No.

In The

Supreme Court of the United States

ISAAC GREEN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. WHETHER THE STATE POST-CONVICTION COURT DENIED GREEN DUE PROCESS OF LAW WHEN IT SUMARRILY DENIED HIS POST-CONVICTION CLAIM, WITHOUT SUFFICIENT RECORD EVIDENCE, THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL CONTRARY TO THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHEN HIS LAWYER FAILED TO FILE A MOTION TO SUPPRESS THE SEARCH OF HIS PHONE?

LIST OF PARTIES

Isaac Green, Petitioner

State of Florida, Respondent

STATEMENT OF RELATED CASES

- *Isaac Green v. State of Florida*, No. 2017-CF-3014, Circuit Court, Alachua County Florida (Judgment entered August 23, 2018);

- *State of Florida v. Isaac Green*, No. 1D23-3168, District Court of Appeal for the First District of Florida

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Isaac Green, respectfully prays that a writ of certiorari issue to review the decision of the First District Court of Appeal for the State of Florida entered November 27, 2024 affirming by unpublished per curiam opinion the decision of the Circuit Court in and for Alachua County Florida denying Green's Motion for Post-Conviction Relief pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure. Green's motion for rehearing was denied January 28, 2025.

OPINION BELOW

The decision of the First District Court of Appeal as well as the underlying Circuit Court order are included in the Appendix, *infra*.

JURISDICTION

This Court has jurisdiction to review the November 27, 2024 decision of the First District Court of Appeal of Florida affirming the lower court's order denying Green's Motion for Post-Conviction Relief pursuant to 28 U.S.C. 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

1. The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

3. The Sixth Amendment to the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor,

and to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

In July of 2017, N.M.A. (the alleged victim, a 22 year-old white female) was attending classes at the University of Florida and living in an apartment in an area of Gainesville, Florida commonly referred to as "Midtown." NM.A.'s apartment was located a few blocks North of the University of Florida and within walking distance of multiple bars and clubs in the Midtown area. During the evening hours of July 28, 2017, N.M.A. and her roommate began walking back and forth between their apartment and multiple bars in the Midtown area. N.M.A. testified that it was "very hot" that night and she consumed multiple mixed drinks containing liquor at each bar prior to becoming overheated, walking back home to "hang out" for approximately "an hour," and then going back out to the next bar to continue drinking alcohol. As N.M.A. traveled back and forth between the bars and her apartment, she quickly became substantially more impaired by alcohol as well as additional substances to which N.M.A. never admitted consuming, but the urine analysis proved had been consumed. N.M.A. later testified that she might have walked all the way back to her apartment the final time alone that night, but she couldn't remember for sure. N.M.A. testified that she could not remember exactly how many drinks she consumed at each bar; she could not remember whether she ate prior to "pass[ing] out" in her bed; she could not remember whether Appellant

picked her up in his car as she was walking and drove her the rest of the way home; she could not remember whether her apartment door was locked or unlocked when she got home; she could not remember entering her apartment or if she let Appellant enter her apartment with her; she could not remember getting into her bed; she could not remember whether another person was in her bed with her; she could not remember that she urinated on herself while she was in bed; she could not remember whether it was her or Appellant who removed her underwear once she was in bed; and she could not even remember whether she and Appellant had sex during the early morning hours of July 29, 2017.

Nevertheless, after Green left her house, N.M.A. called the non-emergency number for the police and reported that she woke up to him standing over her using what she believed to be a cellphone with a light source recording video of her naked. On the morning after the incident, N.M.A. told a forensic examiner who performed a physical exam on her that she knew she was impaired the night before, and she "passed out" in her bed prior to the incident, but she couldn't clearly remember many other details from that night or from the following morning.

Over a month passed without GPD investigators identifying any suspects or having any contact with Appellant. On August 3, 2017, GPD Officer Warren Meek was on patrol in the city limits of Gainesville when he stopped Appellant's vehicle

allegedly for a civil traffic infraction. The officer admitted that he suspected Green was the person who had recently been reported to police by several callers complaining about a suspicious person peering in windows and masturbating. While Green was stopped, the officers conducted a show-up identification with the callers and Green was identified and arrested. This became case number 2017-CF-2874 (hereinafter "the voyeurism case"). Following his arrest, a cellular phone which was found to be in Appellant's possession was confiscated by Officer Meek and ultimately placed in the GPD property holding room. The phone was searched by GPD Detective Matthew Goeckel, allegedly pursuant to a search warrant obtained for the phone in the voyeurism case.[1] Lieutenant Robert Fanelli (Fanelli) testified that he gave the cell phone to Detective Mathew Goeckel (Goeckel) to conduct universal forensic extraction of the phones data. He then found video of N.M.A. on the date of the incident was found in Appellant's phone which was used to convict Green at trial. Goeckel explained the complex procedures he initiated to discover the evidence used to file charges in the instant case, number 2017-CF-3014. He testified that the unlawfully obtained evidence was discovered in a hidden file, that only computer created hacking software could access. Goeckel testified that the hidden

1 This warrant was not filed with the Alachua County Clerk and was not attached to the order denying Green's 3.850 motion. Instead it is merely referenced in a police report and discussed by an officer at trial.

files could only be accessed "utilizing a pin code". Goeckel also admitted that he "was unaware that there was an open investigation for a burglary relating to case number 2017-CF-3014. He stated he knew the evidence was related "after" he searched the phone and extracted the hidden data; data that he says he could not have accessed without hacking into the phone. Goeckel testified that he shared the unlawfully obtained evidence with Fanelli. He further testified on cross-examination that the video recording did not show who the person was that was being depicted in the video, as the video only showed a "vagina" being recorded.

Isaac Green, through counsel, filed a Motion for Post-Conviction Relief pursuant to Florida Rules of Criminal Procedure Rule 3.850 arguing that his trial counsel rendered ineffective assistance of counsel when they failed to file a motion to suppress the evidence from the cell phone which resulted in charges being filed in case number 2017-CF-3014 (this case) in violation of Green's Sixth Amendment rights pursuant to *Wong Sun v. United States*, 371 U.S. 471 (1963), *Weeks v. United States*¸ 232 U.S. 383 (1914) and *Riley v. California*, 134 S. Ct. 2473 (2014). The Circuit Court summarily denied relief. [Appendix A of this Petition]. Green appealed the Circuit Court's decision to the First District Court of Appeal of Florida and they affirmed the Circuit's Court denial per curiam. [Appendix B]. Green filed for rehearing of the affirmance which was denied January 28, 2025. [Appendix C].

ARGUMENT IN SUPPORT OF GRANTING THE WRIT

I. WHETHER THE STATE POST-CONVICTION COURT DENIED GREEN DUE PROCESS OF LAW WHEN IT SUMARRILY DENIED HIS POST-CONVICTION CLAIM, WITHOUT SUFFICIENT RECORD EVIDENCE, THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL CONTRARY TO THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHEN HIS LAWYER FAILED TO FILE A MOTION TO SUPPRESS THE SEARCH AND SEIZURE OF HIS PHONE?

Green was stopped for an alleged traffic violation. During the stop, the officer developed suspicion that Green was the suspect in a recently reported voyeurism case. At some point Green consented to a search of his car. Inexplicably, Green's phone was seized at this point from the car and taken to the police evidence room where it stayed until allegedly a warrant was obtained to search the phone.[2] This warrant was allegedly obtained, not in the instant case, number 2017-CF-3014, but in case number 2017-CF-2874 (the voyeurism case). The scope of that warrant, while not filed in the instant case, would have been constrained to evidence of the voyeurism allegations. The facts of that case involved a suspicious person outside of a residence. No warrant for the phone was obtained pertaining to this case. The officer testified that he had to jump through multiple technical steps to unlock the

2 This alleged warrant does not appear in any of the pleadings below. *Riley v. California*, 134 S.Ct. 2473, 2481 (2014) requires a warrant to search the contents of a phone.

area of the phone where the damaging video was found. That video was of a naked woman laying on a bed, taken by someone inside the room. The officer admitted that there was no connection between the video taken from the phone and the voyeurism case. “When an official search is properly authorized -- whether by consent or by the issuance of a valid warrant -- the scope of the search is limited by the terms of its authorization. Consent to search a garage would not implicitly authorize a search of an adjoining house; a warrant to search for a stolen refrigerator would not authorize the opening of desk drawers. Because "indiscriminate searches and seizures conducted under the authority of 'general warrants' were the immediate evils that motivated the framing and adoption of the Fourth Amendment," *Payton v. New York*, 445 U.S. 573, 583 (1980), that Amendment requires that the scope of every authorized search be particularly described. *Walter v. United States*, 447 U.S. 649, 656-657 (1980). If the scope of a search exceeds what is permitted by the terms of a validly issued warrant, the search and any subsequent seizure are unconstitutional. *Horton v. California*, 496 U.S. 128, 140 (1990). Here, the warrant was not entered into evidence in the instant case to rebut Green’s ineffective assistance of counsel claim which denied him due process of law under the Fifth Amendment to the United State’s constitution. Furthermore, whatever the scope of the warrant authorized by the court for case number 2017-CF-2874 (the voyeurism case), the video of a vagina,

taken indoors on a bed without the face of the victim visible, necessarily exceeded the scope of that warrant and was not, standing alone, evidence of a crime. If the police believed the video of the vagina was evidence of a different crime, which it was, they needed a new warrant to obtain it. *See United States v. Sedaghaty*, 28 F.3d 885, 912 (9th Cir. 2013) where the government had searched a defendant's home pursuant to a warrant focused on tax violations. Agents seized nine computers, which forensic experts searched with "an evolving list of search terms" in order "to comb through the computers for useful materials," eventually finding evidence confirming the defendant was supporting Chechen terrorist groups. *Id*. The Ninth Circuit concluded that the searches beyond the scope of the warrant were improper, noting that the government "should not be able to comb through [the defendant's] computers plucking out new forms of evidence that the investigating agents have decided may be useful" after it failed to find evidence of willfulness regarding the tax returns. *Id*. at 913. To do so required a new warrant, even though the government already had access to the machines and had lawfully seized them. See also *United States v. Runyan*, 275 F.3d 449, 464-65 (5th Cir. 2001) (finding that police exceeded the scope of a private search when they "examined disks that the private searchers did not examine" and would have required a warrant to do so); *United States v. Mulder*, 808 F.2d 1346, 1349 (2d Cir. 1987) (holding that a

separate warrant was needed to test packages in suitcase for drugs, even though the suitcase was lawfully seized via private search). Because the video used to convict Green was taken from his phone without authorization to do so, it was subject to suppression and his counsel rendered ineffective assistance when they failed to file a motion to suppress it on that basis. Furthermore, Green was denied due process of law when the State post-conviction court denied this claim without having in evidence the referenced warrant.

CONCLUSION

WHEREFORE, the Petitioner, Isac Green, respectfully requests this Honorable Court grant this petition for certiorari.

Respectfully submitted,

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