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Split Ga. Justices Ax IT Staffer's Computer Trespass Felony

By **Rosie Manins**

Law360 (June 21, 2021, 4:31 PM EDT) -- A divided Georgia Supreme Court overturned a former information technology worker's felony conviction for computer trespass on Monday, saying he didn't interfere in a city's computer network by secretly copying all his boss' emails and sending them to his personal account.

A six-judge majority reversed an intermediate appellate court's ruling that affirmed the conviction of Jereno Kinslow, who was an IT worker for the city of Norcross, Georgia. Kinslow was convicted in 2018 of computer trespass under Georgia law, but the majority of justices said his conduct didn't rise to the level of interference under the statute.

Justice Nels S.D. Peterson, writing for the majority, said Georgia's computer trespass statute defines the felony crime as using a computer or computer network without authority and with the intention to obstruct, interrupt or in any way interfere with the use of a computer program or data. Interfere in that context has a narrow meaning akin to obstruct or hinder, the court said.

Kinslow altered the city's computer system to allow him to receive at his personal email a copy of all emails sent to his boss, Greg Cothran, according to the opinion. Justice Peterson wrote that a rational jury could conclude at most that Kinslow altered the city's computer network settings, but there was no evidence this hindered the flow or use of data.

"The state presented no evidence that Kinslow's email forwarding scheme blocked or even hindered the flow of data in the form of emails to Cothran, who continued to receive those emails intended for him," Justice Peterson said in the majority opinion. "Rather, the evidence showed only that Kinslow's actions created an additional flow of data to another account."

But Chief Justice Harold D. Melton wrote in a dissenting opinion that the majority's interpretation "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."

Justice Melton, joined in his dissent by two other justices, said there was sufficient evidence to support a computer trespass conviction because Kinslow knew he didn't have authority or permission to automatically copy and forward Cothran's emails to his personal email address. Justice Melton wrote in his dissent that Kinslow should not be let off the

hook just because Cothran still received his emails, because at that point Kinslow had improperly used a computer to access data he was not authorized to see.

He said the majority opinion "educates wrongdoers that they are better off from both a detection standpoint and from prosecution as a matter of law if they simply copy data rather than block its delivery." Kinslow had clashed with Cothran, the manager of the city's IT department, causing Cothran concern about Kinslow messing with the city's computer system, Justice Melton said.

"By manipulating the data stream to give himself access to Cothran's emails, Kinslow intermeddled in the affairs of others and the data intended to go to others with neither authority nor invitation," Justice Melton said in his dissenting opinion. "At the moment Kinslow entered into the city's computer program and checked the box that generated duplicate data, he had committed exactly the sort of trespass that the statute was intended to reach."

Kinslow's counsel told Law360 they were happy to call him with the good news that his conviction was overturned Monday morning. Leigh Ann Webster of Strickland Webster LLC said the majority of the justices got it right and the ruling has broad ramifications for Georgia residents.

"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," Webster said on Monday. "So it is an important decision."

Gwinnett County District Attorney Patsy A. Austin-Gatson, an attorney for the state, did not answer questions about the case on Monday but offered a short statement via email. The city of Norcross is within Gwinnett County, about 20 miles northeast of Atlanta.

"Upon review of the decision, it is also our position that the law has not yet caught up with the realities of advanced technology," Austin-Gatson said.

Kinslow was sentenced to 10 years of probation following a jury trial in January 2018. A Georgia resident, he was employed as an IT worker by the city of Norcross when in October 2013 Cothran was hired to manage the city's IT department. The two clashed when Cothran criticized Kinslow's work in November 2013, and Kinslow was ultimately fired in June 2014.

The email forwarding scheme was discovered in August 2014 when the city clerk sent an email to Cothran and received a bounce-back notification that the email couldn't be delivered to a personal email account of Kinslow's. An investigation revealed Kinslow had altered the computer system in December 2013 to have all Cothran's work emails copied and sent to his personal account and had regularly accessed those emails on his cellphone.

Georgia Supreme Court Justice Nels S.D. Peterson wrote the majority opinion with concurrence from Presiding Justice David E. Nahmias and Justices Michael P. Boggs, Sarah Hawkins Warren, Carla Wong McMillian and Charles J. Bethel. Justice Bethel wrote a concurring opinion.

Chief Justice Harold D. Melton wrote the dissenting opinion with concurrence from Justices

John J. Ellington and Shawn Ellen LaGrua.

Kinslow is represented by Sydney A. Strickland and Leigh Ann Webster of Strickland Webster LLC.

The state is represented by Daniel W.A. Peach and Patsy A. Austin-Gatson of the Gwinnett County District Attorney's Office.

The case is Kinslow v. the State, case number S20G1001, in the Supreme Court of Georgia.

--Editing by Janice Carter Brown.