

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**

**APPENDIX TO
PETITION FOR WRIT OF CERTIORARI**

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COUNSEL FOR THE PETITIONER

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FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-4768

GREGORY THOMAS WILSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Bay County.

Michael C. Overstreet, Judge.

January 21, 2021

PER CURIAM.

AFFRIMED.

ROBERTS, NORDBY, and TANENBAUM, JJ.,

concur.

*Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330 or
9.331.*

Michael Ufferman of Michael Ufferman Law Firm,
P.A., Tallahassee, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and
David Welch, Assistant Attorney General,
Tallahassee, for Appellee.

DISTRICT COURT OF APPEAL, FIRST DISTRICT

2000 Drayton Drive

Tallahassee, Florida 32399-0950

Telephone No. (850)488-6151

September 01, 2021

CASE NO.: 1D18-4768

L.T. No.: 2017-CF-4499

Gregory Thomas Wilson v. State of Florida

Appellant/Petitioners, Appellee/Respondent(s)

BY ORDER OF THE COURT:

Appellant's motion docketed February 05, 2021,
for rehearing and issuance of a written opinion is
denied.

I HEREBY CERTIFY that the foregoing is (a
true copy of) the original court order.

Served:

Hon. Ashley Moody, AG

David Welch, AAG

Michael Ufferman

th

[signature of Kristina Samuels]

KRISTINA SAMUELS, CLERK

[Seal of the First District, District Court of Appeal,

State of Florida]

IN THE FOURTEENTH JUDICIAL
CIRCUIT COURT, IN AND FOR
BAY COUNTY
STATE OF FLORIDA
-VS- CASE NUMBER 17-4499/G
WILSON, GREGORY THOMAS
Defendant
DC NUMBER A30108

Local Jurisdiction Identification Number: 03

ORDER OF PROBATION

This cause coming before the Court to be heard,

and you, the defendant, being now present before the court, and you having

X been found guilty by jury verdict of

Count 01 POSSESSION OF CONTRABAND IN CO

DET FACILITY 3F

Count 02 PERJURY NOT IN OFFICIAL

PROCEEDING 1M

ORDER WITHHOLDING ADJUDICATION

X Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on Probation; count I, 3F, for a period of 3 (three) years under the supervision of the Department of Corrections, subject to Florida law.

JUDGMENT OF GUILT

X The court hereby adjudges you to be guilty of the above offense. – Count II, 1M

Now, therefore, it is ordered and adjudged that the imposition of sentence is hereby withheld and that you be placed on Probation count II, 1M, for a period of 1 (one) year concurrent with Count I under the supervision of the Department of Corrections, subject to Florida

law.

IT IS FURTHER ORDERED that you shall comply with the following standard conditions of supervision as provided by Florida law:

- (1) You will report to the probation officer as directed.
- (2) You will pay the State of Florida the amount of 20.00 per month, as well as 4% surcharge, toward the cost of your supervision in accordance with s. 948.09, F.S., unless otherwise exempted in compliance with Florida Statutes.
- (3) You will remain in a specified place. You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.
- (4) You will not possess, carry or own any firearm. You will not possess, carry, or own any weapon

without first procuring the consent of your officer.

- (5) You will live without violating any law. A conviction in a court of law is not necessary for such a violation of law to constitute a violation of your probation, community control, or any other form of court ordered supervision.
- (6) You will not associate with any person engaged in any criminal activity.
- (7) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used.
- (8) You will work diligently at a lawful occupation, advise your employer of your probation status,

and support any dependents to the best of your ability, as directed by your officer.

- (9) You will promptly and truthfully answer all inquiries directed to you by the court or the officer, and allow your officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions your officer may give you.
- (10) You will pay restitution, court costs, andior fees in accordance with special conditions imposed or in accordance with the attached
- (11) You will submit to random testing as directed by your officer or the professional staff of the treatment center where you are receiving treatment to determine the presence or use of alcohol or controlled substances.
- (12) You will submit a DNA sample, as directed by

your officer, for DNA analysis as prescribed in ss. 943.325 and 948.014, F.S.

(13) You will submit to the taking of a digitized photograph by the department. This photograph may be displayed on the department's website while you are on supervision, unless exempt from disclosure due to requirements of s. 119.07, F.S.

(14) You will report in person within 72 hours of your release from incarceration to the probation office in Florida, otherwise instructed by the court or department. (This condition applies only if section 3 on the previous page is checked.) Otherwise, you must report immediately to the probation office located at 499 Hwy 231 N. Panama City, FL 32405.

SPECIAL CONDITIONS

X 8. You will successfully complete 100 hours of community service at a rate of 8 hours minimum per month, at a work site approved by your officer.

Additional instructions ordered: You will complete and perform 100 hours Public Service Work

X 23. Pay \$1 per month during the term of probation or community control to supplement rehabilitative efforts through First Step Funds, pursuant to s. 948.039(2), F.S.

X 28. You will submit a letter of apology within 30 days to Warden Anglen

X 29. You will submit a letter of apology to Sheriff Ford and to members of the Bar in 14t1 Circuit within 30 days.

(15) Effective for an offender whose crime was

committed on or after July 1, 2005, and who are placed on supervision for violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, a prohibition on accessing the Internet or other computer services until a qualified practitioner in the offender's sex offender treatment program, after a risk assessment is completed, approves and implements a safety plan for the offender's accessing or using the Internet or other computer services.

(16) Effective for offenders whose crime was committed on or after September 1, 2005, there is hereby imposed, in addition to any other provision in this section, mandatory electronic monitoring as a condition of supervision for those who:

- Are placed on supervision for a violation of chapter 794, s. 800.04(4), (5), or(6), s. 827.07 1, or s. 847.0145 and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older; or
- Are designated as a sexual predator pursuant to s. 775.21; or
- Has previously been convicted o f a violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145 and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

You are hereby placed on notice that should you violate your probation or community control, and the conditions set forth in s. 948.063(1) or (2) are satisfied, whether your probation or community control is

revoked or not revoked, you shall be placed on electronic monitoring in accordance with F.S. 948.063.

(17) Effective for offenders who are subject to supervision for a crime that was committed on or after May 26,2010, and who has been convicted at any time of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses listed in s. 943.0435(l)(h)1.a.(I), or a similar offense in another jurisdiction, against a victim who was under the age of 18 at the time of the offense; the following conditions are imposed in addition to all other conditions:

(a) A prohibition on visiting schools, child care facilities, parks, and playgrounds, without prior approval from the offender's supervising officer. The

court may also designate additional locations to protect a victim. The prohibition ordered under this paragraph does not prohibit the offender from visiting a school, child care facility, park, or playground for the sole purpose of attending a religious service as defined in s. 775.0861 or picking up or dropping off the offender's children or grandchildren at a child care facility or school.

(b) A prohibition on distributing candy or other items to children on Halloween; wearing a Santa Claus costume, or other costume to appeal to children, on or preceding Christmas; wearing an Easter Bunny costume, or other costume to appeal to children, on or preceding Easter; entertaining at children's parties; or wearing a clown costume; without prior approval from the court.

(18) Effective for offenders whose crime was committed on or after October 1, 2014, and who is placed on probation or community control for a violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, in addition to all other conditions imposed, is prohibited from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program. Visual or auditory material includes, but is not limited to, telephone, electronic media, computer programs, and computer services.

YOU ARE HEREBY PLACED NOTICE that the court

may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision. If you violate any of the conditions of your probation, you may be arrested and the court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose any sentence that it might have imposed before placing you on probation or require you to serve the balance of the sentence.

IT IS FURTHER ORDERED that when you have been instructed as to the conditions of probation, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability. (This paragraph applies only if section 1 or section 2 is checked.)

IT IS FURTHER ORDERED that you pay:

Court Costs, Fees, and Fines, as imposed at sentencing, in the total amount of: \$ _____

Payments processed through the Department of Corrections will be assessed a 4% surcharge pursuant to s. 945.31, F.S.

Pursuant to s. 948.09, F.S., you will be assessed an amount of \$2.00 per month for each month of supervision for the Training Trust Fund Surcharge.

Court Costs/Fines Waived

Court Costs/Fines in the amount of _____ converted to community service hours

Court Costs/Fines in the amount of _____ reduced to civil judgment.

SPECIFIC INSTRUCTIONS FOR PAYMENT: _____

IT IS FURTHER ORDERED that the clerk of this court file this order in the clerk's office and provide certified copies of same to the officer for use in compliance with the requirements of law.

DONE AND ORDERED, on 11-14-18

NUNC PRO TUNC 11/05/2018

[signature of Michael C. Overstreet]

Honorable Michael C. Overstreet, Circuit Judge

McDonald/tj

I acknowledge receipt of a copy of this order and that the conditions have been explained to me and I agree to abide by them.

Date: 11/08/18 [signature of Defendant]

Defendant

Instructed by [signature of Bon McDonald]

Bod McDonald, Supervising Officer

IN THE CIRCUIT COURT OF THE FOURTEENTH
JUDICIAL CIRCUIT
IN AND FOR BAY COUNTY, FLORIDA
STATE OF FLORIDA.

Plaintiff,

vs. CASE NO.: 17-004499CFMA

GREGORY THOMAS WILSON,

Defendant.

DEFENDANT'S MOTION TO SUPPRESS

Pursuant to Fla. R. Crim. P. 3.190(g), Defendant
GREGORY THOMAS WILSON, by and through his
undersigned attorney, respectfully moves this
Honorable Court to suppress the evidence enumerated
below as the product of an unreasonable search and
seizure:

- Audio recording/live monitoring of
attorney/client telephone calls, as stated below.

- Videos and observations of attorney/client meetings of Defendant and his clients, as stated below.

Background

Defendant Gregory Thomas Wilson is presently charged with the crimes of perjury in a non-official pleading and possession of contraband at a county detention. The State's evidence against him was obtained pursuant to an unreasonable and warrantless search and seizure namely video recordings and observations made in connection with Defendant's representation of and privileged communications and meetings with his client Ms. Clista Robbins. The instant motion is based on the following statement of facts:

1. On May 31, 2017, Christie White, a client of Mr. Wilson's, was sentenced to the Bay County Jail

for violating her misdemeanor probation.

2. On June 15, 2017 Lynn White (Christie's mother) contacted Mr. Wilson and advised that Christie was having a difficult time adjusting and requested that he visit and counsel her. Mr. Wilson agreed to try to schedule two visits a week with her, as his schedule allowed.

3. On June 17, 2017, Mr. Wilson met with Christie at the jail. He subsequently met with her on June 27th and June 29th.

4. On August 8, 2017, Clista Robbins (Christie White's sister) was arrested and booked into the Bay County jail. On August 9, 2017, Mr. Wilson entered a Notice of Appearance representing Clista Robbins on her criminal charges.

5. On the same day, Mr. Wilson met with Ms. Robbins at the jail where she signed over her

personal property to Mr. Wilson, including her car keys so that he could move her car from the Express Lane to prevent it from being towed while she is incarcerated. Mr. Wilson subsequently moved her car to the Bay County Jail parking lot.

6. On August 17, 2017, Ms. Robbins called Mr. Wilson on the recorded phone line and told him she is going to quit everything and for him to “get rid of it.”

7. On the same day, BCSO Investigator Marc Bailey claims that he happened to accidentally hear one of the recorded jail phone calls between Robbins and Wilson, prompting him to listen to both calls in their entirety.

8. On August 23, 2017, Investigator Bailey met with Warden Rick Anglin, Major Jimmy Stanford and Sheriff Tommy Ford to discuss his observations. Sheriff Ford advised them to continue monitoring the

calls and visits and to advise if anything develops.

9. Mr. Wilson continued to meet with Ms. Robbins and Ms. White, separately; meeting on August 24th, 26th, 29th, and 31st and September 5th.

10. On August 25th and on September 2nd, 6th and 8th additional phone calls were recorded.

11. On September 12, 2017 Sheriff Ford, Investigator Bailey, Warden Anglin, and Major Stanford met with State Attorney Glenn Hess and Chief Assistant Larry Basford to discuss their observations. State Attorney Glenn Hess advised Sheriff Ford to install covert video cameras in the private attorney/client interview room. at the jail to monitor the visits.

12. On September 13, 2017, the covert cameras were installed in the attorney/client interview room. No notice was posted alerting counsel of the

presence of a recording device.

13. On September 13, 2017, the covert cameras first recorded the meetings between Ms. Robbins, Ms. White and Mr. Wilson. Additional video recordings occurred on September 15th and September 25th. On September 27, 2017, Ms. White was released.

14. On September 29, 2017, with the consent of the Assistant State Attorney Cord Grimes, Judge Vann accepted a written plea in absentia for Ms. Robbins in which she was sentenced to two years of misdemeanor probation and the felony charges were reduced or dismissed. The Clerk of Courts time stamped the Order and Sentence of the court at 11:20 a.m. authorizing her immediate release from jail.

15. After being contacted by Major Jimmy Stanford and informed of her pending, immediate release from jail, State Attorney Glenn Hess initiates

an *ex parte* meeting with Judge Vann to revoke her immediate release and instead have her held through the weekend to appear in his Court Monday morning to be fingerprinted in open court before reinstating the original agreed upon sentence.

16. Mr. Wilson, unaware of Mr. Hess' meeting with Judge Vann, met with Ms. Robbins at the jail, which is being video recorded and advised her that she will be getting out

17. Upon leaving the private Attorney/Client room and exiting the jail, Mr. Wilson was approached by Investigator Bailey, who secretly recorded the conversation, and asked if he can provide any information about note passing between his sister clients. Mr. Wilson agreed and consented to providing a sworn recorded statement regarding a violation of the jail rules for passing notes between inmates.

18. It is important to note that throughout the aforementioned timeframe the attorney/client meeting rooms remained unchanged. The rooms remained private meeting spaces – generally reserved only for attorney/client meetings – visible only through a window located at about waist to head height on the door.

19. As mentioned, the camera was not obviously recognizable, no signs warned visitors of the possibility of electronic surveillance, and attorneys or inmates were not told that they were being recorded or monitored.

20. Similarly, the procedure for accessing the attorney/client meeting rooms remained the same. Counsel seeking to meet with his or her clients was subject to a metal detector and inspection of all property, and required a detention officer escort

through locked doors in order to access the rooms.

Counsel was not entitled to select any of the available attorney/client meeting rooms, but instead was assigned to a room by the detention officer on duty.

Although the detention officer assigned to the attorney visitation post is required to conduct security checks, such security checks were generally limited to intermittently observing the inmates through the window.

21. The Bay County Sheriff's Office Jail Facility Inmate Visitation Procedure No. 705.00, expressly states:

Attorney visits with inmates will be confidential. They shall be observed for safety and security, but their conversations cannot be monitored.

22. In sum, in the course of providing legal

representation to his clients, Mr. Wilson was surreptitiously recorded by a video recording device expressly installed by detention officers – without a warrant – for the purpose of capturing confidential and privileged attorney/client communications between Mr. Wilson and his clients, without notice or any reason to suspect such recordings were occurring.

23. The recording was not part of routine jailhouse monitoring, nor conducted for legitimate inmate safety concerns, but instead was installed and utilized only in the attorney/client interview room to which Mr. Wilson was escorted by jail personnel.

Legal Argument

“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." *Upjohn Co. v. United States*, 449 U.S. 383, 398 (1981).

An inmate's need for confidentiality in his communications with attorneys through whom he is attempting to redress his grievances is particularly important. We think that contact with an assistance of counsel and access to the courts". *Al Odah v. United States*, 346 F. supp. 2d 1 (US Dist. DC 2004), citing *Adams v. Carlson*, 488 F.2d 618, 631 (7th Cir. 1973) (recognizing that the effective protection of access to counsel requires that the traditional privacy of the lawyer-client relationship be implemented in the prison context).

It is well-established that a “conversation [is] within the Fourth Amendment’s protections,” and that “the use of electronic devices to capture it [is] a ‘search’ within the meaning of the Amendment.” *See Gennusa v. Canova*, 748 F.3d 1103, 1110 (11th Cir. 2014) (quoting *Berger v. New York*, 388 U.S. 41, 51, 87 S. Ct. 1873 (1967)). Thus, warrantless electronic interception of private conversations by the government violates the Fourth Amendment. *Id.* (citing *Katz v. United States*, 389 U.S. 347, 353-59, 88 S. Ct. 507 (1967)).

At issue here, then, is whether Mr. Wilson had a reasonable expectation of privacy during his privileged communications with his clients, thus warranting Fourth Amendment protections. “A citizen’s right to privacy . . . is determined by a two prong test: 1) whether the citizen had a subjective expectation of privacy; and 2) whether that expectation

was one that society recognizes as reasonable [therefore] the government needs a warrant to intercept or record such conversations.” *Williams v. State*, 982 So. 2d 1190, 1194 (Fla. 4th DCA 2008) (citing *State v. Smith*, 641 So. 2d 849, 851 (Fla.1994)). Thus, the reasonableness inquiry has both an objective and subjective component.

I. Mr. Wilson’s reasonable expectation of privacy was one that society recognizes as reasonable.

The Eleventh Circuit Court of Appeals considered whether an attorney has an objectively reasonable expectation of privacy in similar circumstances in *Gennusa v. Canova*, 748 F.3d 1102 (11th Cir. 2014). There, an arrestee and his attorney brought a§ 1983 action against various members of county sheriffs office, alleging that the officers violated their Fourth Amendment rights by monitoring,

intercepting, and listening to their privileged conversations while they were in interview room. *Id.* The arrestee arrived at the Sheriff's Office with his attorney for a noncustodial interview. *Id.*

The interview was conducted in an interview room at the Sheriff's Office that had a small window on the door. *Id.* at 1108. Unbeknownst to the arrestee or his attorney, activity in the interview room – including privileged attorney-client conversations – was being recorded and actively monitored by members of the Sheriff's Office through a concealed camera in the room. *Id.* The camera was not obviously recognizable, no signs warned visitors of the possibility of electronic surveillance, and the arrestee and his attorney were not told that they were being recorded or monitored. *Id.*

While the detectives were out of the room, the

arrestee and his attorney discussed matters related to the investigation, including the arrestee's decision not to submit a written statement. During their conversation, members of the Sheriff's Office actively monitored the interview room, and visually observed the arrestee's attorney place the written statement on the table. *Id.* After seeing this, Sergeant Canova instructed Detective Marmo to return to the interview room and retrieve the statement. *Id.* As he came back into the room, Det. Marmo forcibly grabbed the statement from underneath the attorney's hand, and then arrested the suspect for violation of the domestic violence injunction. *Id.* The attorney and the arrestee filed the action in federal court, where the district court ruled that the surreptitious electronic eavesdropping violated the Fourth Amendment and the Federal Wiretap Act, 18 U.S.C. § 2510 et seq. *Id.*

The Eleventh Circuit affirmed, ruling,

One threat to effective assistance of counsel posed by government interception of attorney-client communications lies in the inhibition of free exchanges between defendant and counsel because of the fear of being overheard Mr. Studivant and Ms. Gennusa had an objectively reasonable expectation of privacy when they discussed privileged matters in the interview room.

...

[U]nlike certain of the individuals in those cases, who had some indication that they were being surveilled and monitored, Mr. Studivant and Ms. Gennusa had no idea that Det. Marmo,

Sgt. Canova, and other members of the St. Johns Sheriff's Office were eavesdropping on them. Indeed, as the district court put it, they were given no indication of this fact.

...

In sum, Mr. Studivant and Ms. Gennusa had a reasonable expectation of privacy for their privileged attorney-client conversations in the interview room of the St. Johns County Sheriff's Office. The surreptitious recording and monitoring of those attorney-client conversations, without notice to Mr. Studivant or Ms. Gennusa, and without a warrant, violated the Fourth Amendment.

Id. at 1112-1113 (quotations omitted).

Florida courts have held similarly. In *State v. Calhoun*, 479 So. 2d 241 (4th DCA 1985), the Fourth District Court of Appeal held that a secret recording of a private conversation between an inmate and his brother – after the inmate invoked his Fifth and Sixth Amendment rights – was violation of the inmate's Fourth Amendment rights. The Court, relying on the trial court's opinion, wrote:

The Fourth Amendment guarantees protect people, not places, and, more particularly, it protects people from unreasonable government intrustion [sic] into their legitimate expectations of privacy. Obviously, the defendant did not have a reasonable expectation of privacy in the interview room itself under the search provisions of either Constitution.

Nevertheless, the defendant did have a reasonable expectation that his conversation with his brother was secure and private, guaranteed to him by the Florida Constitution and statutes cited above.

...

[T]he controlling facts of the instant case are materially distinguishable from those in the cases relied upon by the State. For instance, those cases all involved the surreptitious tape recording, without consent or court order, of conversations between codefendants who were confined in the back seat of a police car. This defendant (unlike those in the cases cited by the State) had expressly invoked his

Fifth Amendment right to remain silent
and his Sixth Amendment right to
counsel.

Id. at 244 (citations omitted) (alteration in original).

Likewise, in *Cox v. State*, 26 So. 3d 666 (4th DCA 2010), the Court – while acknowledging that it is generally true in-custody conversations are not protected because they are in a setting in which a criminal suspect does not have a reasonable expectation of privacy held that when law enforcement officials purposefully create a false illusion of privacy, any resulting conversations must be suppressed pursuant to the Fourth Amendment. *Id.*; see also *Allen v. State*, 636 So. 2d 494, 497 (Fla. 1994) (“We caution, however, that our conclusion in this regard rests on the fact that there was no improper police involvement in inducing the conversation nor any intrusion into a

privileged or otherwise confidential or private communication. A different result might obtain otherwise. For example, police impropriety would exist if police deliberately fostered an expectation of privacy in the inmates' conversation, as happened in *State v. Calhoun*, 479 So. 2d 241 (Fla. 4th DCA 1985)).

The Colorado Court of Appeals considered an almost identical issue to the facts at hand, concluding that under such circumstances an objective expectation of privacy was reasonable. In *People v. Harfmann*, 38 Colo. App. 19 (1976), the Defendant-any attorney appealed his conviction of two counts of sale of a narcotic drug and one count of introducing contraband on the grounds that the evidence produced by the detention officer's secret surveillance was inadmissible. The facts surrounding the surveillance were summarized by the Court:

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. 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.

Id. at 188.

The Court, after concluding that the visual observation constituted a “search” for Fourth Amendment purposes, held that,

[D]efendant 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.

Id. at 189.

A number of other state and federal courts have ruled similarly in analogous cases. *See e.g., Long v. County of Saginaw*, 2014 WL 1845811, at *4-*7 (E.D. Mich. 2014); *Lonegan v. Hasty*, 436 F. Supp. 2d 419, 434-437 (E.D.N.Y. 2006). Cases such as *Cuomo v. State*, 98 So. 3d 1275 (1st DCA 2012), are easily distinguishable by the fact that the detention officers did not carve out a privileged area or intentionally foster an expectation of privacy in defendants who had distinctly expressed their desire for privacy.

The Kansas Supreme Court addressed the issue of video monitoring in county jails and found it to be an unreasonable interference with the right to

confidential attorney-client communications. In *Case v. Andrews*, 803 P.2d 623 (Kansas Supreme Court 1979), the county jail had a policy of *visually* monitoring consultations between attorneys and clients. The county jail provided meeting rooms for incarcerated defendants to meet with their attorneys. The room was divided by a steel wall with a small glass window which prevented any physical contact between the defendant and the attorney. A permanently-mounted camera was installed at the rear of the attorney's end of the room and *was not wired/or sound*. The only other option for attorney-client conferences was in the inmate's cell, which was equipped with a microphone which monitored and recorded all conversations. When Case's attorney placed his suit coat over the camera lens for privacy and to insure a "confidential atmosphere", jail personnel interrupted the

attorney-client visit and insisted the coat be removed.

After Case's attorney refused to remove the coat, jail personnel brought the dispute to a local judge who sided with the jail's position. Case brought legal action complaining the video monitoring and recording (*without audio*) was a due process violation that was an unreasonable interference which deprived him of his Sixth Amendment right to the effective assistance of counsel. The Court held that the the jail policy of *visually* monitoring consultations between attorneys and clients is an unreasonable interference with the right to confidential attorney-client communications.”

(Emphasis added).

Here, Mr. Wilson had an objectively reasonable expectation of privacy in a room specifically designed to accommodate confidential and privileged attorney-client communications. The fact that the

communications occurred in a jail is not dispositive – and in fact, given the heightened need for privileged communications in such setting – warrants extra protection. Likewise, the fact that the conduct at issue may not be a “communication” for purposes of attorney/client privilege is irrelevant – the question is whether Mr. Wilson had an objectively reasonable expectation of privacy in a private attorney/client interview room – and whether that expectation of privacy was violated.

There is no question that the Bay County Sheriff's Office fostered an expectation of privacy in the attorney/client meeting rooms. First, the BCSO inmate visitation policy expressly provides that attorney-client communications *will not* be monitored. Second, there is no notice provided as to the possibility of electronic surveillance. Third, the cameras installed were not

obvious or easily discoverable. Fourth, and perhaps most importantly, the cameras themselves were not installed for routine safety and security measures, but instead for the sole purpose of capturing privileged communications between Mr. Wilson and his clients. In effect, the observing officers were not in a place where they had any right to be since their covert presence and observation served as an impermissible intrusion into an attorney-client consultation. Thus, Mr. Wilson's expectation of privacy was objectively reasonable, and the Bay County Sheriff's Office intrusion via visual observation was a violation of his Fourth Amendment rights.

II. Mr. Wilson had a subjectively reasonable expectation of privacy.

For the same reasons, Mr. Wilson's expectation of privacy in the attorney/client meeting rooms was

subjectively reasonable. There is no evidence to suggest that Mr. Wilson was aware of the recording devices, or that he otherwise had knowledge of any type of observation or monitoring on the part of the detention officers.¹

Accordingly, because Mr. Wilson had a subjective expectation of privacy, and that expectation was one that society recognizes as reasonable, the government's warrantless video surveillance was in violation of the Fourth Amendment and must be suppressed.

¹ Additionally, the evidence should be suppressed pursuant to §§ 934.03 and 934.06, Florida Statutes, which prohibit the use of evidence of intercepted wire or oral communications. Although it is unclear that the video recordings constitute an "oral communication" for purposes of the Florida's Security of Communications Act, there is no question that Mr. Wilson had an expectation that his privileged communications with his client was not subject to interception under circumstances justifying such expectation. *See* § 934.02, Fla. Stat; *State v. Calhoun*, 479 So. 2d 241 (Fla. 4th DCA 1985) (holding recording of police interrogation room violated the Act).

Conclusion

For the foregoing reasons, Defendant GREGORY THOMAS WILSON respectfully requests that the aforementioned evidence be suppressed.

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IN THE CIRCUIT COURT
FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA
IN AND FOR BAY COUNTY
CASE NO.: 17-4499-CFMA

STATE OF FLORIDA,

Plaintiff,

v.

GREGORY THOMAS WILSON,

Defendant.

ORDER DENYING MOTION TO SUPPRESS

THIS MATTER is before the Court on the Defendant's Motion to Suppress, filed on August 30, 2018. Having considered the Motion, the State's Response, the testimony and argument presented during the September 12, 2018 hearing, and being

otherwise fully advised, the Court finds as follows:

The Defendant is charged with possession of contraband at a county detention facility and perjury not in an official proceeding. The Defendant files the instant motion requesting that the Court suppress “[a]udio recordings/live monitoring of attorney/client telephone calls” and “[v]ideos and observations of attorney/client meetings of Defendant and his clients.” The Defendant argues that he had a reasonable expectation of privacy during his privileged communications with his clients conducted in a “private attorney/client interview room,” warranting Fourth Amendment protections, and that warrantless electronic interception of private conversations by the government violated the Fourth Amendment. The Defendant asserts the Bay County Sheriff’s Office “fostered an expectation of privacy in the

attorney/client meeting rooms” because the inmate visitation policy expressly provides that attorney-client communications will not be monitored, there is no notice provided as to the possibility of electronic surveillance, and the cameras installed were not obvious or easily discoverable.

The State, in response, argues the Defendant had no subjective or objective expectation of privacy. The State notes that the phone calls at issue were recorded on an open, recorded line from the jail where both parties were explicitly informed that the calls were subject to monitoring and recording. The State asserts that the video recording equipment did not allow for audio recording, no communications between the Defendant and his clients were intercepted, and no confidential information was recorded or observed.

The Defendant's Motion is due to be denied. As individual's Fourth Amendment protections crystallize when he or she "can claim a 'justifiable,' a 'reasonable,' or a 'legitimate expectation of privacy' that has been invaded by government action." Smith [v. Maryland, 442 U.S. 735, 740 (1979)]. Analysis of whether the individual's expectation of privacy is legally sufficient involves "[t]wo discrete questions."] Id. "The first is whether the individual, by his conduct, has 'exhibited an actual (subjective) expectation of privacy. . . .'" Id. (quoting Katz [v. United States, 389 U.S. 347, 361, (1967)) (Harlan, J., concurring)). "The second question is whether the individual's subjective

expectation of privacy is ‘one that society is prepared to recognize as “reasonable” .

. . .” Id. (quoting Katz, 389 U.S. at 361

(Hartan, 3., concurring)).

State v. Butler, 1 So. 3d 242, 246-47 (Fla. 1 st DCA 2008).

The Defendant had no subjective or objective expectation of privacy in the phone calls at issue. “[T]he confidentiality of a conversation is dependent upon ‘whether the person invoking the privilege knew or should have known that the privileged conversation was being overheard.” Black v. State, 920 So. 2d 668, 671 (Fla. 5th DCA 2006) (quoting Mobley v. State, 409 So. 2d 1031, 1038 (Fla. 1982)). Where it is made clear that jail calls are monitored and/or recorded, participant to such a call does not have a reasonable expectation of privacy. See McWatters v. State, 36 So.

3d 613, 636 (Fla. 2010); Jackson v. State, 18 So. 3d 1016, 1030 (Fla. 2009). The phone calls at issue included notification at the inception that the calls were subject to monitoring and recording.

The Defendant had no subjective or objective reasonable expectation, and jail personnel did not foster an expectation, that his actions in the attorney-client interview room would not be observed. The Defendant was meeting with clients who were inmates at the jail. The Bay County Sheriff's Office Jail Facility Inmate Visitation Procedure Number 705.00(4)(j) provides: "Attorney visits with inmates will be confidential. They shall be observed for safety and security, but their conversations cannot be monitored." The interview rooms are small (approximately 5' x 7'), and the door to each room contains a large window. An officer is stationed at a desk directly across from the

interview rooms, and may approach and observe the occupants of an interview room. The interview rooms, moreover, open to a hallway that is “busy,” with jail personnel and others passing by the doors to the interview rooms. The occupants of an interview room and the desk in an interview room are easily observable from the outside of the room, and the conduct that was recorded would have been equally observable from the hallway. The Defendant and the women pass the contraband furtively. The video recordings do no reveal any confidential attorney-client communications (either verbal or written).²

Therefor it is,

ORDERED AND ADJUDGED that the Defendant's Motion to Suppress is DENIED.

DONE AND ORDERED in chambers in Bay

² The Court finds the decision in People v. Harfmann, 555 P.2d 187 (Colo. Ct. App. 1976), unpersuasive.

County, Florida, this 14 day of September, 2018.

[signature of Michael C. Overstreet]

MICHAEL C. OVERSTREET

CIRCUIT JUDGE

I HEREBY CERTIFY that a true and exact copy of the foregoing has been provided by U.S. Mail to Jack Campbell, Acting State Attorney, State Attorney's Office, 301. S. Monroe Street, Suite 475, Tallahassee, FL 32301; James R. Dowgul, 222 East 4th Street, Panama City, FL 32401; Lisa A. Anderson, P.O. Box 168, Panama City, FL 32402; James P. Judkins, 123 S. Calhoun Street, Tallahassee, FL 32301; and Alexandra E. Akre, 123 S. Calhoun Street, Tallahassee, FL 32301, this 14 day of September, 2018.

[signature of Robin Owens]

Robin Owens, Judicial Assistant

IN THE CIRCUIT COURT, FOURTEENTH
JUDICIAL CIRCUIT
IN AND FOR BAY COUNTY, FLORIDA
STATE OF FLORIDA,
Plaintiff,
vs. CASE NO: 17 – 4499 – CFMA
GREGORY T. WILSON,
Defendant.

* * *

The following pages constitute the MOTION
HEARING held on the 12th day of September, 2018 in
the above -styled cause, heard before the Honorable
Michael C. Overstreet, Circuit Judge, at the Bay
County Courthouse, 300 East 4th Street, Panama City,
Florida.

APPEARANCES

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State Attorney, 2nd Judicial Circuit

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Lisa A. Anderson,

James R. Dowgul,

James P. Judkins

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THE COURT: All right. Good afternoon, everybody. We have a few matters pending for the Court, that I'm aware of, and I'm ready to proceed. My understanding is there is a motion to suppress.

MR. CAMPBELL: Yes, sir.

THE COURT: Filed on behalf of the defense. And a motion in limine filed on behalf of the State. I'm aware of no other motions that are actually set for hearing, but perhaps there are. And finally, it looks like there was an amended information filed today or yesterday, and we should probably arraign the defendant on that as well.

MR. CAMPBELL: Yes, sir.

THE COURT: As far as the order of business, I'm happy to accommodate the parties and address whatever motions you care to first.

MR. CAMPBELL: No preference for the State. I've given you a copy, there's also a copy on the front of the bench, of the amended information. There are three

small areas, I was working on jury instructions. I have not substantively changed the charges. I've shown defense counsel, I don't know if there's any objection or any concerns about the amendments, but that should be pretty perfunctory as far as the arraignment.

THE COURT: Ms. Anderson, I take it you will enter a plea of not guilty on behalf of your client, waive the reading of the information, the amended information?

MS. ANDERSON: Yes, sir. And I did just receive a copy of this just a few moments ago. I haven't had an opportunity to pass it to Mr. Wilson, so I'll be sure that we discuss that.

THE COURT: All right. Very good. From my

review of the motion and the State's response, it does appear that perhaps there is a stipulation as to the facts. There may be facts in dispute, so in that event, it probably would be incumbent on the State to present whatever evidence they care to on the motion to suppress. We might just as well do that first if no one has any preference.

MR. CAMPBELL: Okay, sir.

MS. ANDERSON: Your Honor, we did agree to, for purposes of this proceeding, to stipulate to the authenticity of all the materials. I know Mr. Campbell intends to rely on some of the things that were in discovery, as so do we. So, rather than have to lay the foundation, we've agreed to that.

THE COURT: Very good.

MR. CAMPBELL: The State would call Major Rick Anglin.

THE COURT: All right. Major Anglin, come forward, be sworn and then take the witness stand.

MS. ANDERSON: Judge, can we invoke the rule?

THE COURT: Yeah. Let's, before we get started, anyone that, either of you intend to give testimony, if you'll stand at this time, please, any witnesses, other than, of course, perhaps the defendant. Those of you that have been identified as witnesses, the Rule of Witness Sequestration has been

invoked, it means that you may not discuss your testimony amongst yourselves or with anyone else, with the exception of the attorneys, you're welcome to speak to them until it's your turn to give testimony. You'll remain outside the courtroom. You'll step out, with exception of Warden Anglin, you'll step out at this time.

THE CLERK: Raise your right hand.

THEREUPON,

MAJOR RICK ANGLIN

called as a witness, having been duly sworn, was examined and testified as follows:

THE COURT: And you are welcome to direct your examination from your chair.

MR. CAMPBELL: Thank you, sir, I appreciate it.

THE COURT: And I think the microphone there is on so I can hear you.

MR. CAMPBELL: All right, sir. Thank you very much. Am I allowed to stand? I'm a little bit more comfortable in court.

THE COURT: You may stand or you may sit.

MR. CAMPBELL: Thank you, sir.

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q Could you state your name for the record, please, sir?

A Rick Anglin.

Q And where do you work, sir?

A The Bay County Sheriff's office.

Q What do you do for them?

A I'm the Major at the, over judicial services.

Q Can you give the Court a brief rundown of your professional experience prior to taking over that position?

A Yes, sir. I've been in this line of work for about 28 years. I graduated from Florida State with a Bachelor's degree in Criminal Justice and a Master's degree in Executive Management, and I began my career working for the State and –

Q In what capacity were you working for the State?

A I started off as a correctional probation officer. I worked at multiple correctional facilities around the state. I worked at central office for, on two occasions, for a few years. And then I came back to Bay County and started with the sheriff's office about ten years ago.

Q And all told, how many years have you

worked in a correctional facility, either a county detention, like a jail, or a state prison?

A With the exception of the couple of years, or a few years that I was up in Tallahassee and worked in the central office, all of the 28 years was spent in that capacity.

Q And are you currently the warden or the person in charge of all operations at the Bay County jail?

A Yes, sir.

Q Everything we're gonna talk about today, did that happen in the Bay County jail, Bay County, Florida?

A Yes, sir.

Q And who's your supervisor?

A Sheriff Ford.

Q Did you become aware of an investigation that one of your deputies had begun?

A Yes, sir, I did.

Q Okay. And how did you become aware?

A He reported to my office one day and, I believe in August of last year, and advised me that he had something of concern and wanted me to listen to it.

Q Okay. Now, the Bay County jail, is it a secure facility?

A It is, yes, sir.

Q Do you follow the general protocols concerning, restricting all access between the inmates and all aspects of their lives?

A Yes, sir.

Q What is your job as a warden of a jail?

A Well, mainly it's the care, custody and control of the inmate population and a safe environment for the staff.

Q In part of doing that, do you regulate what materials they, the inmates have access to?

A Absolutely.

Q Is the general public allowed contact visits, generally, with inmates at the Bay County jail?

A No, sir.

Q Okay. Do you have a smuggling problem at the Bay County jail?

A Yes, sir, I do.

Q Okay. Can you describe what types of issues you have with what types contraband you've found in

the Bay County jail?

A We find, drugs is the most prevalent issue that we have or one of the most severe issues we have. Inmates try to smuggle drugs into the jail in an assortment of ways, we're constantly combating that. We have, actually have a drug dog and a handler that works full time trying to keep that problem under control.

Inmates bring drugs in through booking. When they know they're coming into the facility, they know their probation officer's gonna arrest them that day or, so they, as you can imagine, body cavities and so forth, they try to hide it because they know that we are not allowed to do those kind of searches, especially on misdemeanors.

Q Have you ever heard the term kite?

A Yes, sir.

Q What is a kite?

A That's what inmates refer to typically as a note.

Q Do you have problems with kites?

A Yes, sir.

Q Okay. Do you regulate and separate communication between inmates?

A We do, especially when inmates are separated

by dorm.

Q Okay. What is the general layout of the Bay County jail? When I ask that, do you have separate areas or pods, is it on a pod system?

A Yes, sir, it is.

Q Okay. And do you have to segregate some inmates from others?

A We do, yes, sir.

Q Is that for safety concerns sometimes?

A Most of the time, it's for safety concerns. It's based on the inmate's classification. It depends on,

they may be co-defendants, they could be being protected from another inmate, so we separate them.

Q And do you allow attorney visitation to the inmates beyond what would come to the normal public?

A Yes, sir.

Q Can you tell me how that is run?

A Attorneys are allowed to actually have contact visits in a hearing room or a meeting room, on a frequent basis, as much as they need to do or as much as we can accommodate.

Q Okay. Despite the fact that they're given access, do they have to arrange times, are there visiting times for the attorneys?

A Yes, sir. Typically it's, on weekdays, it runs 8 to 5, and then on weekends, we normally run 8 to noon.

Q And are, do attorneys have to go through a screening process before entering?

A Yes, sir, they do.

Q Are there specific requirements concerning what they're allowed to give inmates and pass between inmates?

A There is, yes.

Q What are those rules?

A They're allowed to present items such as a business card, to the inmate, and they can present discovery.

Q Do you have a problem with things as novel a paperclips and staples?

A Absolutely, yes, sir.

Q Why is that a problem?

A Those items, inmates are very ingenious and they can make everything from handcuff keys to tattoo guns out of paperclips and staples and items like that.

Q And when, is there a specific area in the Bay County jail for attorney visitation?

A There is, yes, sir.

Q Where is that?

A That is on the, what we refer to as the old side of the jail, not far from master control. We have four rooms that we us use daily for attorney visits.

Q And what, approximately what is the size of those rooms?

A They're roughly five by seven.

Q Feet?

A Yes, sir.

Q So, relatively small?

A Yes, sir.

Q Be relatively, maybe smaller than the stand
you're in right now?

A Comparable to this, yes, sir.

Q And the doorway to those, is it a solid door,
what kind of door is it?

A No, sir, it's a door that has a window.

Q And do you have guards and other people
going back and forth past that window?

A That is on a hallway that is traveled frequently, very, probably one of the two busiest hallways we have in the jail, so there's people passing that routinely. It's just outside of the security office, so you have people, security officers coming in and out of security. But we also have an officer assigned to that post who stays at that post while attorney visits are going on.

Q Do you allow audio privacy for the communications between inmates and their clients?

A Yes, sir.

Q I mean, inmates and their attorneys?

A Yes, sir.

Q Do you ever take any steps and have you taken any steps to listen in or to otherwise try to intercept the communications between an attorney and his client?

A No, sir, never.

Q We talked earlier about some information on an investigation, is that Marc Bailey who talked to you?

A Yes, sir, it is.

Q And did you take steps, based on some jail calls that were observed to be concerned about, Greg Wilson having a personal relationship with at least one of your inmates?

A Yes, sir, I did.

Q What concerns did you have based on the jail calls that were listened to?

A Well, the first call was especially concerning because of the content, or the conversation that was going on about something that was in the vehicle. And she was very concerned about what was in her vehicle, and expressed or asked specifically about what door he comes in at the jail or how he comes into the jail; and then continued to say if it's in the car, it's in the car, you've got it, get it. And then when he says, yeah, no problem, I'll get it, I'll dispose of it, she says, no, I don't want it disposed of.

Q Have you had inmates actually overdose in

the Bay County jail?

A Yes, sir.

Q Is it unusual for you to have inmates who have severe addiction problems in the Bay County jail?
It is not unusual at all.

A It is not unusual at all.

Q The inmate you're talking about, is that Clista White?

A Yes, sir.

Q Was she actually arrested for DUI and possession of narcotics?

A Yes, sir, she was.

Q In listening to her manner of speech, did you have concerns about her being in some type of withdrawal or otherwise strongly wanting narcotics when she was incarcerated?

A When she made reference to whatever's in the car, she said it would make things easier on her; it certainly was a concern, yes.

Q Based on this, did you start continuing an investigation on whether or not the defendant, Mr. Wilson, was gonna help her get whatever was in the car into the jail?

A I did, yes.

Q Did you order two of your IT personnel to set up video cameras in two of the attorney rooms?

A Eventually, that was some time later, yes.

Q And explicitly, did either one of those cameras have the ability to record sound at all?

A No, sir.

Q Throughout your investigation, did you ever try to get any of the communications, in any way, that was going on between Mr. Wilson and Ms. White?

A No, sir.

Q After, did you have the IT people set up some

cameras in the ceilings to allow a video recording of what was physically happening between Ms. White and Ms. Wilson?

A Yes, sir.

Q Have you had an opportunity, today, and many times, to review some video that was collected of their meeting?

A Yes, sir.

Q Okay. In watching that, have you been to these attorney rooms multiple times?

A I have.

Q Okay. What is recorded on the cameras, would that same action be observable from somebody sitting out in the hallway?

A It would, yes.

Q Based on the window, size of the window –

MR. CAMPBELL: Your Honor, may I approach?

THE COURT: Yes.

Q I'm showing you what's been premarked, shown to defense counsel, as State's Composite A, 1 through 8, are these digital photographs of the jail visitation room?

A Yes, sir, it is.

Q Do these fairly and accurately depict what it looks like in the Bay County jail?

A It does.

Q And one of these, you actually, can you see the table that's at issue in this case?

A Yes, sir, that is, I believe that's room four, yes.

MR. CAMPBELL: All right. By stipulation, I'd introduce State's A, 1 through 8 into evidence, Your Honor.

THE COURT: Without objection, they'll be

admitted.

(State's Exhibit A, 1-8)

Q Now, are attorneys, as you said earlier, the attorneys are allowed to give discovery and business cards. Are attorneys allowed to be conduits between one inmate and another for other written material?

A No, sir.

Q Are written, any form of written communications specifically prohibited under the jail rules and Florida statutes?

A Yes, sir.

Q Do you all have conspicuously posted around the jail, both inside and out, the fact that everybody at the jail is under constant monitoring?

A Yes, sir.

Q Have you taken great steps to make sure that there are very few places in the Bay County jail where you can't be monitored?

A Yes, sir. In fact, we've continued to increase that over the past ten years so that we could, well, for safety reasons obviously. But also, we just recently passed a pre -audit which required that you don't have any blind spots or places in the jail that are not covered by video.

MR. CAMPBELL: Your Honor, by stipulation,
State's G.

(Video played in open court)

Q Major, was there lots and lots of time that
was recorded on these cameras?

A No, sir.

Q Okay. Was it, did you record the entire time
that Mr. Wilson met with Clista White each time that
she came?

A Yes, sir.

Q Okay. And did y'all, you and your staff review

that?

A We did.

Q Have some of it been edited to only show particular portions of relevance, other than them talking without passing things?

A No, sir.

Q State's G, if you could, can you see these screens here, sir?

A Yes, sir, I can.

Q All right. Have you seen this video before?

A I have.

Q Okay. And is the woman in the black and white striped suit, is that Ms. Clista White?

A Yes, sir, it is.

Q And in the purple shirt, is that the defendant, Greg Wilson?

A Yes, sir.

Q Now, what you do see, observe Ms. White, in her left hand?

A That is a, that's what they are referring to as a kite, but when I see it, I look at it as more of a

package.

Q Regardless, are attorneys allowed to receive materials from inmates without disclosing it to you?

A No, sir.

MR. CAMPBELL: Going to, premarked by stipulation, State's C, that into evidence.

Q Is that same the meeting on September 13, 2017, in the Bay County jail, is that the same date, sir?

A I'm not sure about the date of that.

Q All right. I'll back up a second and I'll show it to you. What's the date stamp and time of this one, sir?

A Okay. Yes, sir, I see the date stamp.

Q Can you say it for the record?

A September 13th.

Q All right. Once again, is this, wearing the same purple shirt, once again, Ms. White meeting with Greg Wilson?

A Yes, sir.

Q Now, are you able to read at all what she's writing on that pad?

A I cannot.

Q In any way, are you able to figure out what they're saying to each other through this interaction?

A No, sir.

Q Now, do you know who this young woman is?

A Yes, sir, that would be Christy white.

Q Is that Clista White's sister?

A Yes.

Q Was she also an inmate at the Bay County jail on the same date?

A Yes, sir.

Q Okay. And as she came in, once again, is the defendant wearing the same purple shirt?

A Yes, sir.

Q All right. And we have the same notebook?

A Yes, sir.

Q Okay. And, all right, what did you just observe there, sir?

A Picked the note up, or the package, and set it on his book so she could, she could see it.

Q And then what did she do with it?

A She picks it up and puts it in her pocket.

Q Is that allowed?

A No, sir.

Q Going next to State's D, now this is an hour and 53 minutes, according to the ticker, is that what you see over here?

A Yes, sir.

Q Okay. So, the other two kind of cut to when there are people actually in the room. But more importantly, going back to this, once again, who's this person?

A That would be Clista White – or Clista Robbins, I'm sorry.

Q Is she actually Clista White Robbins, she's been married, started as White?

A Yes, sir.

Q Once again, this is September 13th, starting at 3:20 in the afternoon, 15:25, where we are now, is that right?

A Yes, sir.

Q Skipping along to the relevant portion. Once again, getting to 15:48, we now have Wilson in the room meeting with her, right?

A That's correct.

Q And throughout this meeting, are you able to, you or any of your staff, able to tell what they're talking about, hear them, intercept their communication in any way?

A No, sir.

Q Are you concerned about anything other than the package that you see being taken from her?

A I'm not concerned about anything except the activity that's not allowed.

Q All right. Once again, continuing on to the end, going to 14:30, is that what time you see?

A Yes, sir.

Q Is this, once again, the same un-redacted tape
during the same visit?

A Yes, sir, it is.

Q And now we have Ms. White coming in, her
sister, as we saw in the last one; is that right?

A Yes, sir.

Q Okay. Any question that same note that we
saw taken from Clista is now being passed to Christy?

A That's correct.

Q Now showing you State's F, can you tell the Court what this area is?

A This is the hallway where we have attorney visits. That, the officer that's sitting is actually working the attorney visit desk, and the four attorney rooms are just across from the officer that's sitting at the desk.

Q You see the man with the purple shirt on?

A Yes, sir.

Q Do you recognize him?

A Yes, sir, that's –

Q Who's that?

A – Mr. Wilson.

Q The defendant again?

A Mr. Wilson, yes.

Q And is this actually on the same date that we just watched the video, inside the room?

A Yes, sir.

Q Now, there's a young lady who's opening the door for him, can you see the pane of glass in that door?

A Yes, sir.

Q Is that the same size and shape of the pane of glass that's in the visitation rooms down the hallway?

A Yes, sir.

Q Is this how an attorney is led, we'll show it from another area, is this how they get to the attorney visitation area?

A It is, yes, sir.

Q All right. Okay. Once again, Mr. Wilson coming in?

A Yes, sir.

Q Okay. And do you see him open the attorney

visitation door?

A Yes, sir.

Q And he's going in the same door where we
saw him have his meetings?

A That's right.

Q Okay. He's on the other side of the door,
right?

A That's correct.

Q Can you still see his, the color of his shirt and
him clearly through that pane of glass?

A Yes, sir, you can.

Q And you testified earlier, this hallway that, we're now skipping ahead, that officer's job is to monitor the people who are in the four rooms, correct?

A Yes, sir.

Q Is he there for their safety and the safety of your inmates?

A That's correct.

Q Is part of his mission and directions to watch out if you had an inmate attack his lawyer, or vice versa for that matter?

A Yes, sir.

Q Anywhere in the jail, is it suggested that they're not under, subject to visual supervision at all times in the jail?

A No, sir.

Q Now, I'd also like to talk to you a little bit about jail calls. Are you familiar with the jail system controlling the telephone calls?

A Yes, sir.

Q Okay. Is there a warning on jail calls coming in and out of the Bay County jail?

A There is, yes, sir.

Q Is there a way for attorneys to have a code so that they don't go through that monitored section?

A Yes, sir.

Q Did Mr. Wilson avail himself of that system?

A I'm sorry, could you repeat that?

Q Did Mr. Wilson use that system to talk, do you know whether he was using the clean line or the non-monitored line?

A At least not in the calls that we were listening to.

Q Okay.

MR. CAMPBELL: Going to State's B, by stipulation. Madam clerk, I don't know if I've turned on the audio. You may have to get, I don't know if it will play or not here. I don't think that's being picked up. Hold on a second, let me see if I can get it to play across the speakers.

THE COURT: Mr. Campbell, maybe, sometimes if you'll just point the microphone to the computer.

MR. CAMPBELL: Yes, sir. You can hear it well enough, sir?

THE COURT: We've been able to do that in the past.

MR. CAMPBELL: Thank you, sir.

(Audio played in open court)

Your party has answered. Please hold for acceptance. All phone calls are subject to monitoring and recording.

Hello, this is an Amtel operator calling from Bay County jail with a call from Clista. To accept this call, press one; to decline this call, press two. All phone calls are subject to monitoring and recording. You have five minutes available for this call. Thank you for using Amtel.

(Audio stopped)

Q Is that recording standardized on all the calls that go out?

A It is, yes, sir.

Q Is that the same admonition on every call that y'all listened to concerning Clista White and Mr. Wilson?

A Yes, sir.

MR. CAMPBELL: One moment, Your Honor, please.

Q During those phone calls, did you hear if the defendant warned these phone calls are subject to monitoring, we can't talk, and shush her when they started talking about a potentially concerning subject?

A Yes, sir, multiple times.

Q And in the observation of taking the package from Clista and giving it to Christy, at each time, did you see the defendant specifically try to put it between a piece of paper and kind of use a slight of hand, moving it around?

A Yes, sir.

Q I know, I'm pretty sure I've already asked you, but just like on the video, would the entire table top where we saw that notepad, be fully observable for somebody standing in the hallway looking through that window?

A It would be, yes, sir.

MR. CAMPBELL: Nothing further at this time,

Your Honor.

THE COURT: Defense?

MS. ANDERSON: Your Honor, I've prepared a binder that I'm going to be using throughout the process. I've provided one for Mr. Campbell and I have one for you as well, it's tabbed and numbered.

CROSS EXAMINATION

BY MS. ANDERSON:

Q Major Anglin, good afternoon. You said that you were reported, someone had reported this information to you, that was Bailey?

A Investigator Bailey, that's correct.

Q Was he the one that went through each and every one of the phone calls?

A Yes, sir – yes, ma'am, I'm sorry.

Q Did he tell you the substance of every single phone call that came through?

A I don't know that I could say that he hold told me the substance of every single call, but we certainly discussed that on a regular basis as he would gather more information.

Q Isn't it true your that initial reason for investigating this didn't have anything to do with drugs, correct?

A Well, it had more to do with contraband in jail, because I didn't know what it was at that time.

Q Isn't it true that you thought that there was a romantic relationship or a personal relationship going on, which is why you began the investigation?

A No, that is not true, that is not the only reason. The primary reason was there was possibly some contraband being brought into the jail. The fact that, over time, it appeared, listening to calls, that there may be a relationship there, just kind of supplemented our concerns.

Q So, do you recall giving deposition testimony indicating that he advised you the contents of some of the phone calls and the concern was that the

relationship seemed more than professional?

A I probably did say that. It did concern me that it seemed more than professional, which would be possibly a motive for bringing something into the jail.

Q Okay. Now, when someone comes into the jail, as an attorney, in order to get to these attorney rooms, there's several checkpoints that they have go through; isn't that correct?

A There's one checkpoint they have to go through.

Q So, at the very beginning, when an attorney comes in, they have to get beeped through the door and then they get wanded, correct?

A They would get wanded before they get beeped into the door, through the secure door.

Q Okay. Because there's a metal detector outside of the first secured door?

A Yes, ma'am, that's true. We don't consider that a secure door, but you're right.

Q Okay. That's where you come in and you sign into the log and that's when you get wanded?

A That's correct, that's true, yes.

Q And that attorney is escorted through, we're not allowed to just have a run through the jail, correct? That's correct.

Q So, after that wanding process, there is an escort that takes you through, is it one, two, three secured doors before getting to the attorney visit area?

A Three doors, yes.

Q Okay, three doors through there. Now, the area that we're talking about, and I think that Mr. Campbell showed you some photos.

MS. ANDERSON: And Your Honor, this is tab number four.

Q Major Anglin, did you take these photos? The photos that I'm referring to are the State's exhibit.

A No, ma'am, I did not.

Q You did not? Okay. So, what we have is basically all of these are the same, correct, from the same vantage point directly in front of the door?

A It appears so, yes, ma'am.

Q Okay. And the person that took this, let's just, let's, this one is of room number two. This person would have to be standing there, correct?

A Well, first of all, Investigator Bailey took them, so where he was standing, I'm not sure. But it appears, looking at the picture, that he was standing back away from the door, probably about the middle of the hallway.

Q Okay. And so, for clarification's sake, I have

some additional photos. Because none of the photos that we've seen so far, isn't it true they don't show us the entire attorney visitation area where your officer would sit?

Q I'm sorry, I'm not sure I understand the question there.

Q Well, let me just ask you this.

MS. ANDERSON: This is Defense 5, Your Honor.

Q This photo here, does this look like the jail area that we're talking about?

A It does, yes.

Q And that would be, there are one, two, three, four, five doors; and this first door here, this is the secured door, correct?

A That's correct.

Q And then the next door would be the attorney visit room one?

A Yes.

Q Two, three and four?

A Correct.

Q And then there's a desk that's visible here?

A Right.

Q And there's usually one person assigned to that area?

A That's true.

Q And there's some chairs that are seated along this way as well just past the desk?

A Correct.

Q Okay. So, this is the area that we're talking about?

A That's right.

A Okay. And then in this next photo, is pretty much the same view of what we just looked at, yet there's another door that you can see Officer Kenmore, what is in the door over here?

A That is where they stage the male inmates waiting for attorney visits.

Q Okay. So, in going back to the photo that the State introduced, none of those photos are from the angle of where the, where Officer Kenmore would sit at her desk; isn't that correct?

A Not from where she sits.

Q Okay. So, if we're looking at this next photo, attorney visitation room number one, and if this is the

desk area here, is this more accurate of what their view would be from that desk?

A That's pretty close, yes, from that desk, for room number one, yes.

Q So, for the Court, the Judge has copies. But you can't see the desk area here, can you, inside the attorney visitation room one?

A Well, I'm not sure what elevation they're taking that picture from. It looks like its down pretty low.

Q Okay. Well, you see the desk is right here, correct?

A Correct.

Q So, it's not lower than the desk?

A True.

Q So, that's not visible?

A Not in that photograph.

Q Not in that photograph. So, would you agree that this is similar to the vantage point of where the guard would sit at the attorney visitation desk?

A Similar, yes.

Q Okay. And then this next photo, this is the

fourth photo in the series, we can see the desk right here. And then we're looking down at rooms two, three and four?

A Yes.

Q So, from this vantage point, does this correctly and accurately show that when the officer is sitting at the desk, they're not able to see, basically, anything other than the wall, into rooms two, three and four?

A Well, they're sitting at the desk, yes. We don't require the officer to sit at the desk, we ask the officer to be moving around and to be keeping an eye on things.

Q But if the officer were to come to the vantage point from the other photos, that would be plainly obvious to the occupants inside the attorney room, correct?

A It could be, if they were paying attention.

Q It's a window, they can see through it, right?

A Yes.

Q Okay. And this next photograph that we have, this would be close to number four, looking up at three, two and one, and that's accurate of this area?

A Yes.

Q Okay. And any idea about the distance between the desk and the wall over there, does five and a half feet seem accurate to you?

A I'll say that's close, I wouldn't refute that.

Q As far as the dimensions of the door, of the glass pane, have you ever had an opportunity to measure those?

A I have not.

Q Would you think it's around 35 inches, does that seem correct?

A That's probably about the, yeah, about a foot, that's about right.

Q And then the wooden part of the door, the metal part of the door, from there under is 41 itches?

A Okay.

Q That seems correct?

A Seems correct, yes.

Q And you told us on direct, that you had never installed any sort of recording devices into these rooms prior to this investigation with Mr. Wilson?

A That is correct.

Q Okay. And inside those rooms, there is no posting that, hey, we're gonna record you or these

rooms are subject to recording, correct?

A Not to my knowledge, no.

Q Okay. Is this the only place in the jail where an attorney can meet and discuss matters with their client outside of the confines of the regular jail?

A Routinely, yes. We have, on occasion, made accommodations for other areas, depending on what was going on. And there are times where they meet in the video court area.

Q Okay. But that's not necessarily carved out for routine attorney visitations, unless it's, I know I've been in that room before when I needed to play a computer?

A Right.

Q To play an audio on the computer. So, these rooms are carved out just for these purposes?

A Yes.

Q You told the Court that your concern about this investigation was brought to you by Bailey and the phone calls that he was listening to?

A Well, at that time, one phone call.

Q The one phone call?

A Right.

Q Okay. And would you agree that the phone calls themselves are the best evidence of what actually had occurred?

A Well, it was certainly what prompted us to look, to continue to monitor the situation.

Q Okay. So, but you didn't do the investigation, you relied on Bailey to do that?

A That's correct.

Q So, as far as doing a proper investigation, wouldn't you expect the timing of the calls to be important?

A I'm not sure what you're asking me.

Q Well, you told the Judge that there was concerns that Ms. Robbins was trying to get Mr. Wilson to bring something in?

A Correct.

Q But she never asked him to bring anything in, correct?

A She was speaking in code and making pretty obvious hints about bringing it in, yes.

Q Okay. So, if there was a follow up phone call where she tells him, throw it away, I'm done with that shit, that would be important to your investigation, wouldn't it?

A I'm not following you there.

Q If there was a following conversation, after the one you that were told, and this one we're talking about is on August the 17th, correct?

A No, it was, I believe the phone call was on August the 14th and we discovered it on August the 17th.

Q So, what happened after the 14th would be important, correct?

A Well, sure, yeah.

Q So, if, after that initial phone call on the 14th, she said, I'm done with that stuff, throw it away,

that would important to your investigation?

A It would be a factor.

Q Okay. And you have written jail policies and procedures, correct?

A Yes.

Q And for purposes of attorneys, you have actually assigned a procedure number 705.00, wherein you layout what an attorney has to do in order to visit in that room, correct?

A Yes.

Q Is that, I assume that's inmate visitation?

A Yes, sir, inmate visitation.

Q Okay, yes.

MS. ANDERSON: Your Honor and Mr. Campbell, this is number three, the tab in the notebook.

Q And in that inmate visitation, it's noted in there that attorneys and their representatives shall be searched by scanning device. And also at subsection (i), all belongings of the attorney entering the facility shall be searched for contraband, correct?

A Correct.

Q And (j), attorney visits with inmates will be

confidential?

A Correct, that's right.

Q They shall be observed for safety and security, but their conversations cannot be monitored?

A That's correct.

Q Okay. Now, if you were really concerned about Mr. Wilson bringing in contraband into the jail, why wouldn't you withdraw his jail privileges until you could get to the bottom of whatever you thought was going on?

A Well, at the time that we discovered this, the visit had already occurred, and it appeared that

possibly contraband had already been brought into that jail. And at that point, we suspected a criminal act may have taken place. So, at that point, it's our responsibility to investigate that further.

Q So, you're all just learning of this on the 17th?

A I believe so, yes.

Q So, are you aware that there were, there was another phone call that was not included in the discovery, that was not transcribed, that occurred on the 15th, between the two?

A I am not, no.

Q Okay. And if you thought that Mr. Wilson

was trying to bring in contraband from her vehicle, correct, the fact that he had not retrieved her vehicle would indicate that he's, hadn't been in the car to purportedly get contraband?

A Not at all, the car was in the parking lot at the jail. And we did confirm that on the day that he came or actually, he did visit the following day at the jailor within that time frame.

Q So, if there was a phone call on the 17th, where he said that he had not retrieved her vehicle, then he wouldn't have had any opportunity to get any contraband?

A No, not, he, we discovered this call, that was on the 14th, we discovered it on the 17th.

Q Right. And on the 17th, there was another call. And during that call on the 17th, he said he had not retrieved her vehicle?

A I'm missing your –

Q Were you not made aware of that?

A I'm not following you because the vehicle was in the parking lot of the jail.

Q Do you know how long it had been there?

A I don't know exactly.

Q You don't know who brought it up there?

A My understanding is Mr. Wilson brought it up there or had it brought up there.

Q Do you know when that occurred?

A I do not.

Q Okay. So, the time frame would be important. So, if he's talking about getting contraband out of her vehicle, although he never said that he was bringing it in, correct, you just assumed that?

A He never said he would bring it in, that's correct.

Q Do you recall a phone call where she tells him to throw that away?

A I do recall hearing that at some point in the investigation.

Q Okay. So, you elected not to suspend his jail privileges or have any additional searching or a more comprehensive search done on him, correct?

A Are you taking about initially?

Q Uh-huh.

A Not at that point, no.

Q No? And you didn't get a warrant, did you?

A No.

Q You didn't have enough for a warrant, did you?

A Not at the time, no.

Q Okay. So, essentially, you assumed that he is going to bring in some contraband and you just continued to monitor the telephone calls?

A Well, we were hoping that what we thought may be true, was not true, so we decided just to monitor.

Q So, if there was no further discussion of any contraband, from the 17th through September the 12th, then that would seem to indicate that there was no intent to bring contraband in, correct?

A It was the overall content in the conversations that were taking place and –

Q So, when you say the overall content, do you mean of every single phone call that was made between the two of them?

A During that time frame, yes.

Q And the time frame we're talking about is from August the 14th through September the 12th, before the cameras were installed on the 13th?

A Correct.

Q Okay. Now, we saw portions of a video, and I have a couple of screen shots from those. This is

number six in the defense exhibits.

MS. ANDERSON: And for Mr. Campbell and the Court, there are two batches of photos, one flat and glossy, they're the same photos, they're just larger. I'm going to the glossy photos.

Q So, this is a screen shot of what we just watched on the display, correct?

A I believe so, yes.

Q Okay. Warden Anglin, isn't true that there's no sort of notification that's taped up on the wall here, posting, saying, hey, you've got to give all documents to the desk guard?

A I don't see anything in that picture.

Q There's nothing in that picture, okay. And then here's another screen shot from 9-13, it's the same time. This is the earlier one before, which it's gonna be the same day, and I would presume it's from the same room. There's no indication that there's any sort of posting in there, correct?

A Correct.

Q Now, when we have rules to follow, you told us that we're allowed, as attorneys, to give discovery to our clients, right?

A Correct.

Q And you also said business cards?

A Yes, we do allow that.

Q Okay. Is that in any sort of written policy, that I can give a client a business card?

A I'm not sure that's in written policy, but it is something that we allow.

Q Okay. So, if it's not a written policy, how is it something that I would know when I go to visit a client at the jail, whether or not I can give them a business card because it's?

A Well, you have an officer posted right there, all you have to do is ask the officer what is allowed.

Q Okay. Now, the postings that are here, they're clearly not in the room where Mr. Wilson was on 9-13, correct?

A Well, not on that wall, and I couldn't say if they're on another wall.

Q Have they ever been on any other wall other than that back wall?

A I couldn't answer that, ma'am.

Q So, some of the rules are not necessarily written in stone if I'm allowed to bring in a business card without getting prior approval? I'm okay to give a business card to an inmate?

A Is that the same question you just asked a minute

Q Yeah, I just want to make sure we're on the same page.

A Yes, you are allowed to give a business card, we do allow that.

Q Okay. And if I want to bring my iPad into the jail, I have to have, fill out a security agreement, correct?

A That's correct.

Q And initially, when the security agreements

first came into existence, we were, as attorneys, we had to make a warrant to you that we wouldn't access the internet or make a phone call or send any text messages.

A That is correct, yes.

Q And under the jail rules, under no circumstances are there supposed to be cell phones allowed, correct?

A For who?

Q For attorneys, I can't bring my cell phone into an attorney client visit?

A Unless you have that electronic device

agreement.

Q Okay. But the electronic device agreement, didn't it change later on to allow for online access?

A No, ma'am, not to my knowledge.

Q So, so, I can never access the internet from my approved iPad?

A Well, I can't say that you couldn't, we generally don't allow that.

Q But I'm not allowed to do it?

A Right, you're not allowed, right.

Q Okay. And has there been instances where attorneys have been allowed to do that on a case by case basis?

A I'm not aware of any.

Q All right. Was there ever any substances, there was a note that was eventually found by someone at your facility, that was purportedly to be the kite that was passed?

A That's correct.

Q Isn't it true that there was no sort of drug analysis done on that note?

A Not to my knowledge.

Q So, that really wasn't a concern, that there were drugs in the note?

A We didn't know what was in the note and we didn't know what was in the, because the package, because the way it was folded up. And we're not even a hundred percent positive we got the, because it made it into the dorm, we're not sure we got the exact same one that was seen in the video.

Q And the thing that was seen in the video was just a folded up piece of paper?

A We're not sure. I don't think anybody knows that.

MS. ANDERSON: Your Honor, may I have just

a moment?

THE COURT: Yes.

Q What steps do you take to allow attorneys to have private conversations with their client, as the jail warden, what steps does the jail take?

A 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.

Q So, by doing this process, you want the

attorneys and the clients to have confidence that they're able to speak candidly with one another?

A To speak, yes.

Q And communicate with each other?

A Communication, yes.

Q The cameras that was installed in this circumstance, they were not obvious, were they?

A No, they were not.

Q They were secret pen cameras?

A Yes.

Q And you had some jail IT personnel come in the early morning on the 13th and install them secretly?

A I don't remember what time they came in, but yes, IT did install them, yes.

Q Okay. And you didn't tell Officer Kenmore that those cameras had been installed?

A We did not.

Q So, the purpose is that they were secret just to catch the communications going on between Ms. Robbins and Mr. Wilson?

A They were not put there to catch

communication.

Q They were put there to secretly observe them, correct?

A To observe, yes.

Q And so, at no time, did you tell Mr. Wilson or through any other postings, that the confidential nature of the room that he was relying on was, had been changed?

A No, the room was still confidential for communication, just like it always had been.

Q And would you agree with me, Major Anglin, that the view with the photos that I showed you, the

photos that I took, you're not able to see the desk area from, or the inside of each attorney visitation room, you can't see what's going on where the officer is seated at her desk?

A Where she is seated, that's correct.

MS. ANDERSON: Nothing further, Your Honor.

MR. CAMPBELL: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. CAMPBELL:

Q State's E, the, counsel asked you about the lobby where they're searched and you actually have a tape showing exactly what happened there, is this

that?

A Yes, sir.

(Video/audio fast forwarded in open court)

(Video/audio stopped)

Q Is that the process of him actually coming on that day?

A Yes, sir, it is.

Q Still wearing the same purple shirt?

A Correct.

Q Counsel asked you about the context, the

communications from listening to other jail calls, do you remember that question?

A I believe so, yes, sir.

Q She said, well, you don't know, shouldn't you have listened to what they said on the jail calls to give context or have more information about whether they were smuggling, do you remember that conversation?

A Yes, sir.

Q Okay. To your knowledge, was he making pretty regular visits to the Bay County jail?

A He was, yes.

Q And once again, was all the communication between the two of them completely confidential and you couldn't hear if their entire speech was how I'm gonna smuggle the dope or the note or anything else, into the jail, during those face to face meetings, could you?

A No, sir, we could not.

Q Okay. So, as an investigator, did you have some information that she had a drug problem?

A Yes, sir.

Q Did you have some information that she was asking how to get, how he got into the jail and was trying to see what the security steps would allow him

to get in or get out?

A Correct, yes, sir.

Q Did you, based on the nature of the conversations, believe that their relationship was other than professional, in other words, they were more than just attorney clients?

A That's correct, yes, sir.

Q In fact, they were romantic and having some type of personal relationship?

A It seemed so, yes.

Q Okay. And based on all of that, were you

worried he would do something beyond what a normal attorney would do?

A I was, yes.

Q And counsel also asked you some questions about posted rules, do you know what Mr. Wilson does for a living?

A I do.

Q What is that?

A He's an attorney.

Q Prior to being a defense attorney, what was he?

A He was a prosecutor.

Q Was he actually gonna command at the State Attorney's office here in the 14th Circuit?

A Yes, sir.

Q Did you have any question that he had a pretty good understanding about the laws in the State of Florida?

A Well, I knew he had knowledge of that, as well as knowledge of the jail because he had been on multiple tours with me when we were escorting groups around the jail. So, he listened to my spiel multiple times about our issues and problems with contraband and our security issues. So, he had a lot of knowledge

about how the jail operates and what we're up against.

Q And I forgot, was he actually a law enforcement officer before he became a state attorney?

A Yes, sir, he was.

Q As such, any question to you, as a law enforcement officer or all the prosecutors you work with, that you're not allowed to bring kites in and out of the jailor pass them between inmates?

A Yes, sir.

MR. CAMPBELL: Thank you, nothing further.

THE COURT: All right. You're welcome to step

down and I guess you can leave the courthouse.

MR. CAMPBELL: Subject to recall. Your Honor, I'm gonna stop at this point, that's all the evidence. I have more witnesses if there's some point. I've done a written response, I know we're here late hour, if there's some more facts you want. But I think that this witness has covered the lion's share and I've brought in all my evidence through him. But if, I just ask that he stay here in case I need him. I have the rest under the Rule outside.

THE COURT: All right. Thank you. Ms. Anderson, do you have witnesses that you intended to call?

MS. ANDERSON: Judge, can I have just a

moment to confer?

THE COURT: Sure.

MS. ANDERSON: Judge, the only evidence that we present, I think we've got it in through Major Anglin. The things that we're gonna rely on are all, with the exception of the photographs that show Mr. Dowgul, everything else was provided through discovery; the jail, and public records, the jail logs, the jail call transcripts.

And I actually also included a timeline for Your Honor because we think that that's a crucial part for the Court to completely understand. On the table of contents, is the very first page, and I've gone through and provided the Court with our motion, the State's response, and then we filed a reply that is within your

tab number one.

And then we have an overall timeline at number two. Number three is the inmate visitation that I discussed with Warden Anglin. And then four is the State's photographs that they introduced, of the attorney visitation rooms. And then number five are the defense photographs of the attorney visitation area, not just the rooms, but the hallway in front of those rooms.

And then number six are screen shots that are taken from the video that was provided into evidence. And then number seven was actually provided to us through public record request, indicating that a member of the State Attorney's office actually did put an alert on Mr. Wilson's phone number February 1, 2016 through August the 8th of 2016. And then the jail logs from the date of August 9th through October the

22nd, which requires attorneys to sign those.

And then we've included, at number nine, the jail phone calls that were transcribed within the discovery. And then at number ten, Your Honor, and I apologize in advance, these are audio files that we found in discovery that had not been transcribed and not made part of the paper discovery.

I had attempted to have those transcribed before the Court today. They're quite lengthy, but the items that are listed on that purple page, those span the timeframe that's relevant. The file numbers on these, the top one is 201708090738. So, the file numbers indicate that this was a recording that occurred on August the 9th of 2017 at 7:38 in the morning.

And then I also incorporated those, Your Honor, into the table of contents because we believe that the Court should have an overall picture of whether or not

this was a valid investigation.

So, rather than rely on the memory of what some of the phone calls might have said, that's why I wanted the Court to have access to those. So, we would submit the notebook into, the evidence portions, into evidence. And Mr. Judkins is going to handle the argument from here.

MR. CAMPBELL: Your Honor, may I speak to the evidence? I don't have a problem with a lot of this, there are three things I do. And it's, one is the table of contents. I don't know, that's a product of counsel. I don't know if it's accurate or not, I got it today. Same thing with three, which is this timeline, I don't know what that is.

I don't mind you looking at it, but I just don't want, for the record to, that I'm stipulating to the

accuracy or authenticity of said timeline. I just, I haven't had time to, no pun intended, to look at, let alone authenticate or know its content.

I don't mind the Court looking at it. But should anybody ever look at this, I don't want to be held to that timeline, that I agree that that –

MS. ANDERSON: I understand, Your Honor.

MR. CAMPBELL: I don't have any reason to disagree with counsel, I just. Everything else, other than, and then the seven, which is something to do with the attorney back in '16, the State Attorney's office putting, I don't think is relevant.

So, I don't, my objection would be relevance. I don't have any reason to believe that's not true. I don't care and I don't think it has anything to do with this

case. But that's the only, I would make that evidentiary objection because whether the State Attorney was monitoring his cell phone number at the jail back in '16, I think has nothing to do with the case at bar. So, I just wanted to put my objections on the record. Otherwise, that's where I am.

THE COURT: All right. That's noted. I tell you I've not seen the reply, so I haven't had the benefit of reading it. And I'm not, maybe it's evident, from the reply, why some of these other items that you just referenced, are relevant to the issue of the motion to suppress. And again, I think we're only on, here on two issues, and that is whether the motion to suppress should be granted and what the State is requesting in the context of their motion in limine.

MS. ANDERSON: Yes, sir. And when I prepared the notebooks, I wasn't, I didn't know if it would, everything I put in here was exhaustive, so there may not be specific parts that are applicable to what Mr. Judkins is going to argue. I'll leave that in the Court's discretion.

THE COURT: Well, I guess my question is, maybe you can help me, why are the recordings or this issue about what happened in 2016, relevant to the motion to suppress? Is that gonna be evident from the argument today?

MS. ANDERSON: No, Judge. It's just, it's part of the investigation. Because what we anticipated the State to say is that they put these cameras in because they thought there was gonna be evidence of a crime.

So, we think that the relevance of that would show that the, there was more going on.

We understand how the Court feels on the selective prosecution. But just, we wanted the Court to be aware that there was something that we found in the discovery with that.

With regard to the issues that are going to be argued, is related to the cameras that Mr. Judkins is relying on. Those are more specific to the phone calls because there's some cases out there that talk about an exception if there's a valid investigation going on. And we think that the Court needs the full picture, that we don't think it was a valid investigation, that's why we just included everything that we could find within the discovery as well as the public records.

THE COURT: All right. So, Mr. Judkins, you

can remain seated or you may stand, whatever suits you.

MR. JUDKINS: I'm old enough that I start off standing, but I may sit down.

THE COURT: Fair enough.

MR. JUDKINS: The State's response misses the point of our motion. The only significance here, this is not about, this is not an attorney client privilege case, this a search and seizure case.

And the issue in the search and seizure is really simple to say. Did the defendant, Mr. Wilson, have a reasonable expectation of privacy at the time of this meeting with his client at the jail. And was that expectation of privacy violated by the State's secretly

recording him.

The State gives us that evidence, handed it to us. The jail facility itself does, as the witness said, does everything possible to give the attorneys and their clients the belief and expectation that their meetings are gonna be private, that was his, he pretty much volunteered it. He said everything in the whole process is established to give them the confidence that they can exercise their privileged communications in private.

Now, the cases that we cite in the, in our memo, clearly establish that a videotape of a confidential, of confidential circumstances is a seizure. It's a search and a seizure of the likeness there. It lends itself to violations of the attorney client privilege.

But in terms of the motion to suppress that we have here, it's that attorney client privilege that gives rise to the expectation of privacy. And the expectation

must be reasonable, both subjectively and objectively.

Clearly, they're objectively reasonable because that's what the witness testified. That's what they, that's why they go to the lengths that they go to allow attorneys to have private meetings with their clients.

They're subjectively reasonable because he also testified that Mr. Wilson had been to numerous tours of that facility with him. And so, he knew, objectively knew, not thought, he objectively knew there weren't cameras there that were secretly videotaping what went on in there. I don't really need to get into the fact that there's lots of communications that can be nonverbal and things like that.

But the test is so simple that I'm not gonna be able to take up too much more of your time, because our memo gives you all the law that there is on videotapes of attorneys and clients and other

confidential circumstances, is a search and a seizure.

You can, there have been lawsuits where a lot, lots of money has been won by people whose rights were violated by those secret recordings. One of them over near Jacksonville, Bill Shepard, my buddy over there, got that verdict; and it was appealed to the 11th Circuit and affirmed.

So, I don't think how, that we could come up with clearer circumstances, through the State's own witness, to establish the reasonableness of the belief that the meeting between an attorney and client is confidential and it wasn't being interfered with and it wasn't being videotaped. It was interfered with. It was videotaped.

And that very fact, without a warrant, they could've gotten a warrant. And that was the, the last point I want to make is he said that they had all this

information to lead them to believe that something was going on there between Mr. Wilson and his client.

If that's the case, they should get a warrant. And somebody in your position could then say, well, yeah, there's probable cause here, I'm gonna give you a warrant to videotape, I'll give you a wiretap warrant. I'll give you whatever you want if this, if you've got probable cause to show that this attorney client relationship is being abused to allow misconduct to occur. I can't tell you, I don't know how many hundreds of those you've done, but I bet you have. You do that all the time.

So, you had a very confidential meeting, one of the most confidential meetings that a law, that the law allows, that was interfered with, the videotape evidence, without a warrant. And that's unconstitutional and the motion to suppress should be

granted.

MR. CAMPBELL: Your Honor, did I hear you say that you didn't get my response?

THE COURT: I got your response. I did not get the reply. I've read your response. I've never seen the reply until you brought it to my attention today.

MR. CAMPBELL: I just want to make sure I wasn't starting, that I needed to repeat this, okay.

THE COURT: I read their motion, your response, some of the cases cited. But I've never seen the reply, did not know there was one, it was not clocked in with the clerk. Maybe it was today?

MS. ANDERSON: No, it's in our notebooks,
Judge.

THE COURT: It hasn't been filed?

MS. ANDERSON: Not yet.

MR. JUDKINS: Mr. Campbell and I suffer from
the same disadvantage.

MR. CAMPBELL: I just want to make sure I
understood where we are. Okay. I don't know what's in
there either, so. I'll just respond to Mr. Judkins'
arguments and what I'm prepared to do and the
evidence.

The State, I don't want to waive, I know you said
it shifts to me, which, often it does. I still am raising

standing, once again, as I raised previously. I don't want to waive that.

I have no, I believe that the privilege belongs to the client, not to the attorney, so I don't believe that under attorney client, that he had standing to raise that particular protection.

THE COURT: Well, it sounds like Mr. Judkins just abandoned the attorney client privilege argument, which was argued, by the way, in the motion. So, if you're saying that doesn't apply now, I'm happy to take that to be the case.

MR. JUDKINS: We're resting on what I said and what our motion said.

THE COURT: Well, your motion argues the

attorney client privilege, so. It does.

MR. JUDKINS: Well, that's not what I'm arguing today. I'm sticking with my story that this is a Fourth Amendment case. But the attorney client privilege is not irrelevant because of what I said. It's that privilege that causes the jail to go to such lengths to allow people to have confidential meetings, and that is the expectation of privacy that our Fourth Amendment argument is, but –

THE COURT: I understand the attorney client privilege in that context.

MR. JUDKINS: That's exactly what we're doing.

THE COURT: All right. Thank you.

MR. CAMPBELL: Judge, once again, I just don't, I want to make sure that I'm clear for, that I'm not abandoning any of the things for, because I'll rely on my written response to their written pleadings.

Going to the oral elocution of my counsel, my opposing counsel, I, from a Fourth amendment, I don't think he had a privacy interest, all due respect, Your Honor, I think that there's no question.

I mean, the defendant's sitting here today. He certainly is able to talk to his counsel. We already watched them huddle up and have meetings. It would have been wrong for you or I to try to listen to what they were saying. But they didn't have a privacy and observation in this courtroom. And they don't have one in a jail visitation room that's six foot by seven foot

long, with a big window outside, so they can pass it.

There's been no, you know, one thing I heard Mr. Judkins say is there's nonverbal communication, I agree there's such a thing, and Professor (indiscernible) talks about it. If they were showing where the, or if she was demonstrating how she did on the field sobriety exercises, strike it to death, no problem. But that's not been suggested. We didn't try to zoom in and read what the notes were saying.

To the contrary, we didn't know what they were saying and never were really interested in it, and that's the uncontradicted evidence here. Here is whether or not there is a privacy interest in there. I would suggest objectively, and it says throughout the case law, each time where, including Mr. Shepard's case in Jacksonville in the 11th, that's when they were listening. It was the uninvited ear, going back to the

case, it's the uninvited ear that is the problem.

We specifically took our ears off. We were only watching. And we were watching through a pane of glass, which the Court saw today, was just as clear as day from, even on the video as he walks into that room. Everything, and that was the uncontradicted evidence, is that a person standing in that hallway could've seen the same notes being passed.

Now, would they probably have passed them if they had known that we were watching, probably not. Could we have, would we have, perhaps, had a proof problem if I had only had a live witness coming in and saying, well, I saw him pass notes, versus now having it on video, those are all issues.

What we've done here is we have recorded it so that there's no question what happened with the paper packet. There's no question that, one of the things I

think is important to recognize, he raises a subjective, that his client thought he had privacy.

You watched the furtive way that he sits there. They move it through the paper and you can watch that video as many times, it's in evidence. They sit there and play three card monte with that note, writing notes, slipping it between pieces of paper. He slips it out so that she can see.

Your Honor, I would suggest that is somebody who recognizes that at any time, somebody walking by could sit down and see what they were doing, so that's why he's flipping through pieces of paper while each of the girls are taking and passing the note between them. He knew he that he was subject to visual observation. He knew it because he had a window sitting next to him. And he was a matter of feet from a corrections officer on a hallway where officers and

inmates go by every day. This, I would suggest, would be contrary.

And the Heartsman (phonetic) case out of Colorado, I just, I don't know what to say about that. I just think it's wrong. I think the Ninth Circuit even took it up and said we're not willing to go that far, which says something to me.

I don't think this Court wants to go, with 42 years precedent, and suggest that we can't observe what's going on. Candidly, if one of these two had strangled the other to death, this would be great evidence for the violence that happened in that room.

There's a good reason to sit there and be able to see and put them under visual observation, that's why you have a guard posted outside these four rooms. No, she wasn't sitting there looking in there like Johnny Bench, but that in no way, changes the fact that there's

no legitimate expectation.

And I would suggest the defendant certainly recognized he wasn't in a private room for visual observation. We never listened and there's not been an infringement upon him.

THE COURT: Mr. Judkins, if the guard had elected to stand at the window where your client was seated, where his client, did your client have an expectation of privacy then?

MR. JUDKINS: He has, he has one. But under your example, he would know because he would be able to, the occupants of the room would be able to see the guard standing at the window and they would not misbehave under that circumstance.

What happened if it's surreptitious, like this

was, people aren't under, it's not a waiver situation because, as it would be there, because you've got a guard. The windows, you can see out of just as good as you can see into, so that it just wouldn't have happened.

So, yeah, if the guard had been looking through there, I wouldn't, we wouldn't have an argument. But this was a surreptitious recording of something that nobody had any probable cause to know that was gonna happen, otherwise, they could've gotten a warrant, but.

THE COURT: So, had the guard been standing there, could he put up his sport coat and hang it over the window to assure his expectation of privacy?

MR. JUDKINS: Well, he could. Now, he might

have a disagreement with the guard about whether that was allowed, but he could absolutely do that. He'd have to hang his purple shirt over it, but he could that.

And there's been a lot of situations where lawyers have put their coat over the camera in a room and things like that, and the guards, and that leads to reported opinions, but those aren't the facts of our case.

THE COURT: All right. Let's, I'll read the reply. I'll address whatever is in this notebook that I think is germane to the motion itself.

I have no interest in listening to the disc recordings, unless you can tell me how that has anything to do with what we're talking about today. I mean, honestly, I'm not sure I follow that.

MR. JUDKINS: I don't think they're saying that

there was probable cause to get a warrant. I think they're saying that it created a suspicion, but that's obviously not sufficient for a warrant.

I have glanced, again, at the structure of our memo, our motion. And I, unless it was a mistake, I think the stuff in there under the legal argument that relates to the attorney client privilege, it goes to the argument that, setting up the argument that I'm making, and that it's the attorney client privilege that creates the expectation of privacy.

THE COURT: I get that.

MR. JUDKINS: And that's when we get right in, whether it's an expectation that society considers to be reasonable.

THE COURT: Right. I understand. Okay. So, let's move on to the motion in limine. I think that's the last issue.

MR. CAMPBELL: Yes, sir, it is. And, Your Honor, I think everybody's had a chance to read it. I'm just trying to keep this clean. I don't, I mean, you're gonna rule on it, candidly, on the suppression issue. If you're gonna be appealed one way or another, then we'll see where we go from there, but those are inappropriate.

You've already pretty well ruled on selective prosecution, I want that to move on. We've heard and it wasn't relevant in this position for me to make a lot of objections to relevance. But whether or not they could've gotten a search warrant, once again, legal, this needs to be on the facts.

And everybody in here has tried cases before Your Honor. I've listed several different areas. I don't, and that's what I'm trying to put on, I don't think that it should be appropriate for us to go into the issue of whether or not other State Attorneys were consulted before I was appointed by the governor to be. I don't think that's relevant to the issue of bar.

I'm obviously here on, and this is gonna become obvious because I'm gonna introduce myself as from being from Tallahassee, but whether or not Glen Hess should have raised a conflict, did raise a conflict, his involvement here, I don't think, has anything to do and that should not be allowed.

What happened to Mr. Dingus has no relevance here and should not be allowed. I can tell you today, we now have this 2006 State Attorney putting in a request to monitor the defendant, I'm gonna go ahead and ore

tenus add that to my motion in limine.

You know, whatever their argument, inference, suggestion, evidence, suggesting that people are out to get Mr. Wilson, should not be allowed, unless there's some relevance. And I would ask that if it, any point, any of the issues I've listed in my motion in limine, they believe that have become relevant, that we go to sidebar and that they, I can be heard on it at sidebar and the Court can rule before.

Otherwise, it's just gonna have me running down rabbit trails that are really not germane, that's gonna make this case take a lot longer than I think it needs to. And I think it will just confuse the jury going in.

I know we're going to, we have media here today, there's going to be media interest. And feeding that beast, I think, is mistake and I don't think that

either I or defense counsel should be going into issues beyond the guilt or innocence of this client, this defendant.

MR. DOWGUL: Your Honor, if I may? We would agree with Mr. Campbell on paragraphs one, two, three, four and five.

THE COURT: I'm sorry, I have looked at the motion whenever it was filed. What is, what are you not agreeing on, how about that?

MR. DOWGUL: From there, we would not agree on six, seven, eight, nine, ten.

THE COURT: Pull that up for me, if you would.

MR. DOWGUL: Eleven, and then we would then agree –

THE COURT: Hang on just a minute, Mr. Dowgul, if we're gonna do it this way.

MR. DOWGUL: And then the rest of them, we would agree to, but those are the ones we don't agree. So, one through five –

THE COURT: Time out, let me get a copy of the motion.

MR. DOWGUL: Okay.

THE COURT: All right. Tell me, specifically, the paragraphs that you disagree agree with. And I'll

circle them so that I can understand. And I may have some questions for you. Go ahead.

MR. DOWGUL: It's 6 through 11.

THE COURT: Okay. Mr. Dowgul, the matter relating to Mr. Dingus, the matter relating to the issues of selective prosecution have been addressed now, on two separate occasions, by the Court. And I thought it was clear to all that there was no evidence to support a motion to dismiss the case based on selective prosecution; which is the remedy, the appropriate remedy, when such proof is made known to the Court. So, perhaps you want to add some argument to why you think six through eleven ought to be a part of this trial. I'm not seeing it.

MR. DOWGUL: Judge, we believe that we're entitled to assert and that the Court should give the defense wide latitude in what their theory of what the defense is and what their argument is.

THE COURT: Selective prosecution is not a defense theory.

MR. DOWGUL: And we believe bias and motive is based on certain witnesses and what their testimony would be. And we also believe the part with Mr. Dingus is important on the fact that it goes into specifically stating the fact of, that he was not prosecuted. There has not been a single case that the State will be able to sit there and show that involved a written communication as contraband.

THE COURT: Okay.

MR. DOWGUL: And I think that has relevance. And I think that's important to sit there and make that distinction on that type of bias and motive that's being put forth here.

MR. JUDKINS: Your Honor, may I make a suggestion on 6 through 11? A lot of these things go to motive and bias and things like that. I don't think the defense objects to agreeing to not introduce evidence on those other paragraphs. And I can't imagine what kind of evidence will come in on these items in 6 through 11.

I can see how it could clearly be inadmissible. But I can also see how, depending on the circumstances at trial, it may, these kind of things could come up to show bias or prejudice or favoritism on, of one party

versus the other. And I would suggest you reserve ruling on those issues to see how the issue arises to see if it is, in fact, relevant to the case at that time.

THE COURT: Well, the only, the only possible way collateral matters could be relevant is if it relates to impeachment of a witness for purpose of establishing bias. So, the problem I'm having is I don't know what the evidence is in this case, other than what's been presented.

This trial will not be a showcase to attempt to prove there was selective prosecution. So, maybe Mr. Campbell can address the issue, how might some of this be relevant to impeach a witness by demonstrating their bias?

MR. CAMPBELL: Your Honor, candidly, I can't

imagine it because, and this is why I filed the motion, I would need a ruling. If I had to defend myself from selective prosecuting, particularly in light of the Dingus, I'd need to call myself and you; we just became witnesses on that issue, and Mr. Hess.

And because we both are, I'm the one who made the prosecutorial decision to file the information, and you're the Judge who made the decision to deny on the warrant on Mr. Dingus, so it's gonna, to open up that can, I have to start changing from advocate to witness on who I'm, which is why the appropriate way to raise this is in a motion to dismiss, where we can do it.

To go into, I understand why Mr. Judkins would like you to reserve, but it's going to, if you let that go open, it's going to change significantly who I have to add as witnesses, and broaden this greatly. Because then I have to, as soon as we crack open the Dingus

case, all right, well, now I have to put on the Dingus case and explain the decisions that were made between, and differencing in opinions on. And, of course, once again, yes, we'll have some similar witness, I would agree, Mr. Stanford and some of these detective. But your denial of the warrant was a pretty good factor in their decision not to arrest him. How do I explain that to a jury?

All of these are going to just totally obfuscate. And they don't have a hill of beans to do with whether or not this defendant smuggled contraband into the jailor whether he lied about it.

So, I don't, I mean, I agree they can go to bias and prejudice. They can ask them if they don't like him. They can ask him, but whether or not they like Dingus or they like him more or less than Dingus, that's not. They can ask whether or not they like the

defendant. They can ask all kinds of questions on to motive.

But to go into specific incidents, I don't think, you know, I can't think of any rule of impeachment that allows you to, other than in a self-defense claim, specific acts of, you know, prior violence, sometimes are sometimes allowed. But you're asking for specific, they're trying to introduce specific acts of charging, no charging, investigating, no investigating.

So, both the selective prosecution and Dingus, I think, is, you know, there's still another one out, by my notes, concerning another judge, which I don't want to forget because I want to make sure I address that; because once again, I'm gonna have to call another member of the judiciary.

But as to those, which seems to be where we are, it would change the way this Court, if a jury had to

decide whether or not prosecutors were using their discretion or not, I think it's a total invasion of the prosecutorial discretion under the Florida Constitution, and it would be cruel to ask a jury to try to second guess what my charging decision was versus Mr. Hess'.

THE COURT: All right. The motion in limine is gonna be granted in its entirety. And as we progress through the trial, if anybody believes that there's a reason why some issue that was outlined in this motion in limine that I just granted, ought to be revisited by the Court, before doing so, you'll bring it to my attention and we'll have a sidebar conference and I'll make a ruling.

Like Mr. Judkins said, I can't predict what's gonna happen in a trial. And motions in limine, oftentimes, are improvident for that reason. In this

case, the motion is granted, so there will no reference to any of this material in the context of an opening statement.

If we have to talk about anything in voir dire about people's knowledge of these circumstances, these charges against this defendant, we can address that in a way that perhaps is done outside the presence of the entire venire. But, again, the motion in limine, filed by the State, is granted.

MR. CAMPBELL: Thank you, Your Honor.

THE COURT: I'll reserve ruling on the motion to suppress after I read the reply.

MR. DOWGUL: Judge, if I just may for the record, I just wanted to correct one thing that Mr.

Campbell had sat there and said. With the Court's denial of Mr. Dingus warrant, I don't think the Court was given everything, is part of the problem, okay. There's a statement that I think the Court was never given, that Mr. Dingus gave, that could change the light of that issue, okay. So, I think that's just an incorrect statement by Mr. Campbell.

THE COURT: And at this point, I don't care. All right. What else do we have before we adjourn?

[The remaining portion of the transcript/hearing was regarding planning future court proceedings.]