IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, Appellee	)	APPELLANT'S REPLY
v.	)	Crim.App. Dkt. No. 202400253
Anderson A. IXCOLGONZALEZ, Corporal (E-4) U.S. Marine Corps, Appellant	)	USCA Dkt. No. 25-0243/MC

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Index of Reply

Page

Table of Authorities

Reply

A. The Military Judge did not reasonably apply this Court's precedent, and his conclusion was not within the range of reasonably available choices. His conclusion as to the standard for particularity in search authorizations of electronic devices was not reasonable.

Appellee contends that the Military Judge did not interpret *Riccardi* in a way inconsistent with this Court's treatment. (Appellee Reply at 19–20.) Yet the opposite is true: this Court cited to *Riccardi* only once, to support the proposition that "warrants for computer searches must affirmatively limit the search to evidence of specific federal crimes or specific types of material." *United States v. Richards*, 76 M.J 365, 370 (C.A.A.F. 2017) (citing *United States v. Riccardi*, 405 F.3d 852, 862 (10th Cir. 2005)). Nowhere did this Court establish a rule requiring an authorization be as particular as reasonably possible, yet that is exactly the rule Military Judge applied. (J.A. 400.)

The Military Judge thus misapplied the law when he found that the search authorization here—which limited the search to evidence of Appellee's possession, receiving, viewing, or distributing child pornography—somehow went afoul of the rule this Court actually established: that an authorization is valid where it does not give law enforcement carte blanche authority to search in areas clearly outside the scope of the crime being investigated. (J.A. 400); *Richards*, 76 M.J. at 370.

Nor did the Military Judge use *Burgess* or the Sixth Circuit's opinion in *Richards* reasonably, as Appellee contends. (Appellant Reply at 19–20.) In

Burgess, the Tenth Circuit upheld a warrant that simply authorized law enforcement to search for "computer records" alongside a list of physical property to show evidence of a conspiracy to sell drugs. *United States v. Burgess*, 576 F.3d 1078 (10th Cir. 2009). There, the court held that if the warrant were to be read to allow a search of all computer records without description or limitation it would not meet the Fourth Amendment's particularity requirement. *Id*. at 1091. However, it found the warrant sufficiently particular because the search was focused on evidence of drugs and drug trafficking, and the affidavit, which described a conspiracy to sell drugs, at minimum aided the interpretation of the limits of term even if not incorporated. *Id*. at 1091–92.

And though the Military Judge cited to the Sixth Circuit's opinion in *Richards* to determine that the "proper metric for sufficient specificity is whether it was reasonable to provide a more specific description," his reasoning omitted the holding in that case. *United States v. Richards*, 659 F.3d 527, 535–36 (6th Cir. 2011). There, in response to law enforcement's identification of a website that distributed child pornography, the magistrate issued a warrant that authorized a search of the entire commercial server hosting the website. *Id*. The appellant challenged the warrant as overbroad, but the court disagreed: the warrant, restricted to a search for child pornography crimes, did not permit a free-ranging search and was thus valid. *Id*. at 541–42.

Here, the Military Judge misapprehended the law, and his decision was not within the range of reasonable choices arising from the applicable facts. Presented with a search authorization that, like the authorizations in *Richards* (CAAF), *Burgess*, and *Richards* (6th Cir.), limited the search as to the suspected criminal offense, the Military Judge ignored that those three decisions each rejected ex ante restrictions on searchable locations on the electronic device. *Richards*, 659 F.3d at 536; *Burgess*, 576 F.3d at 1091. Instead, the Military Judge cited to a state court case from Michigan, concluding that law enforcement had been given the authority to "search everything in the hopes of finding anything, but nothing in particular that could help with the investigation." (J.A. 402.) Yet law enforcement were not authorized to search for just anything—they were authorized to search for, and found, evidence of distribution, viewing, possession, or receiving child pornography. (J.A. 280.)

B. Law enforcement conduct was objectively reasonable. A reasonable officer would not know that the Authorization was deficient, and no evidence indicates that the Military Judge did not act in a detached and neutral manner such that Agent Lawrence could not rely on his issuance of the Authorization.

Appellee now argues that the good faith exception cannot apply because the Authorization was so facially deficient that no reasonable officer could presume it to be valid. (Appellee Reply at 26.) Appellee first claims that the detailed Affidavit serves as an acknowledgement that there were temporal and subject-

matter limitations that Agent Lawrence knew about, indicating he was aware that the Authorization was insufficiently particular. (Appellee Br. at 26.) Appellee next contends that the good faith exception cannot apply where the Agent, as in *Groh*, prepares the affidavit himself; and further argues that the Commanding Officer was not detached. (Appellee Reply at 24, 29.) The arguments fail for three reasons.

First, Appellee's argument ignores that this Court, in *Richards*, declined to require the inclusion of temporal limitations in search authorizations, even when law enforcement knew about the limitations at the affidavit stage. *Richards,* 76 M.J. at 370. And, as to subject matter limitations, this Court held that limiting the search by specifying the crime being investigated—as is the case here—was sufficient. *Id*. Thus, Agent Lawrence's detailed Affidavit cannot constitute proof that he knew the Authorization was overbroad and facially invalid.

Next, this case is unlike *Groh*, where the warrant allowed law enforcement to seize an entire house without reference to the crime being investigated. 540 U.S. 551. There, the warrant was so facially deficient that it could not reasonably be presumed valid because it did not describe the items to be seized—a stockpile of illegal explosives and firearms—at all. *Id* at 554. The Supreme Court did not, as Appellee contends, hold that where a law enforcement agent prepares a warrant, the good faith exception is unavailable. (Appellee Br. at 30.) Instead, the *Groh*

Court simply held that where law enforcement prepares a *plainly* invalid warrant, they may not later claim to have reasonably relied on the Magistrate's assurance of validity. *Groh*, 540 U.S. at 565. And in *United States v. Smith*, 108 F. 4th 872 (D.C. Cir. 2024), the court explicitly rejected the claim Appellant makes here—that an authorization that does not limit the types of data that could be taken from seized devices renders the authorization so plainly invalid that the good faith exception does not apply. (Appellant Reply at 14); 108 F. 4th at 880.

Here, Agent Lawrence did describe the items to be seized. (J.A. 252.) Even if this Court finds the description did not meet the standard for particularity, the Authorization did not wholly fail to describe the items; whereas law enforcement in *Groh* were looking for explosives and firearms, and went no further than a request to search a house, here Agent Lawrence limited his request to evidence of relevant, specific child pornography offenses to be found on Appellee's digital devices. (J.A. 252); *see Smith*, 108 F.4th at 880. As Agent Lawrence testified, he would not have read "digital devices" to include any appliances or items not capable of storing digital contraband. (J.A. 157.) Unlike *Groh*, a reasonable law enforcement official would not have known the authorization was glaringly invalid with a "simple glance." *Groh*, 540 U.S. at 564.

Finally, there is no evidence in the Record indicating that the Commanding Officer was not detached. (Appellee Br. 29–30.) Agent Lawrence presented the

Commanding Officer with a lengthy Affidavit, to which he swore; after consideration, the Commanding Officer independently determined there was probable cause to authorize the search and signed both the Affidavit and Search Authorization. (J.A. 279–280.)

Appellee's failure to raise this issue at trial, regardless of whether it was argued at the lower court, bars Appellee from now arguing that the Commanding Officer was not detached. (Appellee Br. 32.) As this Court held in *Perkins*, the accused can raise rubber-stamping in the first instance to show the warrant was invalid, and is not required to wait for the government to raise good faith first. *United States v. Perkins*, 78 M.J. 381, n.13 (C.A.A.F. 2019). Accordingly, Appellee's failure to make a "particularized objection" at trial on this basis waived the issue at this juncture.

C. The Affidavit was properly incorporated; it went beyond the mere reference in *Groh* because it was signed by the Commanding Officer and accompanied the search authorization.

1. The Authorization here went beyond the mere reference to the affidavit in *Groh*.

Groh is distinguishable from this case. There, the affidavit was not incorporated because the warrant merely referenced the document establishing probable cause and the affidavit did not accompany the warrant. *Groh*, 540 U.S. at 558. But here, not only did the authorization reference the Affidavit, but the

Affidavit accompanied the search authorization, and the Commanding Officer reviewed and signed both documents concurrently. (J.A. 252.)

Rather, this case is more like the holding in *Baranski v. Fifteen Unknown Agents of the BATF*, 452 F.3d 433 (6th Cir. 2006). There, the court found that the warrant incorporated the affidavit because the magistrate judge signed both the warrant and affidavit, and the affidavit described with particularity the items to be seized. *Id*. at 440. Further, rather than a general authorization leaving the courts in doubt whether "the [m]agistrate was aware of the scope of the search he was authorizing," this warrant authorized the seizure of 425 machine guns. *Id*. (distinguishing *Groh*, 540 U.S. at 561n.4). Unlike *Groh*, the warrant provided "written assurance that [he] actually found probable cause to search for, and to seize, every item mentioned in the affidavit." *Baranski*, 452 F.3d at 440 (quoting *Groh*, 540 U.S. at 560).

Like that case: (1) the Commanding Officer individually signed both the Search Authorization and Affidavit on the same day; (2) the Command Authorization referenced the "Affidavit(s) made before me" and "as stated in the supporting affidavit(s) "that provided the grounds for probable cause, and; (3) the Affidavit, as the Military Judge found, provided more details than the Search Authorization on the places in the phone to be searched and data to be seized

because it specified that the targeted applications must be capable of storing photographs and videos. (J.A. 240–51, 268–80.)

2. Appellee's citation to *United States v. Ray* is inapt.

Appellee notes that the United States conceded a military search authorization was not incorporated in *United States v. Ray*. 141 F.4th 129 (4th Cir. 2025); (Appellee Br. 37.) This concession does not bear on this case. First, the reason for this concession in *Ray* is not clearly related to a failure of supposed boilerplate language on the face of the authorization. The Fourth Circuit was silent on whether the authorization in that case purported to incorporate the affidavit by reference, and noted only that the affidavit, not the authorization, referenced a separate narrative document for establishing probable cause. *Id*. at 143. Moreover, the court there did not disclose whether the affidavit accompanied the authorization, nor whether the Commanding Officer signed the affidavit itself. *Id*. at 133. Thus, contrary to Appellee's assertion that *Ray* provides controlling authority demonstrating that incorporation had not occurred in this case, nothing from the Supreme Court, a federal court, or this Court supports creating a rule that discounts the text of a search authorization—*signed by an appropriate authority*—because the language is "bold" or "boilerplate."

D. The exclusionary rule should not be applied here because there is no culpable law enforcement conduct to deter.

The exclusionary rule "does not apply every time law enforcement officials violate the Fourth Amendment." *United States v. Lattin*, 83 M.J. 192, 197 (C.A.A.F. 2023). And, "Evidence obtained as a result of an unlawful search or seizure made by a person acting in a governmental capacity is inadmissible against the accused if . . . exclusion of the evidence results in appreciable deterrence of future unlawful searches or seizures and the benefits of such deterrence outweigh the costs to the justice system." Mil. R. Evid. 311(a).

Here, Appellee fails to show why any deterrent effect would result from the application of the exclusionary rule. (Appellee Br. 45–51.) Appellee makes the unsupported assertion that "excluding the evidence in this case serves as a compelling deterrent and this deterrence outweighs the resulting costs to the justice system," and claims only that the Military Judge's ruling was "not unreasonable." (Appellee Br. at 48.)

Yet the Military Judge's ruling addressed only deterring law enforcement from "rummaging about anywhere and everywhere within the data stored in a Servicemember's personal cell phone to search for anything and everything that might be related to a particular offense." (J.A. 408.) The behavior that the Military Judge sought to deter was precisely what this Court believed could be reasonable and necessary in *Richards.* As this Court noted, because files might be

manipulated to hide their true contents, "in the end, there may be no practical substitute for actually looking in many (perhaps all) folders and sometimes at the documents contained within those folders, and that is true whether the search is of computer files or physical files. It is particularly true with image files." *Richards*, 76 M.J. at 370 (citing *Burgess*, 576 F.3d at 1094). Simply put, the deterrent effect here would not be aimed at illegal or negligent conduct; it would be aimed at lawful investigatory actions, endorsed by this Court, that aid law enforcement in balancing constitutional rights with the difficulties posed in searching for electronic child pornography.

Conclusion

The United States respectfully requests this Court vacate the Military Judge's Ruling, reverse the lower court's Opinion, find the evidence acquired under the Command Authorization admissible, and remand for further proceedings.

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Counsel Lieutenant Meggie KANE-CRUZ, JAGC, U.S. Navy, on November 25, 2025.

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