No.

IN THE

SUPREME COURT OF THE UNITED STATES

GREGORY THOMAS WILSON,
Petitioner,
v.

STATE OF FLORIDA,
Respondent.

On Petition for Writ of Certiorari to the Florida First District Court of Appeal

PETITION FOR WRIT OF CERTIORARI

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A. QUESTION PRESENTED FOR REVIEW

Whether an attorney has a reasonable "expectation of privacy" when meeting with clients in the jail attorney visitation room – thereby rendering the act of monitoring/video-taping those meetings an infringement on the attorney's Fourth Amendment rights.

B. PARTIES INVOLVED

The parties involved are identified in the style of the case.

C. TABLE OF CONTENTS AND TABLE OF CITED AUTHORITIES

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2. TABLE OF CITED AUTHORITIES

a. Cases

b. Statutes

c. Other

The Petitioner, GREGORY THOMAS WILSON, requests that the Court issue its writ of certiorari to review the judgment of the Florida First District Court of Appeal entered in this case on January 21, 2021 (A-3)[1] (rehearing denied on September 1, 2021 (A-5)).[2]

D. CITATION TO OPINION BELOW

Wilson v. State, 323 So. 3d 1252 (Fla. 1st DCA 2021).

E. BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant

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[1] References to the appendix to this petition will be made by the designation "A" followed by the appropriate page number.

[2] Because the state appellate court did not issue a written opinion, the Petitioner was not entitled to seek review in the Florida Supreme Court. *See Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980).

to 28 U.S.C. § 1257 to review the final judgment of the Florida First District Court of Appeal.

F. CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the Constitution prohibits "unreasonable searches and seizures." U.S. Const. amend. IV.

G. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

The Petitioner – a former assistant state attorney who was a lawyer practicing in Bay County, Florida, at the time of the underlying incident in this case – was charged with possession of contraband at a county detention facility pursuant to section 951.22, Florida Statutes. Specifically, the prosecution alleged that on September 13, 2017, the Petitioner entered a county jail and proceeded to individually meet with two

of his clients[3] in the attorney-client visitation room, and during the first meeting, he accepted a note from the first client, and then during the second meeting, he gave the note to the second client.[4] The Petitioner's meetings with his clients in the attorney-client visitation room were surreptitiously recorded by law enforcement officials, and the prosecution sought to use the video as evidence to establish the Petitioner's guilt.

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[3] The two clients were sisters Clista White Robbins and Christy White.

[4] Section 951.22 states in relevant part:

> (1) It is unlawful, except through regular channels as duly authorized by the sheriff or officer in charge, to introduce into or possess upon the grounds of any county detention facility as defined in s. 951.23 or to give to or receive from any inmate of any such facility wherever said inmate is located at the time or to take or to attempt to take or send therefrom any of the following articles which are hereby declared to be contraband for the purposes of this act, to wit: Any written or recorded communication . . .

Prior to trial, the Petitioner filed a motion to suppress the video of his meetings with his clients in the attorney-client visitation room. (A-22). A hearing on the motion to suppress was held on September 12, 2018. (A-63-212). During the suppression hearing, Rick Anglin, a major with the Bay County Sheriff's Office and the warden of the Bay County Jail, testified that he ordered that "secret pen cameras"[5] be installed in two of the attorney visitation rooms. (A-90-91, A-160). Major Anglin further testified that he monitored and recorded the Petitioner's meetings with his clients on September 13, 2017. (A-89-91, A-99).[6] During his

[5] Major Anglin conceded that attorneys in the room would not know that they were being recorded. (A-160).

[6] During the trial, it was established that words on the Petitioner's legal paperwork could be seen by law enforcement officials as they were monitoring the Petitioner's meetings with his clients in the attorney-client visitation room at the jail.

testimony, Major Anglin acknowledged that the purpose of the attorney-client visitation rooms is to allow attorneys to have "private" meetings with their clients. (A-159-160). During Major Anglin's testimony, it was also established that a guard sitting at the desk outside the attorney-client visitation room would not have been able to view the interactions between the Petitioner and his clients inside the room. (A-123-134).

Following the suppression hearing, the trial court denied the motion to suppress the video. (A-55). The video was subsequently used by the prosecution during the Petitioner's trial, and at the conclusion of the trial, the jury found the Petitioner guilty as charged.

On appeal, the Petitioner argued that the warrantless video surveillance of his meetings in the attorney-client visitation room at the jail violated his

Fourth Amendment rights. Ultimately, the Florida First District Court of Appeal *per curiam* affirmed the Petitioner's conviction without discussion. (A-3).

H. REASON FOR GRANTING THE WRIT

There is a split of authority as to whether the surreptitious monitoring/taping of an attorney's meeting with a client in a jail amounts to an "infringement" of the attorney's reasonable expectation of privacy.

The Fourth Amendment to the Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Warrantless searches are *per se* unreasonable under the Fourth Amendment, subject to limited exceptions. *See Katz v. United States*, 389 U.S. 347, 357 (1967)). In *Soldal v. Cook County*, 506 U.S. 56, 63 (1992), this Court clarified that

> the Fourth Amendment protects two types of expectations, one involving "searches," the other "seizures." *A "search" occurs when an expectation of privacy that society is prepared to consider reasonable is infringed.* A "seizure" of property occurs where there is some

> meaningful interference with an individual's possessory interests in that property."

(Emphasis added) (citations omitted). The Petitioner submits that he had a reasonable "expectation of privacy" in the attorney-client visitation room.

In *Upjohn Co. v. United States*, 449 U.S. 383, 398 (1981), the Court explained that

> The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law. Its purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. The privilege recognizes that sound legal advice or advocacy depends upon the lawyer's being fully informed by the client.

During the suppression hearing, Major Anglin specifically stated that the purpose of the attorney-client visitation rooms is to allow attorneys to have

"private" meetings with their clients:

> Well, the entire process of attorney visits, everything from scheduling, allowing the attorneys to call in and schedule interviews or meetings, allowing them to have access into a room where they can have a private conversation, the entire process is set up for attorneys to be able to meet with their client and have a private conversation.

(A-159). Thus, the fact that the Petitioner was meeting with his clients (1) in an attorney-client visitation room (2) to discuss matters covered by the attorney-client privilege clearly establishes that the Petitioner had a reasonable "expectation of privacy" at the time that law enforcement officials monitored and video-taped his meeting. *See Case v. Andrews*, 603 P.2d 623, 626 (Kan. 1979) ("We have concluded that under the factual circumstances presented, the Lyon County jail policy of visually monitoring all consultations between attorneys and clients is an unreasonable interference

with the right to confidential attorney-client communications."). The question then becomes whether Major Anglin's act of surreptitiously monitoring and video-taping the Petitioner's attorney-client meeting amounts to an "infringement" of the Petitioner's reasonable expectation of privacy.[7] The Petitioner submits that the answer to this question is yes.

The courts of this country have issued conflicting

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[7] A number of courts in this country have found that video surveillance constitutes a "search." *See, e.g., United States v. Cuevas-Sanchez*, 821 F.2d 248, 250-251 (5th Cir. 1987) (holding that the Government's action in placing a video camera in position that allowed the Government to record all activity in the defendant's backyard qualified as "search" under the Fourth Amendment and entitled the defendant to judicial protection); *United States v. Taketa*, 923 F.2d 665, 677 (9th Cir. 1991) ("Persons may create temporary zones of privacy within which they may not reasonably be videotaped, however, even when that zone is a place they do not own or normally control . . . ."); *Rosario v. United States*, 538 F. Supp. 2d 480, 498 (D.P.R. 2008) (holding that covert video surveillance in the locker/break room constituted a search).

decisions regarding whether the surreptitious monitoring/taping of an attorney's meeting with a client in a jail amounts to an "infringement" of the attorney's reasonable expectation of privacy. The Florida First District Court of Appeal's decision below falls on one side of the split.

On the other side of the split is *People v. Harfmann*, 555 P.2d 187 (Colo. App. 1976) – a case where a Colorado appellate court considered an *identical* issue and concluded that law enforcement's surreptitious monitoring of an attorney who was meeting with a client in the jail attorney visitation room constituted an infringement of the attorney's reasonable expectation of privacy. The facts of *Harfmann* are as follows:

> Defendant appeals from convictions on two counts of sale of a narcotic drug, and one charge of

introducing contraband, on the ground that the trial court erred in permitting introduction of certain evidence despite defendant's motion to suppress. We reverse.

An undercover police officer obtained information from an unidentified informant that defendant, then a practicing attorney, would deliver narcotic drugs to an incarcerated client of his upon his next visit to the county jail. The undercover officer remained in contact with the informant over the next three days, conversing with the informant at least twice a day. During this period, the informant continued to assert knowledge of defendant's impending criminal activity, but was never able to give the undercover officer the exact time at which defendant would attempt the transfer. The officer in turn relayed this information to the sheriff's office, but no attempt was ever made to obtain an arrest or search warrant on the basis of information pertaining to defendant. On the night of the second day following receipt of the original tip, defendant attempted to see the client, and was told by the officer on duty to return the next morning, 'preferably' at about 11:00 A.M. The next morning, at approximately 10:30 A.M., the informant notified the sheriff's department that defendant

would visit his client at 11:00 A.M., and would attempt to transfer the narcotics to the prisoner at that time.

Defendant appeared at the jail at approximately 11:00 A.M. for the announced purpose of consultation with his client. He was purposely escorted to a particular room where the client was already waiting. Neither man was subjected to a search prior to this meeting. The room had no windows, other than an extremely small portal in the door, and the two men were left alone in the room, the door closed and locked, immediately after defendant entered the room. A mirror centrally located in the room, however, was constructed in such a manner that police officers in an adjacent room could observe transactions taking place in the consultation room. By prearrangement, several officers were secreted in the other room for the express purpose of observing what transpired between defendant and his client.

According to those officers, defendant first examined the premises carefully, then handed a small envelope and a cigarette to his client, who proceeded to conceal the items on his person. Following his consultation with his client, defendant was permitted to leave the jail without interference. The client, however, was immediately

> searched, and the envelope and cigarette, which contained minute quantities of cocaine and marijuana, were found on him. Defendant was later arrested, pursuant to a warrant, and was charged with the crimes of which he was convicted.

Harfmann, 555 P.2d at 187-188 (citations omitted). Prior to trial, the attorney moved to suppress the evidence obtained as a result of the surreptitious monitoring of his meeting with his client in the attorney visitation room – arguing that the surreptitious monitoring amounted to an illegal search. The trial court "agreed with defendant that the clandestine viewing of defendant's activities constituted a search," but the trial court "found that exigent circumstances justified this warrantless intrusion such that testimony as to the visual search would be admissible at defendant's trial." *Id.* at 188. On appeal, the Colorado appellate court reversed for a

new trial, stating:

> The first issue to be addressed is whether the visual observation by the officers constituted a "search" in the constitutional sense. We hold that it did.
>
> The constitutional prohibitions against unreasonable searches and seizures protect those who have a reasonable expectation of privacy. *See* [] *Katz v. United States*, 389 U.S. 347 [(1967)]. One who entertains an expectation of privacy that society is prepared to recognize as reasonable is fully protected from governmental intrusions which do not comport with that expectation, even though no actual physical trespass occurs. *Katz v. United States*, *supra.* Thus, a visual observation which infringes upon a person's reasonable expectation of privacy constitutes a search. The question here is whether the visual observation of defendant in this case violates defendant's reasonable expectation of privacy.
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> We agree with the trial court's finding of fact that defendant had an expectation of privacy with regard to the apparently secure room to which he was led for the purpose of consultation with his client. We further concur with the trial court's conclusion that defendant's

expectation of privacy was reasonable. The observing officers were not in a place where they had any right to be since their covert presence and observation represented an impermissible intrusion into an attorney-client consultation, a confidential relationship which must continue to receive unceasing protection even in our institutions of incarceration. *Lanza v. New York*, 370 U.S. 139 [(1962)]. *See also North v. Superior Court*, 502 P.2d 1305 [(Cal. 1972)]. In this respect, the surreptitious observation here differs drastically from the situation where a prisoner's conversations are merely overheard inadvertently by a prison official, and hence, deserves different treatment. *See* [] *Lanza v. New York*, *supra.* Thus, it is our conclusion that the visual observation conducted by the officers constituted a search for constitutional purposes.

We now turn to the issue of whether or not this warrantless search was reasonable. Except for a few well delineated exceptions, warrantless searches are presumptively illegal. Here, the trial court found exigent circumstances which permitted the clandestine observation and excused the non-procurement of a warrant. We do not agree that exigent circumstances existed which made the search conducted here a

reasonable one.

The sheriff's department had been aware for several days that the next time defendant came to the jail he would attempt to transfer contraband to his client. Knowledge of the exact time of the expected visit would have added little, if anything, to the sum of circumstances constituting probable cause for the issuance of a warrant. Moreover, the occurrences of the previous night gave the sheriff's department actual notice of the impending morning visit of defendant many hours prior to receipt of the informant's final tip, and thus, gave the department ample opportunity to obtain a warrant prior to the defendant's arrival at the jail, either for the search of defendant's person prior to his consultation with his client, or perhaps even for the visual observation procedure actually utilized. The availability of other, less intrusive procedures for the maintenance of jail security, and the fact that the officers had sufficient time to resort to the warrant procedure, militate against a finding that the search actually conducted here was reasonable. Thus, we hold that the clandestine visual observation of defendant and his client constituted an illegal search, and hence, testimony pertaining to the incident should not have been admitted into

> evidence at defendant's trial.
>
> Judgment reversed and the cause remanded for a new trial.

Id. at 188-190 (some citations omitted). As in *Harfmann*, in the instant case, the Petitioner had a reasonable "expectation of privacy with regard to the apparently secure room to which he was led for the purpose of consultation with his client[s]." And as in *Harfmann*, "the clandestine visual observation of [the Petitioner] and his client constituted an illegal search, and hence, testimony[/evidence] pertaining to the incident should not have been admitted into evidence at defendant's trial."

By granting the petition for writ of certiorari in the instant case, the Court will have the opportunity to resolve the split in authority cited above. The issue in this case is important and has the potential to affect all criminal cases nationwide. Accordingly, for the

reasons set forth above, the Petitioner prays the Court to grant this petition for writ of certiorari in order to address this important issue.

I. CONCLUSION

The Petitioner requests the Court to grant the petition for writ of certiorari.

Respectfully Submitted,

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