

APPENDIX

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Decision of the United States Court of Appeals for the Eleventh Circuit <i>United States v. Solove</i> , No. 21-11747, 2022 WL 152240 (11th Cir. Jan. 18, 2022).....	A-1
Judgment in a Criminal Case <i>United States v. Solove</i> , No. 18-cr-80025-DMM (S.D. Fla. May 20, 2021).....	A-2

A-1

2022 WL 152240

Only the Westlaw citation is currently available.
United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.

Robert Daniel SOLOVE, Defendant -Appellant.

No. 21-11747

|

Non-Argument Calendar

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Filed: 01/18/2022

Appeal from the United States District Court for the Southern District of Florida, D.C. Docket No. 9:20-cr-80025-DMM-1

Attorneys and Law Firms

U.S. Attorney Service, Jason Wu, Assistant U.S. Attorney, Jonathan Colan, Emily M. Smachetti, U.S. Attorney's Office, Miami, FL, for Plaintiff-Appellee.

Scott G. Berry, Assistant Federal Public Defender, Federal Public Defender's Office, West Palm Beach, FL, Michael Caruso, Federal Public Defender, Bonnie Phillips-Williams, Federal Public Defender's Office, Miami, FL, for Defendant-Appellant.

Before NEWSOM, BRASHER, and ANDERSON, Circuit Judges.

Opinion

PER CURIAM:

*1 Robert Daniel Solove appeals his convictions for two counts of producing child pornography, in violation of 18 U.S.C. § 2251(a); two counts of distributing child pornography, in violation of 18 U.S.C. § 2252(a)(2); and one count of possession of child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B). He appeals the district court's denial of his motion to suppress his internet protocol ("IP") address and e-mail address, obtained without a warrant from the subscriber records of chat messaging application Kik. On appeal, he argues that IP and e-mail addresses fall into the exception to the third-party doctrine established by *Carpenter v. United States*, 138 S. Ct. 2206

(2018), because they constitute cell-site location information ("CSLI") for which a warrant is required.

The Fourth Amendment guarantees individuals the right to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Under the exclusionary rule, evidence obtained as a direct result of an illegal search or seizure is subject to exclusion, as is "evidence later discovered and found to be derivative of an illegality or fruit of the poisonous tree." *Segura v. United States*, 468 U.S. 796, 804 (1984) (quotation marks omitted). To suppress evidence based on Fourth Amendment violations, "a claimant has the burden of proving (1) that the search was unlawful and (2) that the claimant had a legitimate expectation of privacy." *United States v. McKennon*, 814 F.2d 1539, 1542 (11th Cir. 1987). This expectation of privacy must be subjective to the defendant and one that society recognizes as reasonable. *United States v. Trader*, 981 F.3d 961, 967 (11th Cir. 2020), *cert. denied*, No. 21-5323 (Oct. 4, 2021). Under the third-party doctrine, an individual has no reasonable expectation of privacy in information conveyed to third parties, even if they only revealed that information for a limited purpose. *United States v. Gayden*, 977 F.3d 1146, 1151 (11th Cir. 2020), *cert. denied*, No. 20-7896 (Oct. 4, 2021).

In *Carpenter*, however, the Supreme Court held that individuals have a reasonable expectation of privacy in CSLI, such that the government must obtain a warrant to obtain

CSLI records from cell phone carriers. *Carpenter*, 138 S. Ct. at 2223. The Court found that the "unique nature of cell phone location records" subjected them to Fourth Amendment protection, noting that cell phones automatically connect to the nearest cell tower several times per minute without any action on the part of the user. *Id.* at 2217. The Court expressly held, however, that its decision was "a narrow one" and did not impact "business records that might incidentally reveal location information." *Id.*

In *Trader*, we held that the *Carpenter* exception to the third-party doctrine does not extend to e-mail and IP addresses. 981 F.3d at 967-68. We rejected *Trader*'s argument that IP and e-mail address constitute CSLI, because they are neither location records nor cell phone records. *Id.* at 968-69. IP addresses, we explained, only reveal an individual's location indirectly, if the government examines an internet company's business records to see where a particular network is registered. *Id.* at 968. We stated that both IP addresses and

e-mail addresses, further, are associated with any device that can access a wireless internet network, including computers and tablets, rather than cell phones specifically. *Id.* at 969.

*2 Under our prior precedent rule, we are bound to follow the binding precedent of this Court unless and until it is overruled by this Court sitting *en banc* or the Supreme Court.

¶ *United States v. Vega-Castillo*, 540 F.3d 1235, 1236 (11th Cir. 2008). “The prior panel precedent rule applies regardless of whether the later panel believes the prior panel’s opinion to be correct, and there is no exception to the rule where the prior panel failed to consider arguments raised before a later

panel.” ¶ *United States v. Gillis*, 938 F.3d 1181, 1198 (11th Cir. 2019).

Solove’s claim that law enforcement needed a warrant to obtain his e-mail and IP address is foreclosed by our holding in *Trader*, to which we are bound under the prior precedent rule. For this reason, we affirm Solove’s convictions.

AFFIRMED.

All Citations

Not Reported in Fed. Rptr., 2022 WL 152240

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A-2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

UNITED STATES OF AMERICA

v.

ROBERT DANIEL SOLOVE

§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **9:20-CR-80025-DMM(1)**

§ USM Number: **26203-104**

§ Counsel for Defendant: **Scott G. Berry**

§ Counsel for United States: **Gregory Schiller**

THE DEFENDANT:

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	One through Five of the Superseding Information
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
18:2251(A) and (E) - Selling Or Buying Of Children	01/29/2020	1s
18:2251(A) and (E) - Selling Or Buying Of Children	01/21/2020	2s
18:2252(A)(2) and (B)(1) - Activities Re Material Constituting/Containing Child Porno	01/30/2020	3s
18:2252(A)(2) and (B)(1) - Activities Re Material Constituting/Containing Child Porno	02/14/2020	4s
18:2252(A)(4)(B) & (B)(2) - Activities Re Material Constituting/Containing Child Porno	02/19/2020	5s

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

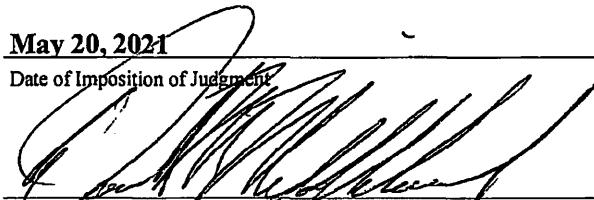
The defendant has been found not guilty on count(s)

Remaining Count(s) is are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

May 20, 2021

Date of Imposition of Judgment

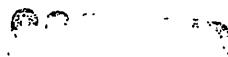

 Signature of Judge

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

May 20, 2021

Date



DEFENDANT: ROBERT DANIEL SOLOVE
CASE NUMBER: 9:20-CR-80025-DMM(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

SIX HUNDRED (600) MONTHS. This term consists of 360 months as to Count 1s and 2s to run concurrently with each other and 240 months as to Count 3s, 4s and 5s, to run concurrently with each other and consecutively to Counts 1s and 2s.

The court makes the following recommendations to the Bureau of Prisons:

- The Defendant be placed in a facility that offers Sex Offender Treatment.
- The Defendant be designated to a facility in or as close to Pennsylvania as possible.
- Due to the nature of Defendant's crimes, it is recommended to the Bureau of Prisons that they take the necessary steps to secure his safety.

- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ROBERT DANIEL SOLOVE
CASE NUMBER: 9:20-CR-80025-DMM(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: LIFE.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: ROBERT DANIEL SOLOVE
CASE NUMBER: 9:20-CR-80025-DMM(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.flsp.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: ROBERT DANIEL SOLOVE
CASE NUMBER: 9:20-CR-80025-DMM(1)

SPECIAL CONDITIONS OF SUPERVISION

Adam Walsh Act Search Condition: The defendant shall submit to the U.S. Probation Officer conducting periodic unannounced searches of the defendant's person, property, house, residence, vehicles, papers, computer(s), other electronic communication or data storage devices or media, include retrieval and copying of all data from the computer(s) and any internal or external peripherals and effects at any time, with or without warrant by any law enforcement or probation officer with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. The search may include the retrieval and copying of all data from the computer(s) and any internal or external peripherals to ensure compliance with other supervision conditions and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

Computer Modem Restriction: The defendant shall not possess or use a computer that contains an internal, external or wireless modem without the prior approval of the Court.

Computer Possession Restriction: The defendant shall not possess or use any computer; except that the defendant may, with the prior approval of the Court, use a computer in connection with authorized employment.

Data Encryption Restriction: The defendant shall not possess or use any data encryption technique or program.

Mental Health Treatment: The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

No Contact with Minors: The defendant shall have no personal, mail, telephone, or computer contact with children/minors under the age of 18 or with the victim.

No Involvement in Youth Organizations: The defendant shall not be involved in any children's or youth organization.

Permissible Computer Examination: The defendant shall submit to the U.S. Probation Officer conducting periodic unannounced examinations of the defendant's computer(s) equipment which may include retrieval and copying of all data from the computer(s) and any internal or external peripherals to ensure compliance with this condition and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

Restricted from Possession of Sexual Materials: The defendant shall not buy, sell, exchange, possess, trade, or produce visual depictions of minors or adults engaged in sexually explicit conduct. The defendant shall not correspond or communicate in person, by mail, telephone, or computer, with individuals or companies offering to buy, sell, trade, exchange, or produce visual depictions of minors or adults engaged in sexually explicit conduct.

DEFENDANT: ROBERT DANIEL SOLOVE
CASE NUMBER: 9:20-CR-80025-DMM(1)

Sex Offender Registration: The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.

Sex Offender Treatment: The defendant shall participate in a sex offender treatment program to include psychological testing and polygraph examination. Participation may include inpatient/outpatient treatment, if deemed necessary by the treatment provider. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: ROBERT DANIEL SOLOVE
 CASE NUMBER: 9:20-CR-80025-DMM(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	\$500.00	\$1,337,800.00	\$0.00		

The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
 The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

\$1,287,800.00 to Minor Victim 1
 \$50,000.00 to Minor Victim 2

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to the Stipulation Regarding Restitution \$ 1,337,800.00
 The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
 The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 the interest requirement is waived for the fine restitution
 the interest requirement for the fine restitution is modified as follows:

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of \$1,337,800.00. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order.

Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.

** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ROBERT DANIEL SOLOVE
CASE NUMBER: 9:20-CR-80025-DMM(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payments of \$500.00 due immediately, balance due

It is ordered that the Defendant shall pay to the United States a special assessment of \$500.00 for Counts 1s, 2s, 3s, 4s and 5s, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

B Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

C The defendant shall forfeit the defendant's interest in the following property to the United States:
FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.