

Jeremy Jaynes v. Commonwealth of Virginia

By Pamela M. Young

On February 29, 2008, the Supreme Court of Virginia upheld the conviction of Jeremy Jaynes in a 4-3 ruling for the violation of Code § 18.2-152.3:1, the unsolicited bulk electronic mail (e-mail) provision of the Virginia Computer Crimes Act (VCCA). Code § 18.2-152.3:1.

At the trial level, the prosecution showed that Jaynes intentionally falsified the header information and sender domain names of the emails that he sent before transmitting the e-mails to the recipients, causing the Internet Protocol (IP) addresses to convey false information to every recipient about Jaynes' identity as the sender. Additionally, the prosecution entered into evidence the results of a search of Jaynes' home where the police discovered a cache of compact discs (CDs) containing over 176 million full e-mail addresses and 1.3 billion e-mail user names. The search also led to the confiscation of a storage disc which contained AOL e-mail address information and other personal and private account information for millions of AOL subscribers.

Once ranked as one of the world's top ten spammers, Jaynes was found guilty by a jury in 2004 for sending over 10,000 unsolicited emails to AOL customers on three separate occasions in July 2003 and was sentenced to nine years imprisonment. Jaynes, the first person in the nation to be convicted of a felony for sending illegal spamming was charged in Virginia because the e-mails went through an AOL server in Loudoun County, where America Online is based.

In 2006, Jaynes appealed his conviction to the Virginia Court of Appeals requesting that his conviction be overturned. The Virginia Court of Appeals rejected Jaynes' appeal and affirmed his conviction.

Jaynes appealed his conviction to the Virginia Supreme Court, and alleged that the Court of Appeals made four errors in reviewing his case: (1) the circuit court did not have proper jurisdiction to judge him on the crimes charged; (2) the statute violated the dormant Commerce Clause, (3) the statute was unconstitutionally vague, and (4) the statute violated the First Amendment. The Court ruled against Jaynes on each issue presented by his appeal.

Dissent

Writing for the dissent, Senior Justice Lacy stated he disagreed with the majority's decision holding that Jaynes did not have standing to raise a First Amendment claim against the Virginia Computer Crimes Act Code § 18.2- 152.3:1 as unconstitutionally overbroad. Lacy stated that the law is "unconstitutionally overbroad on its face because it prohibits the anonymous transmission of all unsolicited bulk e-mail including those containing political, religious or other speech protected by the First Amendment to the United States Constitution." Further Justice Lacy opined that this decision would have

far reaching consequences because the statute criminalizes sending bulk anonymous e-mail, even for the purpose of petitioning the government or promoting religion.

Source: Jaynes v. Commonwealth, 275 Va. 341 (Va. 2008), *available at* <http://news.findlaw.com/hdocs/docs/cyberlaw/jaynesva22908opn.pdf> .