the following to be material and undisputed.

UNDISPUTED FACTS

On September 20, 2004, at approximately 1:30 p.m., defendant Clay Kreitlow, a police officer employed by the Town of Woodruff, Wisconsin, was on duty when defendant

Andrew Cator entered the police department with a piece of paper in his hand. Defendant Cator asked defendant Kreitlow to "run a license plate number" on a vehicle defendant Cator said he wanted to purchase.

Defendant Kreitlow was suspicious of defendant Cator's motives. (At some time prior to September 24, 2004, the Woodruff Police Department had conducted an investigation involving defendant Cator. In addition, defendant Kreitlow had stopped defendant Cator several times for traffic violations.) Defendant Kreitlow decided to investigate the request.

Defendant Kreitlow used a recorded telephone line to contact defendant Dawn Bresnahan, a dispatcher with the Minocqua Police Department. Defendant Kreitlow gave defendant Bresnahan the license plate number and asked her to "run" the number and provide him with information about the individual who owned the vehicle. Defendant Bresnahan gave defendant Kreitlow the information he requested, including the name of the vehicle owner, plaintiff William A. Parus. Defendant Kreitlow did not recognize plaintiff's name.

After ending his call to defendant Bresnahan, defendant Kreitlow asked defendant Cator why he wanted the vehicle owner's information. Defendant Cator stated again that he wanted to purchase the vehicle.

It is the policy of the Woodruff Police Department not to divulge to the public

personal information from the Department of Motor Vehicles database. Having successfully completed all courses relevant to the department's policies and procedures, defendant Kreitlow was aware of this policy. Despite defendant Cator's requests, defendant Kreitlow did not disclose plaintiff's personal information to defendant Cator; however, defendant Kreitlow did tell defendant Cator that the owner of the vehicle was "a local guy."

Defendant Cator became frustrated and asked why defendant Kreitlow would not give him the information. Defendant Kreitlow told defendant Cator that police officers do not give out personal information because they do not know how the information they disclose might be used. Defendant Cator asked defendant Kreitlow which officer would be on duty next. Defendant Kreitlow told him that Officer William B. Rhodes would be working the next shift. Defendant Kreitlow wrote a note to Rhodes explaining the situation and defendant Cator left the police department. The interaction between defendant Kreitlow and defendant Cator lasted ten to fifteen minutes.

Immediately after defendant Cator left, defendant Kreitlow called defendant Bresnahan and explained to her why he had requested the vehicle owner's information. Defendant Kreitlow told defendant Bresnahan not to provide information about the license plate number or owner of the vehicle to anyone else. Defendant Kreitlow also directed defendant Bresnahan to leave a note for later shift officers telling them not to disclose the information.

OPINION

Defendant's motion for summary judgment raises two questions. First, on the basis of the undisputed facts and the reasonable inferences that can be drawn from them, could a jury find that defendant Kreitlow violated the Driver's Privacy Protection Act when he obtained plaintiff's personal information from the Department of Motor Vehicles database? Second, if defendant Kreitlow violated the Act when he obtained plaintiff's personal information, may defendants be held liable under the Act even though defendant Kreitlow did not disclose or use the information he obtained? The answer to both questions is yes.

A. The Driver's Privacy Protection Act and the Law Enforcement Exception

Congress passed the Driver's Privacy Protection Act of 1994 to limit the release of personal driver information contained in motor vehicle records. Kehoe v. Fidelity Federal Bank & Trust, --- F.3d ---, 2005 WL 2043055 at *1 (11th Cir. Aug. 26, 2005). The Act prohibits the release of a motorist's personal information (defined as "information that identifies an individual, including an individual's . . . name [and] address") from the Department of Motor Vehicles database, with specific exceptions. 18 U.S.C. § 2725(3); 18 U.S.C. § 2721(a). Among the Act's enumerated exceptions is § 2721(1)(b), which permits disclosure of personal information "for use by any government agency, including any . . . law enforcement agency, in carrying out its functions." When personal information is released

for a purpose not permitted under the Act, an individual whose information has been disclosed may bring suit in federal court against any person who has knowingly obtained, disclosed or used the information. 18 U.S.C. § 2724(a).

Plaintiff contends that defendant Kreitlow violated § 2721(a) when he obtained plaintiff's personal information from the Department of Motor Vehicles database for a purpose not permitted under the Act. When defendant Cator entered the Woodruff police station on September 15, 2004, he asked defendant Kreitlow to "run a license plate" for him. Defendant Cator told defendant Kreitlow he was planning to purchase the vehicle bearing the license plate and wanted to know whether the vehicle was owned locally. Plaintiff contends that defendant Kreitlow complied with defendant Cator's request for the sole purpose of determining whether plaintiff was "a local guy" and that in doing so defendant Kreitlow was not carrying out a law enforcement function. Therefore, plaintiff contends that defendant Kreitlow violated the Act and is liable under § 2724(a).

In support of his position, plaintiff cites Margan v. Niles, 250 F. Supp. 2d (N.D. N.Y. 2003). In Margan, plaintiffs brought a lawsuit under the Driver's Privacy Protection Act against a police officer and the town that employed him, alleging that the officer knowingly obtained the plaintiffs' personal information from the Department of Motor Vehicles database and disclosed it to his friends, who used the information to harass the plaintiffs. Id. at 66-67. Plaintiff argues that, like Margan, defendant Kreitlow obtained personal

information for a non-law enforcement purpose and is liable for the violation.

Defendants Kreitlow and Town of Woodruff admit that defendant Kreitlow obtained plaintiff's personal information but they deny that defendant Kreitlow violated the Act. Instead, they argue that defendant Kreitlow obtained the information in the course of a law enforcement investigation as permitted by § 2721(b)(1). They point out that defendant Kreitlow was on duty as a police officer at the time he obtained the information, he believed defendant Cator had been involved in a prior police investigation, he did not disclose any of plaintiff's personal information to defendant Cator and he directed other police officers not to disclose plaintiff's personal information to anyone who requested it. Defendants contend that it was defendant Kreitlow's duty to investigate what he regarded as suspicious behavior on the part of defendant Cator and that he obtained plaintiff's personal information while performing a legitimate law enforcement function.

Although the parties agree on the material facts in this case, they dispute the inferences to be drawn from those facts. When deciding a motion for summary judgment, I must draw all reasonable inferences in favor of non-moving party. Butera v. Cottey, 285 F.3d 601, 605 (7th Cir. 2002). Summary judgment is inappropriate if evidence could lead a reasonable jury to return a verdict in favor of plaintiff. Payne v. Pauley, 337 F.3d 767, 770 (7th Cir. 2003).

When defendant Cator entered the police station on September 20, 2004, it was

against police department policy to make available to the general public information from motor vehicle records. Yet when defendant Cator asked defendant Kreitlow to "run a license plate" for him, defendant Kreitlow did so. Defendant Kreitlow obtained plaintiff's personal information from the Department of Motor Vehicles database and informed defendant Cator that the vehicle owner was "a local guy." From these undisputed facts, a jury could reasonably infer that defendant Kreitlow obtained plaintiff's personal information from the Department of Motor Vehicles for a non-law enforcement purpose.

B. Liability Under the DPPA

Next, defendants contend that defendant Kreitlow is not liable to plaintiff under the Act even if he did obtain plaintiff's personal information for a non-law enforcement purpose. They assert that unless defendant Kreitlow actually disclosed or otherwise used plaintiff's personal information they cannot be liable for improperly obtaining it. "No harm, no foul" is their argument; because plaintiff does not claim that he was injured as a result of defendant Kreitlow improperly obtaining his personal information, defendants cannot be held liable for any technical violation of the Act. In support of their position, defendants cite Russell v. Choicepoint Serv., Inc., 300 F. Supp. 2d 450 (E.D. La. 2004), as persuasive authority.

In Russell, the plaintiff alleged that defendant Choicepoint Services, Inc. had

improperly obtained personal information from her motor vehicle record with intent to redistribute it for an impermissible purpose. Id. at 451. Choicepoint obtained Russell's personal information under § 2721(c), which permits "authorized recipient[s] of personal information" to "resell or redisclose" that information for uses permitted under § 2621(b). Id. at 455. The court found that because Choicepoint was an authorized recipient of personal information within the meaning of § 2721(c), it could not be liable to Russell for improperly obtaining her information unless she alleged also that Choicepoint had used the information for a purpose not permitted under § 2621(b). Id. at 455, 457. In the absence of an allegation of improper use, the court presumed that Choicepoint had not improperly obtained Russell's personal information. Id. at 460-61. The court dismissed Russell's claim, stating that she could "not maintain a [Driver's Privacy Protection Act] claim for improper obtainment under 18 U.S.C. § 2724(a) without alleging an accompanying impermissible use." Id. at 455.

The present case is distinguishable from Russell. Russell involved a claim against a commercial entity authorized under § 2721(c) to resell personal information for a purpose permitted under § 2721(b). Defendant Kreitlow is not (and does not purport to be) an authorized recipient of information under § 2721(c). Rather, he contends that as a law enforcement officer he was permitted to obtain information under § 2721(b)(1). Because defendant Kreitlow was not presumptively authorized to obtain plaintiff's information, there

is no reason to require plaintiff to make an additional showing that defendant Kreitlow improperly used the information he obtained from the Department of Motor Vehicles database. The Russell court's requirement that a plaintiff allege both "improper obtainment" and "impermissible use" is relevant only in the context of a claim arising under § 2721(c). This is not such a case, and therefore Russell is not applicable.

This case is governed by the plain language of 18 U.S.C. § 2724(a), which authorizes civil remedies for violations of the DPPA. Section 2724(a) states:

> A person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.

The statute uses the disjunctive "or" to connect the terms "obtains," "discloses" and "uses." Therefore, each term must be given a separate meaning. Reiter v. Sonotone Corp., 442 U.S. 330, 337 (1979). Section 2724(a) makes a person liable when he knowingly obtains personal information from a motor vehicle record for a purpose not permitted under the Act regardless whether he proceeds to disclose or use the information.

It is true that plaintiff has not alleged that he suffered injury as a *result* of defendant Kreitlow's obtaining his personal information. However, under the statute, improperly obtaining plaintiff's information *was* an injury. The Driver's Privacy Protection Act is designed to safeguard personal information. See, e.g., 139 Cong. Rec. S15765 (1993) ("Easy

access to personal information makes every driver in this nation vulnerable and infringes on their right to privacy.") (statement of Sen. Robb). If defendant Kreitlow obtained plaintiff's information in violation of the law, then he infringed upon plaintiff's privacy. The language of the statute protects not only against the wrongful dissemination of private information, but also against the wrongful acquisition of that information.

Resolution of this dispute turns on the answer to a single question: Was defendant Kreitlow carrying out a law enforcement function when he obtained plaintiff Parus's personal information from his motor vehicle record? Because the parties dispute the answer to this question, I must deny defendants Kreitlow's and Town of Woodruff's motion for summary judgment.

ORDER

IT IS ORDERED that the motion for summary judgment filed by defendants Clay Kreitlow and the Town of Woodruff is DENIED as to plaintiff William A. Parus's claim that defendant Kreitlow obtained plaintiff's protected personal information in violation of the

Drivers' Privacy Protection Act of 1994.

Entered this 14th day of September, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge