

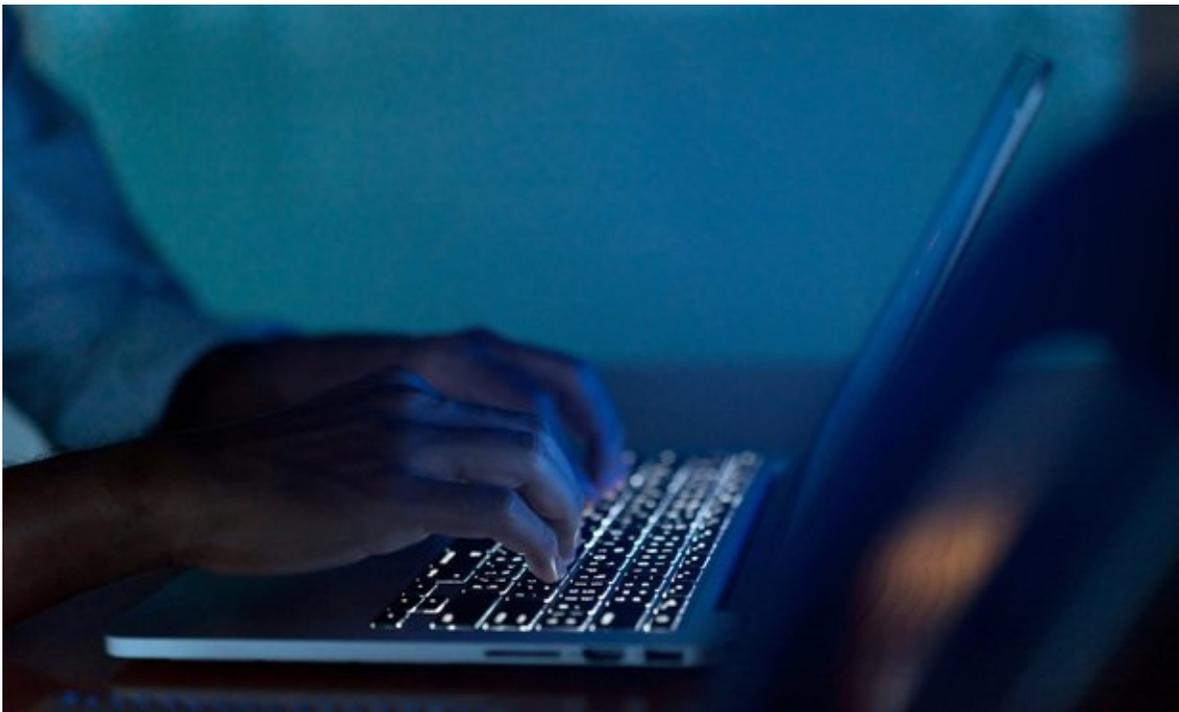
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Divided High Court Reverses Conviction of IT Tech Who Secretly Forwarded Boss' Emails to Himself

"If the court had interpreted the statute differently, it could have criminalized a lot of innocuous behavior—behavior that many of us engage in regularly, like forwarding emails," said appellate attorney Leigh Ann Webster of Strickland Webster in Atlanta.

By Cedra Mayfield | June 21, 2021



(Credit: [chinnarach/stock.adobe.com](https://www.adobe.com/stock/344444444/chinnarach))

A divided high court overturned a felony computer trespass conviction of a Georgia man who forwarded all his boss' emails to his own inbox—in a case in which prosecutors cited the wrong statute at trial.

Rather than charging Jereno Sadatrice Kinslow—an IT professional with the city of Norcross— with interfering with the operation of a computer program, the Gwinnett County District Attorney's Office instead accused him of interfering with the use of data.

But that was the wrong move, according to the Supreme Court of Georgia, which found Kinslow's conduct did not violate the section of Georgia law that prosecutors cited to convict him.

Atlanta defense attorney Leigh Ann Webster homed in on the prosecutor misstep for a victory before the high court.

"You have to be very thoughtful and careful about actually analyzing the words of the statute as written and understanding what they mean, before you charge someone with a crime," said defense attorney Leigh Ann Webster of Strickland Webster in Atlanta. "When you're charging someone with a crime, the fact that it might appear to be computer trespass ... doesn't necessarily mean that it actually meets the elements of the crime as the law is written."

Webster's client, Kinslow, altered his employer's city of Norcross computer network settings so that emails sent to his boss also arrived to Kinslow's personal email inbox.



Leigh Ann Webster of Strickland Webster in Atlanta.
(Courtesy photo)

'Broad Ramifications'

Under Georgia Code § 16-9-93 (b) (2), which defines the offense of computer trespass, "the state was required to prove that Kinslow used a computer network knowingly without authority with the intention of obstructing or interfering with the use of data," read the majority opinion by Justice Nels S. D. Peterson. "We conclude that the evidence presented at trial was insufficient to prove that Kinslow's use was done with the intention of obstructing or interfering with the use of data."



Justice Nels Peterson, Georgia Supreme Court. (Photo: John Disney/ALM)

While invasive, the high court determined that Kinslow's act of forwarding his employer's emails to himself hadn't hindered the flow or use of data to or for any intended recipient.

Rather, it found the evidence presented by the state showed the IT tech's actions created an "additional flow of data" to another account.

Based on that distinction, the Supreme Court of Georgia ruled the state's evidence didn't support Kinslow's conviction. It then reversed the Court of Appeals decision that had found otherwise.

"It has broad ramifications for Georgia's residents," Webster said. "If the court had interpreted the statute differently, it could have criminalized a lot of innocuous behavior—behavior that many of us engage in regularly, like forwarding emails from listservs without permission, or accessing the internet from work computers when

that isn't allowed by the terms of use. So it is an important decision."

Standard of Review

But not everyone agreed with the outcome.

Three justices dissented.



Chief Justice Harold Melton, Supreme Court of Georgia. (Photo: John Disney/ALM)

“There was sufficient evidence to support the jury’s finding of guilt in this case,” wrote Chief Justice Harold D. Melton in a dissent supported by Justice John J. Ellington and Justice Shawn E. LaGrua. “In reaching its erroneous conclusion, the majority rewrites part of the statute that is the subject of this case, ignores other plain language in that same statute which compels a different result, and upends the constitutional standard of review in sufficiency cases.”

The dissent focused on the statute’s mention of the word “interfere,” using its definition as a basis for going against the majority in support of upholding Kinslow’s conviction.

“‘Interfere’ has been defined as ‘to come in between for some purpose; to intervene; ... to intermeddle; to enter without invitation or right into the concerns of others,’” Melton wrote for the minority. “By manipulating the data stream to give himself access to [his boss’s] e-mails, Kinslow intermeddled in the affairs of others, and the data

intended to go to others, with neither authority nor invitation. As such, there was sufficient evidence to support a finding that Kinslow interfered with the use of the city’s computer program and its data.”

Key Nuance

Gwinnett County District Attorney Patsy Austin-Gatson agreed.

“The law has not yet caught up with the technology that we all deal with now,” she said.

After prosecuting the appeal with Gwinnett County Assistant District Attorney Daniel W. A. Peach, she said the case provided at least one takeaway.

“I think the case is pretty clear that the court did not like how the law was written and how we interpreted the law,” Austin-Gatson said. “We’ll make a decision on what to do with the case when it comes back.”

But in a concurrence agreeing with the majority opinion, Justice Charles Bethel pointed out a distinction in the statute that cost the state its case.



Justice Charles Bethel, Supreme Court of Georgia. (Photo: John Disney/ALM)

“The state prosecuted this case solely on the theory that Kinslow committed the crime of computer trespass by interfering with the use of data in violation of [Georgia Code] § 16-9-93 (b) (2),” Bethel wrote. “The state did not pursue a theory that Kinslow interfered with the operation of a computer program, which is also punishable under the same Code section.”



Patsy Austin-Gatson, Gwinnett County district attorney. (Courtesy photo)

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