IN THE
SUPREME COURT OF THE UNITED STATES

RYAN GALAL VANDYCK

Petitioner,

VS.

UNITED STATES OF AMERICA
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPLICATION REQUESTING AN EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JON M. SANDS
Federal Public Defender
District of Arizona

M. EDITH CUNNINGHAM
Assistant Federal Public Defenders
407 W. Congress, Suite 501
Tucson, AZ 85701
Telephone: (520) 879-7500
Facsimile: (520) 879-7600
Counsel of Record

APPLICATION REQUESTING AN EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI

The petitioner, Ryan Galal VanDyck, by and through his court-appointed counsel, M. Edith Cunningham, Assistant Federal Public Defender, respectfully requests that the Honorable Justice Kagan grant an extension of time to file the petition for writ of certiorari pursuant to Supreme Court Rules 13.5 and 30. Petitioner asks the Court to extend the time for filing the petition for forty-seven (47) days, from April 2, 2020, to May 19, 2020.

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on August 28, 2019. Appendix A. The Court of Appeals denied Petitioner's petition for rehearing and rehearing en banc on January 3, 2020. Appendix B.

The extension is requested because of undersigned counsel's conflicting professional obligations, including: the opening brief in Ninth Cir. No. 19-10118, filed February 20; the reply to the Solicitor General's brief in opposition to the petition for certiorari in Sup. Ct. No. 19-6062, filed February 28; the opening brief in Ninth Cir. No. 19-10300, due March 26; a supplement to a motion for new trial in No. CR 4:15-00742-TUC-CKJ-MSD (D. Ariz), due April 3; and a reply brief in Ninth Cir. No. 18-10289, due May 5.

Petitioner therefore respectfully asks the Honorable Justice Kagan to extend the time for filing the petition for forty-seven (47) days, from April 2, 2020, to May 19, 2020.

RESPECTFULLY SUBMITTED this 13th day of March, 2020.

JON M. SANDS
Federal Public Defender
District of Arizona

*M. Edith Cunningham
Assistant Federal Public Defender
407 W. Congress Street, Suite 501
Tucson, Arizona 85701
Telephone: (520) 879-7500
Facsimile: (520) 879-7600
Counsel of Record

Appendix A

NOT FOR PUBLICATION

FILED

AUG 28 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. RYAN GALAL VANDYCK, Defendant-Appellant.	No. 16-10524 D.C. No. 4:15-cr-00742-CKJ-BPV-1 MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Cindy K. Jorgenson, District Judge, Presiding

Argued and Submitted July 15, 2019
San Francisco, California

Before: PAEZ and RAWLINSON, Circuit Judges, and HUCK,** District Judge.

Ryan VanDyck was convicted of conspiracy to produce child pornography and possession of child pornography. He now appeals the district court's denial of his motions to suppress evidence obtained from the execution of a search warrant at his home office address.

---

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Paul C. Huck, United States District Judge for the U.S. District Court for Southern Florida, sitting by designation.

VanDyck makes three overarching arguments. First, he argues that the evidence should have been suppressed as the fruit of an illegal warrantless search of the file attached to the email intercepted by American Online ("AOL") as suspected child pornography. Second, he argues that the evidence should have been suppressed because police detectives obtained his subscriber information linked to an Internet Protocol ("IP") address without a warrant. Finally, he argues that even if a warrant was not required to view the image attached to the email or to obtain the subscriber information, the evidence should be suppressed because the search warrant was not supported by probable cause. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.[1]

1. Fruit of an Illegal Warrantless Search

VanDyck argues that law enforcement illegally searched the file attached to the email intercepted by AOL without a warrant. VanDyck concedes that he did not raise this argument in front of the district court because of an "oversight." We will not consider this argument as VanDyck has not shown good cause for failing to raise this issue. *See United States v. Guerrero*, 921 F.3d 895, 898 (9th Cir. 2019).

[1] We review de novo the district court's denial of a motion to suppress evidence and the validity of a search warrant. *United States v. Cervantes*, 703 F.3d 1135, 1138 (9th Cir. 2012); *United States v. Crews*, 502 F.3d 1130, 1135 (9th Cir. 2007).

2. Subscriber Information

VanDyck argues that the evidence should be suppressed because the Fourth Amendment required a warrant to obtain the subscriber information associated with the IP address, and law enforcement obtained the subscriber information with only an allegedly illegal and deceptive grand jury subpoena. In *United States v. Forrester*, we concluded that internet users have no expectation of privacy in the IP addresses of the websites they visit because "they should know that this information is provided to and used by Internet service providers for the specific purpose of directing the routing of information." 512 F.3d 500, 510 (9th Cir. 2008). VanDyck argues that *Forrester* must be reconsidered in light of the Supreme Court's decision in *Carpenter v. United States*, 138 S. Ct. 2206 (2018).[2]

In *Carpenter*, the Court made it clear that its decision was a "narrow one" that did not express views on matters not before the Court. *Id.* at 2220. Given this narrow holding, we decline to extend *Carpenter* to encompass the argument advanced by VanDyck. Moreover, we are bound by our decision in *Forrester* as it is not clearly irreconcilable with *Carpenter*. *Cf. United States v. Pepe*, 895 F.3d 679, 686 (9th Cir. 2018) ("We have a rule that 'where the reasoning or theory of

[2] In *Carpenter*, the Court declined to extend the third-party doctrine to cell site records. *Id.* at 2217. Instead, the Court held that an individual maintained a "legitimate expectation of privacy in the record of his physical movements as captured" through cell site records. *Id.*

our prior circuit authority is clearly irreconcilable with the reasoning or theory of intervening higher authority, a three-judge panel should consider itself bound by the later and controlling authority, and should reject the prior circuit opinion as having been effectively overruled.'") (quoting *Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (en banc)).

3. Probable Cause

VanDyck argues that even with the image description and the subscriber information, the state judge lacked probable cause to issue the search warrant. We give "great deference to an issuing judge's finding that probable cause supports the warrant and review for clear error." *United States v. Flores*, 802 F.3d 1028, 1043 (9th Cir. 2015) (internal quotation marks and citation omitted). We "will not find a search warrant invalid so long as the issuing judge had a substantial basis for concluding that the supporting affidavit established probable cause." *Id.* (citation omitted).

Here, the affidavit in support of the search warrant included a description of a file containing child pornography sent by a specific email address, the IP address associated with that email address, and the internet provider's indication that the subscriber information for that IP address was located at a specific home office address. Moreover, the affidavit described how further investigation indicated that one of the homeowners at the address, VanDyck, had previously been investigated

for having an inappropriate relationship with a 13-year-old girl and that in a separate previous investigation into VanDyck's arrest for falsely impersonating a police officer, the police had found legal erotic photos of prepubescent children under VanDyck's bed. Thus, we conclude that the affidavit supporting the search warrant stated sufficient facts to establish probable cause.[3] *See Flores*, 802 F.3d at 1043.

AFFIRMED.

[3] VanDyck's motions to take judicial notice are denied as moot. Dkt Nos. 43, 70.

Appendix B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. RYAN GALAL VANDYCK, Defendant-Appellant.	No. 16-10524 D.C. No. 4:15-cr-00742-CKJ-BPV-1 District of Arizona, Tucson ORDER

Before: PAEZ and RAWLINSON, Circuit Judges, and HUCK,* District Judge.

Judges Paez and Rawlinson have voted to deny the petition for rehearing en banc and Judge Huck has so recommended. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is DENIED.

---

* The Honorable Paul C. Huck, United States District Judge for the U.S. District Court for Southern Florida, sitting by designation.