

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

STATE OF GEORGIA)
vs.) Case No. CR-1500525-063
GARY WHITTLE,) CR-1900027
Defendant.)
ORDER

This case is before the Court on Defendant Gary Whittle's motion to withdraw guilty plea and motion to withdraw probation stipulation. On November 7, 2018, Defendant was arrested and held without bond on two (2) counts of Sale of Schedule II Controlled Substance. On November 14, 2018, a probation warrant was issued against Defendant based upon the sale charges, and a revocation hearing was scheduled for January 17, 2019. Defendant entered his plea of guilty to the sale charges and stipulated to the violation of probation on January 17, 2019. He was sentenced to probation for a term of twenty (20) years with general and special conditions, and with the special condition that he complete the RSAT program and aftercare.

Subsequent to the entry of his plea, Defendant learned that investigators who were members of the Glynn Brunswick Narcotics Enforcement Team ("GBNET") were under investigation by the Georgia Bureau of Investigation. Defendant filed a motion to withdraw guilty plea and motion to withdraw probation stipulation on February 12, 2019, asserting that his guilty plea and stipulation were not knowingly and intelligently made due to the State's withholding of this information regarding investigators in violation of *Brady v. Maryland*, 373 U.S. 83, (1963).

The Court heard evidence on Defendant's motion beginning on February 20, 2019, continuing on March 5, 2019 and April 3, 2019 and concluding on April 5, 2019. After review of the evidence and testimony presented and applicable law, the Court finds as follows:

FINDINGS OF FACT

GBNET is a joint task force consisting of Glynn County Police Department (GCPD) officers and Brunswick Police Department (BPD) officers. It contains supervisors from both police departments, but ultimately is supervised by a Captain with the GCPD. The Captain reports to the GCPD Chief of Police. Both GCPD and the BPD contribute money to fund GBNET. The officers assigned to GBNET have jurisdiction within Glynn County and the City of Brunswick.

On November 8, 2017 GBNET officers were located at the Wee Pub in Glynn County, to conduct an undercover operation. A team of officers was located inside the Wee Pub and a team of officers was located outside in the parking lot. GCPD Sergeant Brandon Gregory was the supervising officer located inside the Wee Pub with the team of officers which included GCPD Officer James Cassada. A GBNET confidential informant (CI#16 NCI-028, herein after CI#16) and her girlfriend encountered Officer Cassada inside the bar. A confrontation occurred with the girlfriend of CI#16. Multiple GBNET officers heard the girlfriend accuse Officer Cassada of having a sexual relationship with the CI#16; the girlfriend "yelled you are sleeping with C.I.s, you are cheating on your wife, you are a shitty person." The confrontation became loud and contentious such that it compromised the undercover nature of the operation and the GBNET officers left the Wee Pub. Officers that were stationed outside the bar were made aware of the incident by the officers that witnessed the incident inside the bar. (T. Vol. IV, Ex. 21, 23).

The following day Sergeant Gregory reported the incident to his supervising officers,

GCPD Captain David Hassler and GCPD Lieutenant Eugene Smith. A form was completed deactivating CI#16 on November 9, 2017, and multiple officers testified or stated to the GBI that they were told by supervisors not to use CI#16 anymore. The GBNET file for CI#16 indicates that CI#16 was activated on May 18, 2017 and participated in undercover narcotics purchases until she was deactivated on November 9, 2017. The file further indicates that Officer Cassada was responsible for signing up and “handling” CI#16. (T. Vol., Ex. 22).

Sergeant Gregory testified that he reported the incident the following day to his supervisors; however, there is no written report or paperwork documenting this report at GCPD. Other than the form deactivating CI#16, there is no documentation showing any action was taken to inquire into or investigate the allegations made against Officer Cassada by CI#16’s girlfriend in the presence of GBNET officers at the Wee Pub. Officer Cassada continued to work in his capacity as a GBNET officer.

On November 15, 2017, one week after the incident at the Wee Pub, the girlfriend of CI#16 contacted Officer Cassada’s wife via Facebook Messenger indicating that she wished to speak with her about her husband. Later that evening Officer Cassada’s wife and the girlfriend of CI#16 spoke by telephone. The girlfriend informed Officer Cassada’s wife that her husband was having a sexual relationship with CI#16. Officer Cassada’s wife confronted Officer Cassada’s wife with the allegation and he left home for two nights. (T. Vol. IV 91-137, Ex. 27).

Officer Cassada’s wife testified that she then called GCPD Captain David Hassler and told him about the allegations. He responded that he was on vacation and would look into it when he returned. Captain Hassler told the GBI and testified that the telephone call with Officer Cassada’s wife did take place, but that the call was about Officer Cassada having an alcohol problem and marital infidelity. Officer Hassler also told the GBI that he discussed the issue with

GCPD Sergeant David M. Haney once he returned from vacation and shortly after that Officer Cassada went to alcohol treatment. The following text was sent on the evening of November 15, 2017 by Officer Cassada's wife to the girlfriend of CI#16:

10:48 p.m. Wife "I called his captain. On vacation. I'm not playing his games anymore"

(T. Vol. IV, Ex. 31).

GCPD Officer Dustin Davis testified that he too notified Captain Hassler after Officer Cassada's wife contacted his wife. Specifically, he learned that Officer Cassada's wife had caught Officer Cassada at a hotel with an informant. Officer Davis testified that he learned this during the time that Officer Cassada was in treatment and that he informed Captain Hassler soon after learning the information. (T. Vol. I, 76-83). Lieutenant Eugene Smith testified that he overheard Officers Dustin Davis and John Dustin Simpson discussing the fact that their wives had been contacted by Officer Cassada's wife with accusations of her husband, and possibly other officers, sleeping with informants. Lieutenant Smith reported this information to Captain Hassler. (T. Vol. II, 102-103).

At 11:31 p.m. on November 15, 2017 Officer Cassada's wife sent a text message to Glynn County Police Sergeant David M. Haney asking if he was up. On the morning of November 16, 2017 the following text exchange occurs between Officer Cassada's wife and Sergeant Haney:

7:00 a.m.	Haney:	"Sorry, I was asleep"
8:01 a.m.	Wife:	"can you talk?"
8:03 a.m.	Wife:	"It's important."
8:27 a.m.	Wife:	"Will you please let me know if you see him? I

don't need any details...just want to know he's O.K."

8:27 a.m. Haney "I will"

8:27 a.m. Wife "Thank you"

8:46 a.m. Haney "I talked to him in phone for a while. He is fine"

8:48 a.m. Wife "Thank you David. Not sure if it's possible, but if the opportunity arises, think about seeing if there is any kind of treatment program you can get him to agree to that may help him. It may help save his job too. And his kids need him."

11:04 a.m. Wife "Jesus, I just received more information. I'm sick to my stomach and totally heart broken. If this stuff hits the media, we are all going to be humiliated, including the department and his children. I don't know what to do David."

(T. Vol. IV, Ex. 28).

Officer Cassada's wife testified that she spoke by telephone with Sergeant Haney following the 8:03 a.m. text and informed him that she had received information that her husband was having a sexual relationship with an informant and asked for help locating her husband. She further testified that prior to the 11:04 a.m. text she again spoke with the informant's girlfriend by telephone, and included in on the call was CI#16 who confirmed her relationship with Officer Cassada. (T. Vol. IV, 91-137, Ex. 28).

Sergeant Haney testified that he "can't remember any specifics about a conversation that [he] had with [Officer Cassada's wife]." However, Sergeant Haney did confirm in his testimony

that he had an early morning conversation with Officer Cassada's wife "where she said something to the effect of, you know, he didn't come home and she was concerned about it." (T. Vol. II, 27-37).

On November 17, 2017 Officer Cassada, his wife and Sergeant David Haney met for lunch at the Yellow Deli in downtown Brunswick. A text message exchange on that date with Officer Cassada's wife and Officer John Dustin Simpson is as follows:

11:02 a.m.	Wife	"We are supposed to have lunch with Haney to discuss his options. He asked to go him and I said I would. He's scared and he knows he has hurt a lot of people. But he seems finally ready to seek help. And that's what his children need him to do."
11:06 a.m.	Simpson	"I feel like shit I was supposed to take the day off with him but everyone called out today so I couldn't"
11:06 a.m.	Wife	"It's O.K. He's just laying in bed and hiding from the world. And I think that's O.K. for now"
11:11 a.m.	Simpson	"Ok"
11:42 a.m.	Simpson	"Where y'all going for lunch so our crew don't come in on y'all"
11:44 a.m.	Wife	"I think yellow deli"
11:44 a.m.	Wife	"Meeting at 130"

(T. Vol. IV, Ex. 32).

Officer Cassada's wife testified that she and her husband met Sergeant Haney for lunch sometime later than 1:30 p.m. that day. She testified that she left Officer Cassada and Sergeant

Haney alone at the table for a period of time because she felt her husband would speak more freely. After the lunch meeting, the following text exchange took place between Officer Cassada's wife and Sergeant Haney:

3:50 p.m. Wife "I have no doubt that you're helping to save his life. Thank you"

3:51 p.m. Haney "Well [redacted], in a world full of enemies you have to pick a few people to love"

(T. Vol. IV, Ex. 28).

Officer John Dustin Simpson testified that he too was informed that Officer Cassada's wife had caught Officer Cassada coming from a hotel room with an informant. Officer Simpson reported this to Sergeant David Haney and asked if he needed "to go any higher with this information." Sergeant Haney told him "no, that he would take care of it." Officer Simpson testified that this conversation took place after Sergeant Haney had lunch with Officer Cassada and his wife. (T. Vol. I, 27-34).

Sergeant David Haney refused to cooperate with the GBI investigation, and testified that he would recommend other officers not to cooperate with the GBI. (T. Vol. II, 42). Although Haney confirmed that he met Officer Cassada and his wife for lunch, he testified multiple times that he could not remember the specific content of any conversation he had with Officer Cassada, his wife, or any other officer. (T. Vol. II, 21-42).

Multiple GBNET Officers testified or stated to the GBI that they were told directly that Officer Cassada was going to treatment for an alcohol problem, or indicated that it was generally known among the officers in GBNET. Officer Cassada's wife communicated with several officers by text regarding Officer Cassada being in a rehabilitation facility. Officer Cassada's wife had the following text message exchange with Captain David Hassler on December 7, 2017:

7:51 p.m. Wife "Spoke to Cass earlier. He is doing well and said the food is amazing lol. He misses you guys."

8:38 p.m. Hassler "Great thanks for letting me know"

(T. Vol. IV, Ex. 33, 34).

Sergeant David Haney testified in response to a question about his knowledge of Officer Cassada going to rehab and then returning to GBNET, "I don't know when...so I'm not sure when he left or when he came back or if he actually went to rehab." However, the following text exchange took place between Officer Cassada's wife and Sergeant Haney on December 7, 2017:

7:52 p.m. Wife "Spoke to Cass earlier. He is doing very well and said the food is amazing lol. He misses you guys."

7:53 p.m. Haney "I've been thinking about him so much"

7:53 p.m. Haney "Where is he"

7:53 p.m. Wife "He's at lakeview in Jacksonville. It's absolutely amazing!"

7:55 p.m. Wife "They have gender specific therapy, professional

therapy (group sessions for him with only other first responders), surf therapy, equine, therapy. It's such a cool place."

9:09 p.m. Wife "They asked for no correspondence initially, other than immediate family. But once he gets to the next phase, I'll send the mailing address if you'd like. I think he may end up faking more problems so he can stay longer, the place is like a resort lol."

9:10 p.m. Haney "That is awesome. I am glad to hear. I will write him one you tell me."

(T. Vol. IV, Ex. 28).

On December 9, 2017 Officer Cassada's wife contacted Sergeant Brandon Gregory about sending paperwork from the treatment facility to Glynn county so that the officer's sick leave could be approved. The texts with Sergeant Gregory include the following exchange:

5:12 p.m. Wife "I just heard from him. I told him you have not received anything yet and he said he will speak with the case manager Monday morning"

5:13 p.m. Gregory "Ok. I'll ask the other supervisors Monday if they have gotten anything"

5:15 p.m. Wife "I may just ask them to email it to me and I'll forward it to you. That way we will all have a copy for our records. Will you send me your email address?"

5:16 p.m. Gregory "bgregory@glynncounty-ga.gov"

5:16 p.m.	Wife	"Ok great thanks"
5:17 p.m.	Gregory	"If they have to physically mail something it may be best to mail it to Glynn county Human Resources or the police department addressed to Hassler"

On December 12, 2017 Sergeant Gregory responded:

3:02 p.m.	Gregory	"Talked to my captain. Said he already received paperwork and filed it wit hr"
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(T. Vol. IV, Ex. 35).

Notwithstanding the above communication indicating paperwork was received by Captain Hassler concerning Officer Cassada's treatment, no such documentation exists either at the GCPD or at Glynn County Human Resources. The only documentation that Officer Cassada was not at work is contained in Glynn county payroll records. From December 4, 2017 through January 29, 2018 "payroll time sheets" submitted to Glynn County indicate that Officer Cassada took sick leave. The time sheets are signed by Lieutenant Eugene Smith and Chief John Powell. There is no reason for the leave documented in either the payroll records or Officer Cassada's personnel file. (T. Vol. IV, Ex. 2).

Lieutenant Eugene Smith testified that he was aware that Officer Cassada went to treatment. He stated that both he and Captain Hassler were notified by Officer Cassada that he was going to treatment. He believed that Officer Cassada's leave had been approved through Glynn Human Resources and that those in the chain of command above him should have been notified. However, Chief Powell testified that he was unaware of Officer Cassada going to treatment for alcohol until February 2019. (T. Vol. II, 101-106).

Operation Déjà vu"

Payroll time sheets from Glynn county indicate that Officer Cassada returned to work on January 30, 2018. GBNET officers confirm that Officer Cassada returned to working as a narcotics investigator without any restriction. Officer Dustin Davis testified that GBNET began an operation in January or February of 2018 called "Déjà vu" which targeted distributors of methamphetamine and continued into the fall 2018. Davis estimated that some 75 criminal cases resulted from "Déjà vu." During this time, Officer Cassada worked in GBNET handling confidential informants, collecting drugs into evidence, and swearing out warrants for search and arrest of suspects.

On May 29, 2018 Officer James Cassada submitted a letter of resignation to Chief of Police Powell effective June 9, 2018. On June 7, 2018 Chief Powell signed receipt of a retraction letter from Officer Cassada. Officer Cassada requested to rescind his resignation and "take more time to seek other opportunities possibly in other Glynn County Departments." Chief Powell testified that his signature was on both letters, but could not recall whether he had a conversation with Officer Cassada that prompted the retraction of the resignation. (T. Vol. III, 24-26, Ex. 3, Ex. 4).

On February 22, 2018 GBNET Officers asked a Glynn County Patrol Officer to make a traffic stop on a vehicle traveling north on Interstate 95. When the GCPD Patrol Officer initiated the traffic stop, the vehicle fled and a chase ensued. The vehicle was pitted by the Georgia State Patrol and the passenger ultimately died. The driver is currently being held in the Glynn County Detention Center for criminal charges including vehicular homicide. On February 27, 2018 the Glynn County Police Department issued a press release indicating that GBNET officers had conducted surveillance on the vehicle in Florida where "it is believed they purchased a large quantity of illegal narcotics." (T. Vol. IV, Ex. 13). Chief Powell confirmed that no internal

affairs investigation was conducted into the activities of GBNET in Florida, outside the jurisdiction of Glynn County Police Officers, which led to the attempted traffic stop, ensuing chase, and fatal crash. Chief Powell confirmed that Glynn county has a chase policy, but was unaware that the supervisor who approved the chase was not made aware of GBNET involvement or the activities in Florida until after the crash. Chief Powell confirmed that GBNET Officers were aware that their jurisdiction is confined to Glynn County. (T. Vol. III, 71-82).

GBNET Association

Glynn County Sheriff's Deputy and ATF Task Force Agent Mike Lawson testified that on May 9, 2018 he received a photograph via text message from a confidential informant. The photograph was of GBNET Officer John Dustin Simpson. The message asked the question "Do you know this man?" Deputy Lawson telephoned the informant and was told that Officer Simpson was "running" with a known drug trafficker and felon. The informant also told Deputy Lawson that Officer Simpson was hanging around other drug dealers in Glynn County. (T. Vol. IV, 18-38, Ex. 9A, 17).

On May 21, 2018 Deputy Lawson met with Chief of Police John Powell and Chief of Staff Brian Scott in the parking lot of the Glynn County Sheriff's Office. Deputy Lawson testified that he told Chief Powell and Chief of Staff Scott that he received the information about Officer Simpson associating with a suspected methamphetamine dealer and convicted felon. Deputy Lawson then showed them the photograph he had received of Officer Simpson. Chief of Staff Scott asked Deputy Lawson if he was talking about Officer Simpson being a member of "The Outlaws" motorcycle gang. Deputy Lawson said this was not about that and was recent information. (T. Vol. IV, 18-38).

Deputy Lawson testified he also informed Chief Powell and Chief of Staff Brian Scott about a de-confliction meeting that took place on May 7, 2018 with ATF and GBNET. The purpose of the meeting was to determine if there were any conflicts or simultaneous investigations that the two groups were operating. During the meeting GBNET Officer Dustin Davis stated that GBNET had either attempted or completed a narcotics buy from an individual on St. Simons Island, but that it was learned that Officer Simpson was friends with the individual and no arrest was made. (T. Vol. IV, 18-38).

Deputy Lawson testified that a few weeks after he met with Chief John Powell and Chief of Staff Brian Scott, he received a telephone call from Chief of Staff Scott, and Chief Powell was present with Chief of Staff Scott during the call. During the call, Chief of Staff Scott stated that he had received information from retired GCPD Captain Terry Wright concerning an incident at the Blue Bar involving Officer Simpson and a convicted felon in possession of a gun. Scott further stated that when confronted by the bar manager, Simpson flashed his credentials. (T. Vol. IV, 18-38).

Deputy Lawson testified that he was being informed by Chief of Staff Scott about the convicted felon possessing the firearm at the Blue Bar so that he might take action as part of his duties with the ATF. Deputy Lawson testified that he told Chief Powell and Chief of Staff Scott that an internal affairs investigation into the actions of Officer Simpson should take place first. (T. Vol. IV, 18-38).

Chief Powell could not recall the meeting with Deputy Lawson, but did recall Captain Wright contacting Chief of Staff Scott. He confirmed that no inquiry or internal affairs investigation was conducted into any of the allegations involving Officer Simpson until February

of 2019. Officer Simpson received a reprimand as part of the internal affairs investigation into Officer Cassada. (T. Vol. III, 51-53, Ex.1, Ex. 16).

Camden County

On August 10, 2018 Camden County Sheriff Jim Proctor wrote a letter complaining of GBNET operations in Camden County. Sheriff Proctor stated that he was not informed by GBNET of any of the activity that was being conducted in Camden County and that such investigation was unauthorized. Sheriff Proctor stated that "GBNET has zero authority to operate any investigations outside the bounds of Glynn County. This type of behavior is reckless and dangerous." (T. Vol. III, Ex. 9).

Chief Powell did not recall if he had received the letter, but did confirm that he and BPD Chief of Police Kevin Jones had met Sheriff Proctor for lunch and assured him that this would not happen again. Chief Powell confirmed that no inquiry was performed to determine the identity of the GBNET officers or the extent of operations in Camden County. No internal affairs investigation was conducted. (T. Vol. III, 55-58).

Arrest Agreement

In approximately July 2018 CI#13, a confidential informant with whom Officer Cassada was alleged to have been sexually involved, sold methamphetamine twice to another informant working for GBNET. In approximately October 2018, as GBNET compiled a list of persons to be arrested in the "Déjà vu" operation, Officer Cassada asked Officer Dustin Davis to take CI#13 from the list and to wait on arresting her "to save face with the wife." Officer Davis complied. (T. Vol. I, 97-98).

In her interview with the GBI on February 5, 2019, CI#13 stated that approximately four to six months earlier, Officer Cassada had informed her that she had a "sell charge" and "that he would

take care of it if she acted right and stayed clean." She indicated that Officer Cassada had asked either Dustin Davis or Dustin Simpson not to pursue the "sell charge." At the time of the GBI interview, no warrants had been served on CI#13 for the "sell charge." (T. Vol. IV, Ex. 26). Early in 2019, Officer Cassada again intervened on behalf of CI#13. GBNET Officer Dallas Harper told the GBI that sometime between January 28 and 30th, 2019 he was making a list of known drug dealers in Glynn County to provide to the Drug Enforcement Administration (DEA). Officer Harper stated that when he brought up the name of CI#13, Officer Cassada told him that it was a rumor that she was selling drugs and not to worry about her. (T. Vol. IV, Ex. 20).

GBNET stop of McIntosh County Sheriff's Deputy

In January 2019, GBNET initiated two traffic stops on Colonel Danny Lowe with the McIntosh Sheriff's Office. In the first traffic stop, the patrol officer confirmed to Colonel Lowe that he was requested by GBNET to initiate the stop. Colonel Lowe was released and then stopped a second time later that evening. During the second stop, a different patrol officer held Colonel Lowe on the road for a period of time, required him to perform a field sobriety test and searched his McIntosh county issued vehicle. (T. Vol. III, Ex. 14, 15).

Chief Powell confirmed that he received a call from McIntosh Sheriff Steve Jessup. GBNET Officers had previously been confronted about operations outside of their jurisdiction in McIntosh County by Colonel Lowe, and Sheriff Jessup was concerned with possible retaliation against Lowe. Chief Powell testified that he had reviewed the patrol officer's body cameras and found no policy violations. He did not know which, if any, GBNET officers were involved in the traffic stops of Colonel Lowe. He confirmed that he did not conduct any inquiry or internal affairs investigation to find out. The McIntosh Sheriff made repeated requests under the Georgia

Open Records Act attempting to gain access to police and dispatch records relating to the two traffic stops. (T. Vol. III, 60-69, Ex. 10, 11, 12).

GBI Investigation

On January 30, 2019, GBNET Officer Meredith Tolley was watching a video recording of an interview that had occurred a year earlier (February 4, 2018) with CI#13 NCI-014. On the recording, Officer Tolley heard CI#13 make statements concerning sexual interaction and drug use with a GBNET officer. After hearing the statements, Officer Tolley became concerned because she had previously heard from Officer Dustin Davis that Officer Cassada's wife had caught him at a hotel with a confidential informant. Officer Tolley reported the statements CI#13 had made in the interview to Officer Dustin Davis and Officer Mikey Davis, and the three GBNET Officers notified Assistant District Attorney Liberty Stewart. Stewart advised the officers to notify their chain of command. The officers reported the information to Lieutenant Jeremiah Berquest, who notified Captain Tom Jump, who notified Chief John Powell. Chief Powell contacted the GBI to investigate. (T. Vol. II, 80-83).

Initially, the GBI began an investigation into allegations that Officer Cassada had been sexually involved with one informant, CI#13 NCI-014. Subsequently, the GBI learned that there were two separate confidential informants with which Officer Cassada was alleged to have been involved sexually. (T. Vol. IV, 38-90, Ex. 18).

The GBI conducted an interview with CI#13 on February 5, 2019. The informant told the GBI that she had met Officer Cassada at the Wee Pub for drinks and to talk. Officer Cassada had given her \$250 to help her with a late bill, but she stressed that this was not for sex. Later that night she went with Officer Cassada to a hotel off of Perry Lane Road to have sex and smoke "meth." She believed it was the "Economy Hotel." GBI Agent Feller later obtained a motel

receipt indicating that Officer Cassada had used his credit card to purchase two nights at the Econolodge located off of Perry Lane Road on November 15 and 16, 2017. (T. Vol. III, Ex. 16, Vol. IV, Ex. 26).

CI#13 also stated that approximately five months earlier, she met Officer Cassada in the Home Depot parking lot to smoke some "meth." She indicated that Cassada had provided her with "meth" at random times, but she had only smoked "meth" with Cassada on these particular occasions. (T. Vol. IV, Ex. 26).

The CI file maintained by GBNET indicated that CI#13 was signed up by Cassada on February 14, 2014 and was used to purchase narcotics by GBNET on January 4, 2017, January 18, 2017, May 22, 2017 and December 5, 2017.

Officer Cassada resigned his position with the Glynn County Police during the GBI investigation and refused to speak with the GBI regarding CI#13.

The GBI conducted an interview with CI#16 on February 7, 2019. CI#16 told the GBI that she had engaged in sex twice with Officer Cassada in his county vehicle under the Sidney Lanier Bridge. CI#16 stated that she had not used any drugs with Officer Cassada, but that he had asked her to purchase a gram of cocaine for him personally, but she never did. CI#16 confirmed that her girlfriend confronted Officer Cassada at the Wee Pub (determined to be on November 8, 2017 based upon interviews with GBNET Officers) and that her girlfriend contacted Officer Cassada's wife via Facebook. CI#16 also confirmed that she spoke with Officer Cassada's wife about the relationship. (T. Vol. III, Ex. 16).

The CI file maintained by GBNET indicated that CI#16 was signed up by Officer Cassada on May 18, 2017 and used multiple times by GBNET to make narcotics purchases until

deactivated on Nov. 9, 2017 (following the Wee Pub Incident). CI#16 was also determined to be the sister of a GBNET Officer. (T. Vol. III, Ex. 16, Vol. IV, 81).

Officer Cassada resigned his position with the Glynn County Police during the GBI investigation and refused to speak with the GBI regarding CI#16.

US Attorney's Office Brady Disclosure Letter

On March 4, 2019 the U.S. Attorney for the Southern District of Georgia sent a letter to 21 local attorneys disclosing *Brady* material for Officers Cassada and Simpson. The letter disclosed the association of Officer Simpson and the convicted felon. The letter further states that the convicted felon requested federal probation to authorize him to reside with Officer Simpson. On September 25, 2018 the United States Probation Office denied this request. On September 26, 2018 Officer Simpson called the U.S. Probation Office and asked why the felon would not be allowed to reside with him. The letter explains that a review of publicly available Facebook posts revealed numerous photographs of Officer Simpson and the convicted felon spending time together, accompanied by captions indicating they are close friends. The March 4 letter from the U.S. Attorney is not addressed in the GCPD internal affairs investigation which reprimanded Officer Simpson. (T. Vol. III, Ex. 8, 16).

GCPD Internal Affairs Investigation

Chief John Powell became interim Chief of the GCPD in September 2017, and has served as Chief since January 2018. He confirmed that internal affairs investigations must be initiated or authorized by him. Chief Powell confirmed that no internal affairs investigations have taken place with respect to GBNET officers in this time period, other than an officer involved shooting which occurred at Exit 29 (officer cleared and suspect survived injuries) and the current internal affairs investigation that arose from allegations involving Officer Cassada. (T. Vol. III, 3-10).

Chief of Staff Brian Scott conducted the internal affairs investigation pertaining to Officer Cassada. Three officers were identified for policy violations - Captain Hassler, Officer Cassada, and Officer Simpson. Chief Powell confirmed that no additional officers were identified for disciplinary action.

CONCLUSIONS OF LAW

Under the constitution of the United States of America, as interpreted by the United States Supreme Court in *Brady v. Maryland*, 373 U.S. 83 (1963), the state's suppression of evidence favorable to an accused violates the accused's due process rights where the evidence is material either to guilt or to punishment. The violation exists irrespective of the good faith or bad faith of the prosecution. This doctrine was extended in *Giglio v. United States*, 405 U.S. 150 (1972), to include all material impeaching information on the State's witnesses. The State, as defined by the courts, includes all police agencies as well as the prosecutor's office.¹ A prosecutor is presumed to have knowledge of all information gathered in connection with his or her office's investigation of the case and has a duty to learn of favorable evidence known to others acting on the government's behalf in the case.² The Courts have detailed a four part test to determine whether a *Brady* violation has occurred, and whether a new trial is required.

(1) the State, including any part of the prosecution team, possessed evidence favorable to the defendant; (2) the defendant did not possess the favorable evidence and could not obtain it himself with any reasonable diligence; (3) the State suppressed the favorable evidence; and (4) a reasonable probability exists that the outcome of the trial would have been different had the evidence been disclosed to the defense.³

This test looks to see what the prosecution team, including the police department, possessed at the time of the trial or plea; thus, evidence created after a plea or trial is not *Brady*

¹ *Head v. Stripling*, 277 Ga. 403, 408 (2003)

² *Id.*

³ *Anthony v. State*, 302 Ga. 546, 552 (2017).

material.⁴ Specifically, this does not refer to when the evidence became public but when the District Attorney's Office, the police department, or any member thereof, obtained knowledge of the evidence at issue.⁵

After review of the evidence and testimony presented, the Court finds that exculpatory evidence existed in the above-referenced case which was not disclosed by the State.⁶ There is evidence before the Court that GBNET Officer James Cassada engaged in sexual conduct and illicit drug use with two separate female informants between May 2017 and February 2019. Such conduct, if true, would violate GCPD policy and criminal laws of the State. At a minimum such conduct would constitute *Brady* material, as set forth in *Giglio*, because it may be used to impeach the officer or informant in any criminal proceeding in which he or she is called as witness. Because Officer Cassada is a state actor, the prosecution is deemed to have knowledge of his conduct at the time it occurred. The Court finds this information would be exculpatory in a criminal case that resulted from Officer Cassada handling the confidential informant, directing or participating in the purchase of controlled substances, collecting controlled substances into evidence or otherwise being in the chain of custody, or providing sworn testimony or probable cause information for search or arrest warrants. The Court further finds this information to be exculpatory in a criminal case that resulted from either confidential informant participating in the purchase of controlled substances, taking possession of controlled substances or otherwise being in the chain of custody, or providing information used as probable cause for the issuance of search or arrest warrants. The evidence presented established that first date that GBNET conducted a narcotics purchase with either CI#13 or CI#16 is January 4, 2017; therefore, this

⁴ *Jones v. State*, 253 Ga. App. 848 (2001); see also *Callaway v. State*, 304 Ga. App. 506 (2010).

⁵ *Id.*

⁶ Whether all of the evidence and testimony presented was true or not; the evidence is exculpatory material under *Brady* and should have been disclosed to Defense Counsel.

knowledge is imputed to the State from that date forward. It is undisputed that this *Brady* material was not disclosed to Defendant Whittle prior to the entry of his guilty plea, nor would the information have been obtainable to him at that time. The evidence establishes that this information was not disclosed to the District Attorney or Defense Counsel in Mr. Whittle's case.

As early as November 8, 2017 the allegations that Officer Cassada was engaging in sex with an informant came to the attention of multiple GBNET officers. It was reported by Sergeant Gregory to his supervisors, Lieutenant Smith and Captain Hassler. Subsequently, similar information was reported by Officer Cassada's wife to Captain Hassler and Sergeant David Haney. Again, the information was reported by Officer Simpson to Sergeant Haney. Again, the information was reported by Officer Davis to Captain Hassler. And again, the information was reported by Lieutenant Smith to Captain Hassler. No written record, no inquiry, no internal affairs investigation, and no action resulted from any of these reports to superior officers. Thus, the information was suppressed by and within GBNET until reported to the District Attorney and the GBI on February 1, 2019.

Following allegations of sex with CI#16, Officer Cassada took sick leave and went to a substance abuse treatment facility in Jacksonville between December 4, 2017 and January 29, 2018. Sergeant Gregory, Sergeant Haney and Captain Hassler were specifically notified by Officer Cassada's wife. Multiple GBNET officers indicate that they knew Officer Cassada had gone to treatment for what they were told was an alcohol problem. supervising officers at the GCPD confirmed knowledge contemporaneous with Officer Cassada taking leave to go to alcohol treatment; however, this information was not documented and not disclosed upon Officer Cassada's return to GBNET. Officer Cassada returned to his GBNET duties without restriction on January 30, 2018 and continued as an Officer with GBNET until his resignation in February

2019. The Court finds that a two month stay in a substance abuse treatment facility is exculpatory information under *Brady* that may affect Officer Cassada's ability to perform such job duties as the purchase of controlled substances, collecting controlled substances into evidence or otherwise being in the chain of custody, or providing sworn testimony or probable cause information for search or arrest warrants. This information was not disclosed to Defendant Whittle prior to the entry of his guilty plea, nor would it have been obtainable to him at that time. Knowledge is imputed to the State on January 30, 2018, which is the date Officer Cassada returned to GBNET following treatment.

During operation "Déjà vu" an informant with whom Officer Cassada was alleged to have sexual relationship sold methamphetamine twice. Officer Dustin Davis agreed not to execute arrest warrants upon the informant when requested by Officer Cassada because it would cause Cassada problems at home. At the time the GBI began its investigation, the informant had not been arrested. Thus, the criminal law was not enforced with respect to this informant because Officer Cassada intervened on her behalf. The Court finds that this is *Brady* material relevant to impeach Officer Davis and Officer Cassada under *Giglio*. This information was not disclosed by the State prior to Defendant Whittle entering his guilty plea, nor would it have been attainable by him at that time. Knowledge is imputed to the State from the date of the GBNET "round up" resulting in the arrest of the other "Déjà vu" defendants, November 7, 2018.

Defendant Whittle was arrested on two warrants for the sale of Schedule II drugs alleged to have occurred on March 16, 2018 and April 11, 2018. The warrants were obtained in Glynn Magistrate Court on November 5, 2018 upon sworn affidavit of Officer James Cassada. Defendant Whittle entered his guilty plea on January 17, 2019. These events occur after the date that knowledge is imputed to the State of exculpatory information relating to Officer Cassada.

Specifically, the Court finds a reasonable probability exists that had the exculpatory information relating to Officer Cassada been disclosed to Defendant Whittle, it would have materially impacted his decision to waive his right to trial and enter a guilty plea. Thus, the outcome of his case would have been different.

THE COURT HEREBY FINDS the following:

- 1) Defendant Gary Whittle's Motion to withdraw his guilty plea and stipulation to probation revocation is **GRANTED** based on the suppression of exculpatory evidence which was relevant to his case because there is a reasonable probability that disclosure would have changed the outcome of his case;
- 2) Exculpatory evidence within the meaning of *Brady* exists in a criminal case resulting in whole or in part from Glynn County Police Officer James Cassada handling the confidential informant, directing or participating in the purchase of controlled substances, collecting controlled substances into evidence or otherwise being in the chain of custody, or providing sworn testimony or probable cause information for search or arrest warrants occurring on or after January 4, 2017;
- 3) Exculpatory evidence within the meaning of *Brady* exists in a criminal case resulting in whole or in part from GBNET confidential informant CI#13 NCI-014 participating in the purchase of controlled substances, collecting controlled substances into evidence or otherwise being in the chain of custody, or providing information used as probable cause for the issuance of search or arrest warrants occurring on or after January 4, 2017;
- 4) Exculpatory evidence within the meaning of *Brady* exists in a criminal case resulting in whole or in part from GBNET confidential informant CI#16 NCI-028 participating

in the purchase of controlled substances, collecting controlled substances into evidence or otherwise being in the chain of custody, or providing information used as probable cause for the issuance of search or arrest warrants occurring on or after May 18, 2017;

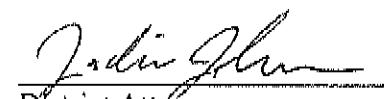
- 5) Impeaching information within the meaning of *Giglio* exists with respect to Glynn County Police Officer James Cassada as set forth herein with knowledge imputed to the State beginning on January 4, 2017;
- 6) Impeaching information within the meaning of *Giglio* exists with respect to Glynn County Police Officer Dustin Davis as set forth herein with knowledge imputed to the State beginning on November 7, 2018;
- 7) Impeaching information within the meaning of *Giglio* exists with respect to Glynn County Police Officer John Dustin Simpson as set forth herein with knowledge imputed to the State beginning on May 9, 2018;
- 8) Impeaching information within the meaning of *Giglio* exists with respect to former Glynn County Police Captain David Hassler as set forth herein with knowledge imputed to the State beginning on November 15, 2017;
- 9) Impeaching information within the meaning of *Giglio* exists with respect to Glynn County Police Lieutenant David M. Haney as set forth herein with knowledge imputed to the State beginning on November 16, 2017; and
- 10) The Court does not make a finding as to how the exculpatory or impeaching material set forth herein relates to any case not before the Court at this time.

SO ORDERED this 28 day of May, 2019.



JUDGE ROGER B. LANE
Superior Court of Glynn County
Brunswick Judicial Circuit

Order Submitted by:



District Attorney
Brunswick Judicial Circuit



Asst. Circuit Public Defender
Brunswick Judicial Circuit