

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA.

CASE NO: 98-04803CF
DIVISION: CR-E

STATE OF FLORIDA

vs.

ROBERT L. SIMMONS
_____ /

**DEFENDANT SIMMONS' MOTION FOR POST-CONVICTION RELIEF
PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.850**

COMES NOW, the Defendant, ROBERT L. SIMMONS, by and through his undersigned counsel, pursuant to Rule 3.850, Florida Rules of Criminal Procedure, and hereby moves this Honorable Court for an order vacating the defendant's plea, judgment and sentence in the above referenced cause for the reasons set forth below.

Course of Proceedings

On June 22, 1999, Robert L. Simmons went to trial on a one count information charging Mr. Simmons with trafficking in cocaine while armed in violation § 893.135 and § 775.087, Florida Statutes in case number 1998-4803-CFA. The charge arose out of alleged activities of the Defendant on April 1, 1998 where Mr. Simmons allegedly sold approximately six ounces of cocaine to a confidential informant, Jack Zacharia. On the first day of trial, the State called as its first witness Jacksonville Sheriff's Office Detective Charles Bates. Several times during direct examination Detective Bates attempted to interject hearsay and was admonished by the Court. Finally, the State ignored a motion *in limine* and questioned Detective Bates regarding evidence relating to that motion and a mistrial was declared by the trial judge, the Honorable Lance Day.

Following the mistrial, the State amended the Information to include another count of trafficking in cocaine.¹ A second trial was then set to begin on June 26, 2000. Prior to the commencement of the second trial, the State filed *State's Second Motion In Limine* asking the court to prohibit the Defendant from introducing any evidence of a pending federal investigation into police corruption.

The State was already aware that its key witness, JSO Officer Jason Pough, was the target of a joint federal-state police corruption investigation. The investigation, which was being conducted under federal grand jury secrecy rules,² had leaked into the press:

Accused crack dealers are cooperating with federal prosecutors, cops are investigating cops and the surviving victims of at least two unsolved slayings and a handful of robberies are reliving the past.

That's all happened since a federal-state task force began investigating allegations 16 months ago of Jacksonville police tipping off drug dealers -- a probe that has since broadened to include possible police involvement in other crimes.

A federal grand jury has been hearing testimony about the probe since then, including meeting again last week. *Florida Times Union*, April 23, 2000.

According to early press reports, the investigation had been going on since approximately October 1998. Numerous articles appeared over the course of the next several months, including articles naming JSO Officer Jason Pough as a target of the investigation. In an April 23, 2000

¹ In addition, at that time the State offered the defendant a plea agreement for a sentence of one year in the county jail, which he refused.

² See Rule 6, Federal Rules of Criminal Procedure.

Florida Times Union newspaper article, it was disclosed that three JSO narcotics officers, Aric Sinclair, Karl Waldon and Eric Maddox, had been taken off the streets and stripped of their badges and guns. The Times Union reported in the same article that the investigation was looking into two unsolved homicides, hinting that JSO officers were involved in the murders.

Also waiting for future developments is the family of slain convenience store owner Sami Safar, who banked where Sinclair worked as a security guard. . . . The task force also is investigating the slaying of Jeff Reed, 31, whose body was found a week after Safar's death under a tree at Fifth and Wilcox streets. *Florida Times Union*, April 23, 2000.

That same article reported that State Attorney Harry Shorstein declined to have one of his assistants participate directly in the investigation although he was invited to do so by Deputy Managing Assistant United States Attorney James L. Klindt:

Deputy Managing U.S. Attorney Jim Klindt, the lead prosecutor in the case, has declined to comment about the investigation. But his reputation is that of a bulldog prosecutor when it comes to people in positions of trust. He has successfully prosecuted lawmen in Duval, Clay, Nassau and Baker counties on drug-related charges.

Oddly, during the whole process, the State Attorney's Office, the lead prosecuting agency in Duval County for murder and other violations of state law, has not gotten involved. The U.S. Attorney's Office told State Attorney Harry Shorstein he could have a prosecutor on the task force, but that person wouldn't be allowed to share

information with anyone, including Shorstein. Shorstein declined the offer.³

Then a month later the same newspaper reported that JSO Officer Jason Pough had been called before the federal grand jury investigating the JSO corruption:

Since the probe began, Officers Aric Sinclair, Karl Waldon and Eric Maddox have been taken off the street, but no charges have been filed against them. A few officers, including Waldon and Maddox, have testified before the grand jury.

Police records show Bones [JSO Officer Reginald Bones, who has since been indicted in federal court] had previously worked with Waldon and Sinclair in narcotics for about four months. Bones, 33, is now working in patrol. Also called to testify was Officer Jason Pough, a 33-year-old former narcotics detective who now teaches in the fifth-grade Drug Abuse Resistance Education program, and Officer Mario Potts, 36, who works in patrol.

Potts did not testify, and Pough was represented by Jacksonville lawyer Paul Perez.

Perez wouldn't comment yesterday about the case. None of the officers called to the federal courthouse would comment. *Florida Times Union*, May 23, 2000.

Then on June 6, 2000, less than three weeks before the trial in this case, Duval County Sheriff Nat Glover stripped JSO Officer Jason Pough of his gun and badge and arrest authority and assigned him to desk duty. This also was reported in the local press:

Jacksonville Sheriff Nat Glover took two officers off the street yesterday and sent another home, bringing to five the number of officers stripped of their powers as a

³ A copy of the April 23, 2000 article is hereunto annexed as Exhibit A, and by this reference made a part hereof.

federal grand jury investigates allegations of police misconduct.

Officers Jason Pough and Reginald Bones, both 33, were placed on desk duty while Officer Karl Waldon, stripped of his authority in April and assigned to a desk, was sent home without any duties, Glover said.

"I am doing this in the best interests of this agency and this city," Glover said. "I'm committed to doing what's necessary to make certain we maintain public trust and the integrity in this agency."

The Times-Union has previously reported that during the 18-month investigation, Officer Aric Sinclair, 31, was sent home in February, and Officer Eric Maddox, 29, was put behind a desk in August. All five officers are still being paid, Glover said.

The probe began after allegations were made that police were tipping drug dealers and has expanded into possible police involvement in other misconduct and crimes, including two homicides and at least three robberies.

Neither police nor federal prosecutors would say how Pough, Bones and Waldon are linked to the probe, though records show they worked in the narcotics unit with Sinclair. Maddox never worked in narcotics. *Florida Times Union*, June 6, 2000
[emphasis supplied]

On June 17, 2000, just five days before the trial of this case, the *Florida Times Union* reported that JSO Officer Waldon had resigned and the Sheriff still had JSO Officer Pough relieved of duty. The press continued to report that “[n]either police nor prosecutors would say how the

officers are linked to the probe, which involves a task force of federal, state and local police agents.”⁴

According to JSO Officer Pough’s testimony given in deposition January 5, 1999,⁵ he knew that the confidential informant in this case, Jack Zacharia, was a drug dealer, and had been arrested for trafficking in cocaine. He claimed to not otherwise know him or have ever spoken to him. Pough testified that as to this case, he “just happened to be around,” and that he “volunteered to work an hour or two” after normal working hours. He claimed that he could not remember who his partner in the Narcotics Division had been at this time (which was just eight months prior to the deposition). Although he had not been involved in the case in any way, and was supposedly a last minute “volunteer” to merely be part of the “take down” [arrest] team, he ended up playing a major role in the case that evening. He knew that Zacharia was to meet Simmons at the Silver Foxx, a club on Beaver Street in Jacksonville. Pough testified that he was given a ride by several other officers who dropped him off at the Silver Foxx and he was instructed to go inside, while the other officers parked down the street away from the Silver Foxx. He testified that he was not previously shown a picture of the individual [Robert Simmons] that he was to take down and did not know him, but later while in the club with the informant, Zacharia, the informant pointed Simmons out to him when they were alone together. He testified that he, Pough, was alone, the only police officer, in the Silver Foxx

⁴ *Florida Times Union*, June 17, 2000. The May 23, 2000 article is hereunto annexed as Exhibit B, and by this reference made a part hereof. The June 6, 2000 article is hereunto annexed as Exhibit C, and by this reference made a part hereof. The June 17, 2000 article is hereunto annexed as Exhibit D, and by this reference made a part hereof. A time line of the events in the case that are publicly known at this time was set forth in a *Florida Times Union* article dated December 15, 2000, a copy of which is hereunto annexed as Exhibit E, and by this reference made a part hereof.

⁵ A true and correct copy of the deposition is hereunto annexed as Exhibit F, and by this reference made a part hereof.

with the confidential informant and Simmons for “maybe 15, 20 minutes” then Pough testified that he came back out of the club and rejoined the police officers down the street. In the entire twenty minutes he was alone with the informant and Simmons in the club he never saw Simmons and the informant have any conversation.

Pough, someone who had had no involvement in the investigation and claimed to not know either Zacharia or Simmons, and who was a last minute volunteer to assist in the take down, was the only officer who went inside the club where the meet was to take place and where the deal was supposedly to go down. He was alone in the club for up to twenty minutes with the known drug dealer informant and Simmons (who had no prior criminal record). He had neither a monitor nor other recording device or means to communicate with the officers outside. He said that he lost sight of Zacharia in the time that they were in the club alone together, for at least ten minutes, and during that time he testified that Zacharia could have gone into the bathroom or gone outside - he did not continue to watch the informant.

Pough testified that he did not know why he went inside the club, he was “not clear on the details, but I’m just assuming that with Zacharia going in - - make sure he’s going in to do what he’s supposed to do and making sure that Simmons was inside the club.” After about an hour Simmons leaves and Detective Charles Bates follows Simmons who drives home, changes clothes, exchanges his motorcycle for a white Jaguar and drives back to the club. Shortly thereafter a take down signal is given and Pough assists in arresting Simmons, who is standing at the door of the club.

Pough then does the search of the Jaguar and Pough finds sitting on the seat a bag of powder cocaine and Pough drove the Jaguar away from the scene after the arrest and although it had already been searched, and nothing more than the drugs found, Pough testified that as he drove the

Jaguar and came to a stop at a red light “a gun slid from under the seat and hit me on my foot.”

The cocaine that Pough claimed he found in the search and the gun that Pough claimed slid out from under the seat and hit him on his foot was the basis for the armed trafficking charge that Simmons went to trial on, and for which he was sentenced to 36 months in prison, a \$50,000 fine and other sanctions.

This case was based on a search and seizure that Pough claimed he made and of drugs and a gun that Pough claimed he found. The confidential informant, a known drug trafficker, was searched prior to the meet by Detective Bates, in order to insure that he did not already have drugs on him that would be planted and used to falsely make a case against Simmons. Yet that precaution went to the winds when Pough was allowed to be alone with Zacharia for up to twenty minutes after the search and before the arrest.⁶

Although the State knew that JSO Officer Jason Pough had been alone and unobserved with the confidential informant for twenty minutes prior to the informant giving the take down signal that he had been shown the drugs by the defendant, and although it was JSO Officer Pough who claimed to have found the drugs and gun in the search of Simmons’s car, and although the State knew, based on the joint federal-state investigation of which Pough was a target, that Pough had been involved in continuing drug related criminal activity before the time of the Simmons case, during the time of

⁶ This case took place April 1, 1998. We do not know whether Pough was already under suspicion at that time. He apparently was under investigation at the time of the deposition in January 1999 and nothing concerning this fact was disclosed to the defense in its deposition of Pough. Of course the other officers did not search Pough to make sure he was not bringing cocaine to the scene of the meet - they only thought to search the informant. Knowing what is known now, Pough would not have been permitted to participate in this case at all as a police officer. Conceivably he could have been used as a confidential informant but if so, he would have been searched and treated with the same mistrust any informant is accorded.

the Simmons case and continuing after the time of the Simmons case, nothing was disclosed to the defense under *Brady*, *Bagley* or Rule 3.220 of the Florida Rules of Criminal Procedure, about Pough's criminal activities.

Had it merely been a matter of authorities failing to disclose such matters to the public generally, they would have been within their discretion to not do so, but with JSO Officer Jason Pough subpoenaed as a material witness in this felony criminal trial, in which this defendant faced a life sentence for armed trafficking in cocaine, the State Attorney had a Constitutional obligation to disclose everything it knew about the criminal activities of Pough, and the agreement he had made with authorities to admit his wrongdoing and cooperate. The State instead not only failed to disclose to the defense any *Brady* or *Bagley* information about Pough whatsoever, but instead argued to the Court in its *Second Motion in Limine* that the defense should be prohibited from inquiring further about these matters in trial. This turned *Brady* and *Bagley* on their heads.

JSO Officers Waldon and Sinclair were indicted in the United States District Court for the Middle District of Florida in case number 3:00-cr-436-J-25C. The indictment of Waldon and Sinclair is fifty-four pages long and contains twenty-six counts charging drug offenses, Hobbs Act violations, obstruction of justice and conspiracy to violate civil rights of defendants in drug cases and others. Because JSO Officer Pough had cooperated, starting at least as early as his May 22, 2000 appearance before the federal grand jury which was reported May 23, 2000 in the Florida Times Union, he was not charged in the Waldo-Sinclair indictment, but was an unindicted coconspirator, who was charged in a separate information. Pough was charged by information in the United States District Court for the Middle District of Florida, in case number 3:00-cr-440-J-21A with one count of violation of the civil rights of Bernard Stewart for the incident that took place on June 19, 1998.

The information was filed on December 14, 2000. A true and correct copy of the Pough Information is hereunto annexed as Exhibit G, and by this reference made a part hereof. The Waldon-Sinclair indictment is hereunto annexed as Exhibit H, and by this reference made a part hereof.

The United States Attorney's Office is reportedly threatening Waldon and Sinclair with the death penalty in their case. Pough's sentencing agreement is not yet public, but he appears to have been deeply involved with Waldon and Sinclair. Pough's name appears on twenty-six of the fifty-two pages of the indictment. The indictment names Pough as an unindicted co-conspirator in the primary conspiracy charge, count one, of the indictment. The object of the conspiracy was "to rob and steal property . . . and to assault and kidnap persons . . . in order to obtain property." The manner and means allegedly used by Pough included "during the performance of their duties as law enforcement officers under color of law, conduct illegal searches of persons in Jacksonville, Florida and of residences and other venues in Duval County, Florida . . . conduct illegal seizures of drugs and money from persons, residences and criminal suspects . . . in order to misappropriate and steal . . ." "One overt act charged that Pough stopped a vehicle driven by Claude Wright on April 23, 1996 and seized \$1,200, marijuana and cocaine and split it with Sinclair. On February 24, 1998, Waldon, in Pough's presence, seized marijuana from an individual and then the next day executed an affidavit for a search warrant of 1226 Harrison Street, Jacksonville, Florida, falsely claiming to have purchased the marijuana from an individual in the Harrison Street residence. Pough participated in the search of 1226 Harrison Street and stole a sum of money from the house. In April 1998 Pough was continuing to rob people on patrol.⁷ [This was the same time as the offense charged in this case.] Then on May 11, 1998 Pough searched a vehicle belonging to Daniel Wilcox and seized and stole

⁷ See paragraph 30, page 8 of Waldon-Sinclair indictment.

a sum of money and crack cocaine which was split with Waldon. On May 23, 1998 Waldon involved Pough in an illegal search using a battering ram for the purpose of burglarizing the apartment of Don Brown to steal drugs and money. On June 19, 1998 Pough was with Waldon when he received a tip that a person would be in possession of a large sum of money and/or cocaine at a bank located at 5660 Fort Caroline Road, Jacksonville, Florida. Pough and Waldon met with the informant then drove to the bank with Pough following in an unmarked JSO vehicle. They ultimately followed a green van, stopped it, Pough took the driver, Bernard Stewart out of the van, handcuffed and pepper sprayed him in the eyes. They then drove the van off to a secluded area to search it for money and drugs. The money that was found was divided between Pough, Waldon and a third person. Pough developed a cover story in case Waldon's vehicle was captured by the video surveillance camera at the bank and Waldon told Pough not to worry about the police radio communications [that could lead back to them]. Waldon and Pough discussed the May 15, 1998 \$50,000 robbery of Hussam Tanhan at Southtrust Bank committed by Jeff Reed, another coconspirator, on instructions from Sinclair. [Reed was later allegedly murdered to cover up his involvement.] Waldon told Pough that he too could "get a hit" like Sinclair had done. Pough and Waldon then discussed doing a similar hit on a bank customer. Waldon asked for Pough's help on June 26, 1998 in stopping the bank customer, who was thought to be armed. Ultimately later that day the targeted bank customer, Sami Safar, was robbed and murdered. The indictment is silent on Pough's further involvement in the murder. In or about late March or early April 1998 [the time of the alleged offense in this case], Pough, Waldon and Sinclair met at the Super 8 Motel on Philips Highway in Jacksonville, Florida, used their authority as police officers to obtain entry to a motel room, seized a quarter kilogram of cocaine from the room that belonged to Leonard Jefferson and

for \$1,000 gave the cocaine to Sinclair for distribution. On April 20, 1998 Pough seized cocaine from Edwardo Williams in a car stop and it ultimately went to Sinclair for unknown uses. On May 11, 1998 Pough illegally searched a vehicle belonging to Daniel Wilcox and kept a quantity of crack cocaine. On April 23, 1998 Pough stole a sum of money from Claude Wright acting under color of law. On February 26, 1998 Pough aided and abetted Waldon and Sinclair in stealing money from James Battle, acting under color of law. In April 1998 Pough possessed cocaine with intent to distribute it. [This was at the same time as he allegedly found cocaine in Simmons's car.] On April 20, 1998 Pough possessed cocaine with intent to distribute it.

Because Pough was cooperating with the joint federal-state investigation as early as May 22, 2000 when he testified before the federal grand jury that handed down the Waldon-Sinclair indictment, it is reasonable to infer that the State was already aware of at least all of the matters described above relating to Pough's criminal drug activities, because his testimony before the grand jury would have been the basis for those allegations. Despite this knowledge, the State withheld any *Brady* or *Bagley* disclosure or disclosure required under Rule 3.220 of any of the above matters. We submit, additionally, that it is reasonable to infer that the specific allegations in the indictment are but the tip of the iceberg of the totality of criminal activity by Pough. No prosecutor puts everything in an indictment and particularly in this case, because Pough is a cooperating federal witness, the prosecution is motivated to down-play Pough's criminal activity that does not otherwise corroborate its case against Waldon and Sinclair. No doubt Pough has been granted formal or informal immunity as to innumerable criminal acts that are not mentioned in the Waldon-Sinclair Indictment or in the

Pough Information.⁸

Instead of honoring its Constitutional obligation to disclose the above information and the information described in footnote 8, *supra*, the State instead filed its *State's Second Motion in Limine* asking the Court to prohibit the defense from inquiring further about the federal corruption probe. This motion failed to disclose to the Court the State's knowledge of Pough's criminal activity, which the State then knew as a result of Pough's cooperation agreement with law enforcement. Had the State not concealed from the Court the information it had, the Court would have seen the relevance of the *Brady* and *Bagley* material on Pough for the defense of the case. Clearly evidence - admissions - of criminal drug activity by this key witness - the witness who claimed to have "found" the cocaine in this case, the witness who claimed to have "found" the gun that was the basis for the armed trafficking charge, the witness who was alone, unobserved and unmonitored for twenty minutes with the known drug trafficker confidential informant who gave the take down signal - all when he was not even a part of the investigation of this case but had "volunteered" to go along and help at the last minute, would have been admissible in impeachment at trial. If nothing else, his cooperation plea agreement and admission of felony criminal activity

⁸ If this Court does not simply grant this motion, then Simmons requests that the Court compel the State to disclose to the defense promptly and prior to any evidentiary hearing (1) the existence and substance of all agreements between law enforcement (federal and state) and Jason Pough, (2) Jason Pough's grand jury testimony, (3) all records relating to the investigation of Jason Pough, including, but not limited to a specification of the date that Jason Pough was first suspected of wrongdoing and the date he first approached law enforcement about offering to cooperate, the date he began formal cooperation, copies of notes of all proffers and debriefings of Jason Pough as part of such investigation and cooperation, copies of all reports of proffers or debriefings of third parties that implicated Jason Pough, records of all electronic surveillance of Jason Pough or in which Jason Pough appears or is mentioned, a disclosure of all evidence seized from or turned over by or on behalf of Jason Pough, and (4) any other matter arguably subject to disclosure under *Brady* or *Bagley* or Rule 3.220 in this case.

during the very time period of the charge in this case, would have been relevant and admissible in the trial of this case.

The State withheld this information from the defense and from the Court and argued, in bad faith we submit, that the federal corruption probe was irrelevant to this trial and in bad faith by concealing relevant information from this Court caused the Court to grant its motion *in limine*.

On June 26, 2000, after a jury was selected for a second trial, facing life in prison for the charge of armed trafficking in cocaine, Robert Simmons agreed to withdraw his plea of not guilty and plead guilty to Count Two of the Amended Information and be sentenced to thirty-six (36) months in state prison. Count Two consisted of the original charge alleging trafficking in cocaine on April 1, 1998.

On July 28, 2000, the Defendant was adjudicated guilty by the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida, of trafficking in cocaine and sentenced to state prison for thirty-six (36) months and ordered to pay a fine of \$50,000. The Defendant did not appeal this judgement and sentence, and there have been no previous post-conviction relief motions filed in this case.

The Defendant files this motion for post-conviction relief pursuant to Rule 3.850, Florida Rules of Criminal Procedure, and asks this honorable Court to withdraw his plea of guilty and set aside the judgement and sentence in this case.

Had the *Brady* and *Bagley* information described above been properly disclosed as it should have been, the case would have collapsed. The State could never have proceeded with this prosecution if it had made the disclosures it was obligated to make. Mr. Simmons would certainly never have accepted a plea agreement had he been provided the disclosures to which he was

Constitutionally entitled under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and the equivalent provisions of Florida's Constitution. The plea, judgment and sentence in his case must be vacated.

Reasons for Granting the Motion

Mr. Simmons' is entitled to withdraw his plea and have his conviction set aside due to the State's withholding and suppression of evidence that would have served to impeach a key witness in Mr. Simmons' case in violation of [*Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 \(1963\)](#) and [*United States v. Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375, 3383, 87 L.Ed.2d 481 \(1985\)](#).

Memorandum of Law

FAILURE TO DISCLOSE EVIDENCE OF INVESTIGATION, PLEA AND COOPERATION AGREEMENT AND ADMISSIONS OF FELONY OFFENSES OF MATERIAL STATE WITNESS WAS *BRADY* AND *BAGLEY* VIOLATION

[*Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-1197 \(1963\)](#), held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." See [*Moore v. Illinois*, 408 U.S. 786, 794-795, 92 S.Ct. 2562, 2567- 2568, 33 L.Ed.2d 706 433 \(1972\)](#). The standard for a *Brady* violation is: Where there has been a suppression of favorable evidence in violation of *Brady v. Maryland* the non-disclosed evidence is material: "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability

sufficient to undermine confidence in the outcome." [United States v. Bagley](#), 473 U.S. 667, 682, 105 S.Ct. 3375, 3383, 87 L.Ed.2d 481 (1985), [United States v. Alzate](#), 47 F.3d 1103, 1109, 1110 (11th Cir. 1995).

In [United States v. Agurs](#), 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976), however, the Court made it clear that a defendant's failure to request favorable evidence did not leave the Prosecution free of all obligation. There, the Court distinguished three situations in which a *Brady* claim might arise: first, where previously undisclosed evidence revealed that the prosecution introduced trial testimony that it knew or should have known was perjured, [427 U.S.](#), at 103-104, [96 S.Ct.](#), at 2397- 2398; second, where the Prosecution failed to accede to a defense request for disclosure of some specific kind of exculpatory evidence, [id.](#), at 104-107, [96 S.Ct.](#), at 2398-2399; and third, where the Prosecution failed to volunteer exculpatory evidence never requested, or requested only in a general way. The Court found a duty on the part of the Prosecution even in this last situation, though only when suppression of the evidence would be "of sufficient significance to result in the denial of the defendant's right to a fair trial." [Id.](#), at 108, [96 S.Ct.](#), at 2400.

In [United States v. Bagley](#), 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985), the Court disavowed any difference between exculpatory and impeachment evidence for *Brady* purposes, and it abandoned the distinction between the second and third *Agurs* circumstances, i.e., the "specific-request" and "general- or no-request" situations. *Bagley* held that regardless of request, favorable evidence is material, and constitutional error results from its suppression by the prosecution, "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." [473 U.S.](#), at 682, [105 S.Ct.](#), at 3383 (opinion of Blackmun, J.); [id.](#), at 685, [105 S.Ct.](#), at 3385 (White, J., concurring in part and concurring in

judgment).

A showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal (whether based on the presence of reasonable doubt or acceptance of an explanation for the crime that does not inculcate the defendant). [Id.](#), at 682, [105 S.Ct.](#), at 3383-3384 (opinion of Blackmun, J.) (adopting formulation announced in *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068, 80 L.Ed.2d 674 (1984)); [Bagley](#), *supra*, [473 U.S.](#), at 685, [105 S.Ct.](#), at 3385 (White, J., concurring in part and concurring in judgment) (same); see [473 U.S.](#), at 680, [105 S.Ct.](#), at 3382-3383 (opinion of Blackmun, J.) (*Agurs* "rejected a standard that would require the defendant to demonstrate that the evidence if disclosed probably would have resulted in acquittal"); cf. [Strickland](#), *supra*, [466 U.S.](#), at 693, [104 S.Ct.](#), at 2068 ("[W]e believe that a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case"); [Nix v. Whiteside](#), [475 U.S.](#) 157, 175, [106 S.Ct.](#) 988, 998, [89 L.Ed.2d](#) 123 (1986) ("[A] defendant need not establish that the attorney's deficient performance more likely than not altered the outcome in order to establish prejudice under *Strickland*"). *Bagley's* touchstone of materiality is a "*reasonable probability*" of a different result.

The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A "*reasonable probability*" of a different result is accordingly shown when the prosecution's evidentiary suppression "undermines confidence in the outcome of the trial." [Bagley](#), [473 U.S.](#), at 678, [105 S.Ct.](#), at 3381.

Bagley materiality is not a sufficiency of evidence test. A defendant need not demonstrate

that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict. The possibility of an acquittal on a criminal charge does not imply an insufficient evidentiary basis to convict. One does not show a *Brady* violation by demonstrating that some of the inculpatory evidence should have been excluded, but by showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.

Once a reviewing court applying *Bagley* has found error there is no need for further harmless-error review. A *Bagley* error cannot be treated as harmless, since "a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different," [473 U.S., at 682, 105 S.Ct., at 3383](#) (opinion of Blackmun, J.); [id., at 685, 105 S.Ct., at 3385](#) (White, J., concurring in part and concurring in judgment).

Under *Bagley*, the materiality of *Brady* disclosure violations is considered collectively, not item by item. *Bagley* materiality imposes a burden on the prosecution to gauge the likely net effect of all such evidence and make disclosure when the point of "reasonable probability" is reached. The individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the prosecution's behalf in the case. But whether the prosecutor succeeds or fails in meeting this obligation (whether, that is, a failure to disclose is in good faith or bad faith, see [Brady, 373 U.S., at 87, 83 S.Ct., at 1196-1197](#)), the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable and in Mr. Simmons' case requires a new trial. [Kyles v. Whitley, 514 U.S. 419, 432, 115 S.Ct. 1555, 1565](#) to [514 U.S. 419, 441, 115 S.Ct. 1555, 1569](#).

Florida courts have more specifically addressed whether information regarding an

investigation of a witness is material so as to violate *Brady*. The Florida Supreme Court has stated: “It is clear that if a witness for the State were presently or recently under actual or threatened criminal charges or investigation leading to such criminal charges, a person against whom such witness testifies in a criminal case has an absolute right to bring those circumstances out on cross-examination.” [Fulton v. State, 335 So.2d 280, 283-284 \(Fla. 1976\)](#)(quoting *Morrell v. State*, 297 So.2d 579, 580 (Fla. 1st DCA 1974)). However, when a witness is only under criminal investigation, that investigation must not be too remote in time and must be relevant to the case at hand. See [Breedlove v. State, 580 So.2d 605, 608 \(Fla. 1991\)](#). Thus, the Second District Court of Appeal has held that investigations of an officer’s prior use of excessive force was relevant to his bias and reversed a conviction for attempted second-degree murder of that officer. [Mendez v. State, 412 So.2d 965 \(Fla. 2nd DCA 1982\)](#). It has also been held that a defendant charged with bribery should have been allowed to inform the jury that the key state witness, a police officer, was under investigation for soliciting bribes. [Stirpling v. State, 349 So.2d 187 \(Fla. 3rd DCA 1977\)](#).

In the instant case, the investigation of Officer Pough was clearly material so as to violate *Brady* and its principles. Officer Pough was under federal investigation and now is under federal charges as a result of a joint federal-state investigation for his actions in a drug conspiracy as well as other police corruption. Since Officer Pough was alone with the Informant and the Defendant for twenty minutes, after which the Defendant allegedly provided drugs to the Informant, and then Officer Pough did the search that resulted in his claiming that he found the drugs and gun that are the basis for the charges in this case, the fact that Officer Pough was himself under investigation for drug dealing, for stealing drugs, for distributing drugs, for illegal searches, and had admitted such wrongdoing and admitted numerous felony offenses at the time of the charged offense herein or prior

to the trial herein, was clearly relevant and admissible in this case.

CONCLUSION

In an article looking at the effect of the joint federal-state JSO corruption probe on prior state criminal convictions, State Attorney Harry Shorstein was quoted on December 15, 2000 by the Florida Times Union as saying:

"If we need one of those officers to convict you, there'd be very little likelihood that we'd proceed, . . . [w]e'd dismiss it."

In Mr. Simmons's case the decision should not be left up to the State Attorney. This Court has an obligation on the facts of this case to vacate Mr. Simmons's plea, conviction and sentence.

WHEREFORE, the Defendant, Robert L. Simmons, requests this Honorable Court grant all relief to which the Defendant may be entitled in this proceeding, including but not limited to, setting aside the judgment and sentence for armed trafficking in cocaine and allowing him to withdraw his plea. In the alternative, should the Court not vacate the plea and conviction, then Robert L. Simmons requests this honorable Court grant discovery as set forth in footnote 8, *supra*, and thereafter set this case for an evidentiary hearing.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Defendant Simmons' Motion for Post-Conviction Relief Pursuant to Florida Rule of Criminal Procedure 3.850* was delivered by U.S. Mail, postage prepaid, to the Office of the State Attorney, Duval County Courthouse, 330 East Bay Street, Jacksonville, Florida 32202, by placing in a United States mail depository on this 21st day of December, 2000.

William Mallory Kent

***IN THE CIRCUIT COURT IN AND FOR THE FOURTH JUDICIAL CIRCUIT
DUVAL COUNTY***

***98-4803-CFA
DIVISION CR-E***

ROBERT L. SIMMONS V. STATE OF FLORIDA

EXHIBIT LIST

Exhibit A - April 23, 2000 Florida Times Union Article

Exhibit B - May 23, 2000 Florida Times Union Article

Exhibit C - June 6, 2000 Florida Times Union Article

Exhibit D - June 17, 2000 Florida Times Union Article

Exhibit E - December 15, 2000 Florida Times Union Article

Exhibit F - Pough Deposition

Exhibit G - Pough Information

Exhibit H - Waldon-Sinclair Indictment

EXHIBIT A

Sunday, April 23, 2000

Story last updated at 1:00 a.m. on Sunday, April 23, 2000

FEDERAL PROBE INTO JSO WIDENS

By Kathleen Sweeney and Jim Schoettler
Times-Union staff writers

Accused crack dealers are cooperating with federal prosecutors, cops are investigating cops and the surviving victims of at least two unsolved slayings and a handful of robberies are reliving the past.

That's all happened since a federal-state task force began investigating allegations 16 months ago of Jacksonville police tipping off drug dealers -- a probe that has since broadened to include possible police involvement in other crimes.

A federal grand jury has been hearing testimony about the probe since then, including meeting again last week.

At least one investigator familiar with the case said it could be over in a month.

No charges have been filed, but a number of lives have already been affected. Jacksonville police officers Aric Sinclair, Karl Waldon and Eric Maddox have been taken off the street, unsure when or if their patrols will resume. Meanwhile, their colleagues' morale is sagging as they wonder if other officers will be stripped of their badges and guns.

"Any time there's an investigation, especially of this magnitude, it casts a shadow over the department," said David Stevens, president of the Jacksonville branch of the Fraternal Order of Police. "They want it over . . . so they can move on."

Sheriff Nat Glover, concerned that weak

supervision is partly to blame for the problems, said Thursday he's ordered his staff to talk with supervisors about accountability. He is also taking the message to police academy classes and to the street.

"I've always pushed accountability and supervision, but certainly the latest developments have intensified that effort," Glover said. "I think early intervention with small problems can prevent having to deal with more serious problems later."

Even Mayor John Delaney has made inquiries into the case, concerned about any negative impact it may have on Glover and the public's perception of the city police force.

"To the extent that the mayor has been involved is out of an abundance of affection and concern for the sheriff personally and certainly the welfare and overall concern for the community at large," Susan Wiles, Delaney's chief of staff, said Thursday. "He's had multiple discussions with the sheriff to sort of make certain that the sheriff is OK and doesn't need his help in any way."

The sheriff hasn't sought help from Delaney.

Also waiting for future developments is the family of slain convenience store owner Sami Safar, who banked where Sinclair worked as a security guard. Safar's estate is suing Sinclair and SouthTrust Bank to recover money taken in the May 15, 1998, robbery of a convenience store employee. The lawsuit alleges that the employee, who is Safar's nephew, wasn't protected properly.

A court record filed on behalf of Safar's estate indicates his family also could file a wrongful death suit in his unsolved murder. Safar was found dead July 4, 1998, a day after he made a withdrawal from the same bank at 810 W. 44th St. and disappeared. Investigators have withheld how he died.

The task force also is investigating the slaying of Jeff Reed, 31, whose body was found a week after Safar's death under a tree at Fifth and Wilcox streets.

Reed, who had a prison stint for kidnapping, had been shot once in the chest. An abandoned pale yellow Mercedes Benz was running nearby.

Reed's family said they haven't been contacted by anyone from the task force. No one connected with the investigation would discuss what links exist between Reed's unsolved death and the other crimes.

The task force of agents from the FBI, U.S. Drug Enforcement

Administration, Florida Department of Law Enforcement, U.S. Attorney's Office and Sheriff's Office began its work after police, investigating drug dealers, intercepted at least one telephone conversation that implicated a Jacksonville officer in providing tips about undercover work.

The probe led to the arrests of three Jacksonville drug dealers in August. About the same time, Maddox was assigned to desk duty. Maddox is among several officers who've testified before grand jurors, whose proceedings are secret.

Soon after their arrests, the accused drug dealers, Abdul Robinson, Derrick Smith and Dondricka Bates, began giving federal prosecutors information about police. Court records said the men are "cooperating fully with the United States in the investigation and prosecution of others."

As the task force developed information into the tipping, investigators learned about other crimes that possibly involved officers. They are reviewing at least two home invasion robberies, in addition to the robbery of Safar's employee and the two unsolved homicides.

Deputy Managing U.S. Attorney Jim Klindt, the lead prosecutor in the case, has declined to comment about the investigation. But his reputation is that of a bulldog prosecutor when it comes to people in positions of trust. He has successfully prosecuted lawmen in Duval, Clay, Nassau and Baker counties on drug-related charges.

Oddly, during the whole process, the State Attorney's Office, the lead prosecuting agency in Duval County for murder and other violations of state law, has not gotten involved. The U.S. Attorney's Office told State Attorney Harry Shorstein he could have a prosecutor on the task force, but that person wouldn't be allowed to share information with anyone, including Shorstein. Shorstein declined the offer.

As the investigation continued into this year, the information being uncovered caused Glover to take his harshest action to date: stripping Sinclair of his gun, badge and car in February and ordering him home until the investigation is over.

Glover wouldn't describe how Sinclair or the other officers are connected to the investigation, other than to say some of the allegations are serious and involve a small group of officers. Sinclair told the Times-Union he didn't do anything wrong.

Ten days ago, a third officer, Waldon, was placed on desk duty. Glover, citing the grand jury probe, again declined comment on his action.

EXHIBIT B

Tuesday, May 23, 2000

Story last updated at 11:28 p.m. on Monday, May 22, 2000

GRAND JURY HEARS POLICE OFFICER, INMATE IN PROBE OF DRUG TIPS

By Kathleen Sweeney and Jim Schoettler
Times-Union staff writer

A Jacksonville police officer and an inmate testified yesterday before a federal grand jury investigating allegations that police tipped off drug dealers and were possibly involved in robbery and murder.

Two other officers subpoenaed before the grand jury yesterday didn't testify. One didn't testify because of time constraints, and the other appeared and left with an attorney. His lawyer wouldn't comment about why his client didn't testify.

Since grand jury proceedings are secret, nothing was revealed about yesterday's proceedings. But court records indicate the probe, which has led to three police officers being stripped of their police powers, may last several more months.

Records show three drug dealers cooperating with federal prosecutors in the case have had their sentencings postponed once again as the probe continues.

The records show that Abdul Robinson, Derrick Smith and Dondricka Bates, who have agreed to plea bargains on drug charges and were scheduled to be sentenced next week, have had their sentencing delayed for another 90 days. Their sentencing was previously postponed so they could work with prosecutors.

"Defendants are cooperating with the United States, but their cooperation has not been completed," records said of the most recent delay.

Officer Reginald Bones, who testified yesterday, has worked with two of the officers stripped of their guns and badges by Sheriff Nat Glover because of allegations made during the probe.

Glover said he first asked federal authorities about 18 months ago to investigate what he called a breach of confidence between police and drug dealers. A federal task force investigating the tipping allegations has

broadened the probe to include possible police involvement in two homicides and several robberies.

Since the probe began, Officers Aric Sinclair, Karl Waldon and Eric Maddox have been taken off the street, but no charges have been filed against them. A few officers, including Waldon and Maddox, have testified before the grand jury.

Police records show Bones had previously worked with Waldon and Sinclair in narcotics for about four months. Bones, 33, is now working in patrol. Also called to testify was Officer Jason Pough, a 33-year-old former narcotics detective who now teaches in the fifth-grade Drug Abuse Resistance Education program, and Officer Mario Potts, 36, who works in patrol.

Potts did not testify, and Pough was represented by Jacksonville lawyer Paul Perez. Perez wouldn't comment yesterday about the case. None of the officers called to the federal courthouse would comment.

The unidentified inmate arrived at the federal courthouse in shackles and a green jailhouse jumpsuit. He testified for more than an hour.

EXHIBIT C

Tuesday, June 6, 2000

Story last updated at 12:42 a.m. on Tuesday, June 6, 2000

5 POLICE OFFICERS NOW OFF BEATS AS INVESTIGATION CONTINUES

By Jim Schoettler and Kathleen Sweeney
Times-Union staff writers

Jacksonville Sheriff Nat Glover took two officers off the street yesterday and sent another home, bringing to five the number of officers stripped of their powers as a federal grand jury investigates allegations of police misconduct.

Officers Jason Pough and Reginald Bones, both 33, were placed on desk duty while Officer Karl Waldon, stripped of his authority in April and assigned to a desk, was sent home without any duties, Glover said.

"I am doing this in the best interests of this agency and this city," Glover said. "I'm committed to doing what's necessary to make certain we maintain public trust and the integrity in this agency."

The Times-Union has previously reported that during the 18-month investigation, Officer Aric Sinclair, 31, was sent home in February, and Officer Eric Maddox, 29, was put behind a desk in August.

All five officers are still being paid, Glover said.

The probe began after allegations were made that police were tipping drug dealers and has expanded into possible police involvement in other misconduct and crimes, including two homicides and at least three robberies.

Neither police nor federal prosecutors would say how Pough, Bones and Waldon are linked to the probe, though records show they worked in the narcotics unit with Sinclair. Maddox never worked

in narcotics.

None of the officers has been charged with a crime, but several have retained attorneys. Paul Perez, a Jacksonville attorney representing Pough, declined to comment. Neither Waldon nor Bones nor their representatives could be reached for comment.

Glover declined to discuss details of the moves yesterday, such as why Waldon was sent home and the others given desk duty.

Yesterday's actions followed Bones' testimony two weeks ago before the grand jury, which has not completed its work. The grand jury has been meeting since last year and is being led by Deputy Managing U.S. Attorney Jim Klindt, who has successfully prosecuted law enforcement officers in Duval, Clay, Nassau and Baker counties on drug-related charges. He refused to comment on the investigation yesterday. Pough and another officer, Mario Potts, were subpoenaed last month to testify before the grand jury the same day as Bones but did not.

Police personnel records show Bones, a 1984 graduate of Baker High School, joined the Jacksonville Sheriff's Office in May 1993 after working as a deputy in Baker and Columbia counties.

While a Jacksonville police officer, Bones has been suspended twice and reprimanded twice for violating Sheriff's Office policy. He has received several commendations, but also has also received some negative evaluations. Bones worked in narcotics from September 1997 to January 1998, and most recently worked in patrol.

In a May 1999 evaluation, Bones' supervisor wrote that the officer "does not contribute to the work productivity of the squad, does not go out of his way to assist other officers and is not a team player." The evaluation also said Bones "does not display self-discipline nor is he self-motivated."

Records show he was suspended for five days in May 1998 after an internal investigation charged him with misconduct involving a traffic accident, in which he was driving Sinclair's unmarked police vehicle.

Sinclair was in a second unmarked car also damaged in the accident, which all the officers blamed on a third vehicle that was never found. The investigation discovered that Bones and others involved gave conflicting accounts and also couldn't remember key details.

Bones was suspended for 10 days in September 1998 after internal detectives charged him with unbecoming conduct and improper action. The investigation said that he kicked open the door of his sister-in-law's home to confront her about an altercation he had with his sister. The investigation found Bones "unnecessarily involved himself in an altercation."

Records show Pough, a 1984 graduate of Ribault High School, became a Jacksonville police officer in January 1991 after working as a library clerk and phone solicitor.

Pough has received a written reprimand for unbecoming conduct, though a report of that was not available. His personnel file also contains several commendations and above-satisfactory evaluations. His last evaluation in August said he "holds himself to a very high standard of work ethics. This has a positive effect on other members of his squad." It added that Pough "leads by example and encourages other members of the squad to increase their work production."

Pough worked in narcotics from September 1997 until August 1999. He most recently worked teaching the fifth-grade Drug Abuse Resistance Education program.

Waldon, a 1981 Paxon High School graduate, joined the Sheriff's Office in August 1992 after working as an Orlando police officer for about three years. Since joining the Sheriff's Office, he's worked with the department's SWAT team and worked in narcotics from April 1997 to April 1998 before being transferred to patrol.

His file includes more than 20 commendations and letters of appreciation. His evaluations refer to him as a "team player" who is well respected and trusted by his peers. He has never been disciplined.

Glover said the investigation began in December 1998 when he asked federal authorities to probe what he called a breach of confidence between police and drug dealers.

A task force of federal, state and local agents was assigned the case after city police, investigating drug dealers, intercepted at least one telephone conversation that implicated a Jacksonville officer in providing tips about undercover work.

The probe led to the arrests in August of three Jacksonville drug dealers who began giving federal prosecutors information about police tipping. They have

had their sentencings postponed three times. At least one other convicted drug dealer has testified before the grand jury.

As the task force developed information on tipping, investigators learned about other crimes possibly involving officers.

One of the homicides is the July 1998 slaying of convenience store owner Sami Safar, who banked in the SouthTrust Bank at 810 W. 44th St., where Sinclair worked as a security guard. Safar, 33, was found dead a day after he made a large withdrawal from the bank and disappeared.

The second slaying also occurred in July 1998 when Jeff Reed, 31, was found shot to death under a tree at Fifth and Wilcox streets.

The robberies include the May 1998 attack on a Safar employee, who was attacked in the SouthTrust parking lot for a \$50,000 withdrawal he'd just made.

EXHIBIT D

Saturday, June 17, 2000

Story last updated at 1:59 a.m. on Saturday, June 17, 2000

POLICE OFFICER RESIGNS IN INVESTIGATION WAKE

By Jim Schoettler and Kathleen Sweeney
Times-Union staff writers

A Jacksonville police officer sent home by Sheriff Nat Glover during a federal grand jury investigation into police misconduct has resigned, ending his eight-year career at the Sheriff's Office.

Officer Karl Waldon quit while still being paid and didn't give a reason in a resignation letter he sent to Glover on Wednesday. Glover has stripped four other officers of their guns and badges during the 18-month grand jury probe, which is ongoing. One of those officers was sent home, while three others have been assigned to desk duty.

Waldon, 37, made his resignation official Thursday, according to police personnel records.

"I have been honored to be a member of the Sheriff's Office and to serve the citizens of the community for the past eight years," Waldon wrote in his resignation letter. "After great reflection and much prayer, my family and I have decided that I should now pursue other professional objectives."

Glover assigned Waldon to desk duty in April and sent him home with no further police duties 10 days ago. Glover didn't explain the moves in either case.

Waldon recently moved from his North side apartment, where he lived with his wife, and he couldn't be reached for comment. His attorney, Hank Coxe, said Waldon's decision to quit has nothing to do with the grand jury investigation, though he declined to comment further.

"It's a personal decision he and his wife made,

unconnected to anything else," Coxe said.

Glover declined to discuss details of Waldon's resignation.

"It's always unfortunate when I receive a letter of a young officers' retirement, but beyond that, I wouldn't like to make any further comment," Glover said.

The investigation began after allegations were made that police were tipping drug dealers and has expanded to include possible police involvement in other misconduct and crimes, including two homicides and at least three robberies. No charges have been filed, and police and prosecutors have refused to discuss details of the case.

Waldon is among a handful of officers who've been subpoenaed to testify before the grand jury, which has not completed its work. Glover ordered Waldon sent home June 5, as well as reassigning Officers Reginald Bones and Jason Pough to desk duty. Officer Eric Maddox was reassigned to desk duty in August, while Officer Aric Sinclair was taken off the streets and sent home in February.

Neither police nor prosecutors would say how the officers are linked to the probe, which involves a task force of federal, state and local police agents.

EXHIBIT E

Friday, December 15, 2000

Story last updated at 12:21 p.m. on Friday, December 15, 2000

JSO PROBE - TIMELINE OF EVENTS

April 23, 1996: Man stopped for speeding; \$1,200 and marijuana and cocaine seized.

Feb. 24, 1998: Search warrant executed at home in the 1200 block of Harrison Street; money and cocaine stolen.

Late March or early April: Man stopped for speeding; \$6,000 and cocaine seized.

April: Cocaine taken from under mattress at Jacksonville motel.

May 11: Man stopped for speeding; cash and crack stolen.

May 15: Hussam Tahhan, Sami Safar's nephew, robbed of \$50,000 of Safar's money outside SouthTrust Bank. Aric Sinclair working off-duty at the time.

May 21: Man stopped for speeding; later that day attempted break-in occurred at his home.

June 19: Woman said two men dressed as police officers and wearing masks searched her home, tied her up in plastic flex-cuffs and sprayed pepper spray in her face.

June 19: Three hours later, a man is stopped by police, handcuffed with flex-cuffs, sprayed with pepper spray, kidnapped and robbed of \$512.

July 3: Safar withdraws \$50,000 from same SouthTrust bank, is kidnapped, robbed and

strangled with a rope.

July 4: Safar's vehicle found about 300 yards from bank with keys and some money inside. Safar's body is later found in 2900 block of Imeson Road. The withdrawal and his driver's license are missing.

July 10: Jeffrey Reed found slain in 1600 block of Wilcox Street.

Aug. 14: Safar's friends and business owners offer \$50,000 reward in Safar's slaying.

Late 1998/Early 1999: Police suspect drug dealers being tipped to investigations.

April or May: Cocaine stolen from person at Greyhound Bus Station in Jacksonville.

August 1999: Sheriff Nat Glover strips Officer Eric Maddox of gun and badge and puts him on desk duty.

August: Grovers strips Officer Aric Sinclair of gun and badge and placed on desk duty.

Aug. 27: Abdul "Blue" Robinson, Derrick "Smiley" Smith and Dondrecka "Marlo" Bates arrested on federal drug indictments. All three begin to cooperate, with Bates implicating Smith and Robinson in drug ring and Smith and Robinson giving details of paying off police for information about drug cases.

Sept. 3: Glover announces there has been a breach of confidence in Sheriff's Office and that he has ordered task force of federal, state and local authorities to investigate. Grand jury convenes.

February 2000: Sinclair taken off desk duty and told to stay home on paid leave.

March: Officer Karl Waldon testifies before grand jury.

March 27: State Attorney Harry Shorstein complains his office not in probe.

March 30: Safar's estate sues Sinclair and SouthTrust over Tahhan robbery, seeking reimbursement of Safar's money. Suit alleges Tahhan was not provide

proper security.

April 7: Glover strips Waldon of gun and badge and places him on desk duty.

May 22: Among the grand jury witnesses is Officer Reginald Bones, best friends with Waldon.

June 5: Glover strips Officers Jason Pough and Bones of their guns and badges and puts them on desk duty.

June 14: Waldon resigns from force to "pursue other professional objectives."

June 19: Notation in Waldon's personnel file indicates police expect him to be charged.

June 30: Safar's estate sues Sinclair, SouthTrust and city officials, saying Sinclair provided information to people that led to Safar's death and that the other two parties bear responsibility.

July 26: Fraternal Order of Police holds special meeting on how to deal with police corruption.

July 27: FOP presents 22 recommendations to Glover on dealing with misconduct and corruption.

Aug. 8: Safar's brother and assistant medical examiner among witnesses before grand jury.

Aug. 8: Shorstein said his office is back in the investigation.

Aug. 31: Smith, one of three indicted drug dealers, fires his attorney and says he wants to change his plea.

Sept. 6: Bones resigns from force, citing his desire to seek other opportunities.

Sept. 21: Robinson sentenced to 21 years, Bates sentenced to seven years. Smith's sentencing continued.

Sept. 21: As a pre-emptive strike to pending grand jury indictments, Glover appoints a committee of community leaders to study such issues as recruiting,

hiring and discipline and says a new integrity squad will set up stings on officers to catch troublemakers and deter misconduct.

Sept. 24: Glover said "some painful times coming." Mayor John Delaney said Glover under great pressure.

Sept. 25: Klindt joined in case by civil rights attorneys Robert Kurzweil and Barry Kowalski from Justice Department. Kowalski has worked on such high-profile cases as the Rodney King beating.

Sept. 26: Pough and Bones among witnesses to testify before grand jury.

Sept. 28: Brother of Sami Safar said he and family have returned to Syria out of fear that crime remains unsolved.

Oct. 1: Waldon's wife, Tamara, blasts investigation as bogus and challenges prosecutors to indict her husband.

Oct. 24: James "Junior" Swift, Waldon's brother-in-law, tells Times-Union he's a target of probe, though he says he's done nothing wrong.

Oct. 26: Smith sentenced to 30 years in prison.

Nov. 5: Shorstein and others express angst about length of investigation and its effect on criminal justice system and police morale. Former prosecutors say such investigations are lengthy due to code of silence among police and other factors.

Nov. 14: Undersheriff John Gordon and Director of Operations Joseph Henry, second and third in command at Sheriff's Office, called to grand jury to answer questions about police policy. Waldon's parents also called, but not asked to testify.

Monday: Glover testifies for about an hour before the grand jury.

Tuesday: A 26-count sealed federal indictment is returned.

Wednesday: Bones appears in court on bank fraud indictment; Sinclair, Waldon and Swift in custody.

Yesterday: Indictment is unsealed, revealing several allegations of civil rights violations, including the robbery and murder of Safar. Pough and Kenneth McLaughlin, friend of Waldon's, charged in separate filings.

- Compiled by Jim Schoettler and Marilyn Young

EXHIBIT F
POUGH DEPOSITION

EXHIBIT G
POUGH INFORMATION

EXHIBIT H

WALDON-SINCLAIR INDICTMENT

FEDERAL CASES

*Strickland, supra, 466 U.S., at 693, 104 S.Ct., at 20 17

Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) 15, 18

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Moore v. Illinois, 408 U.S. 786, 794-795, 92 S.Ct. 2562, 2567- 2568, 33 L.Ed.2d 706 433 (1972)
..... 15

Nix v. Whiteside, 475 U.S. 157, 175, 106 S.Ct. 988, 998, 89 L.Ed.2d 123 (1986) 17

United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976) 16

United States v. Alzate, 47 F.3d 1103, 1109, 1110 (11th Cir. 1995) 16

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