IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION "X"

CASE NO: 50-2017-CF-008722-AXXX-MB

STATE OF FLORIDA

vs.

SHEILA KEEN-WARREN,
Defendant
_____/

DEFENDANT'S SECOND MOTION TO COMPEL THE STATE TO PRODUCE *BRADY* INFORMATION

The Defendant, Sheila Keen-Warren, through undersigned counsel, pursuant to Florida Rule of Criminal Procedure 3.220 and *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, moves this Court to enter an Order directing the State to search for and produce all information pertaining to the Palm Beach County Internal Audit Committee's audit of the Palm Beach County Sheriff's Office Evidence Unit.[1] In support thereof, Ms. Keen-Warren states as follows:

STATEMENT OF FACTS

I. The Fiber

On May 26, 1990, following the murder of Marlene Warren, Detective Michael Harrison responded to Ms. Warren's residence as the lead crime scene investigator. While processing the crime scene, he collected and packaged two balloons with ribbons. He then filled out a property receipt for the evidence. Exhibit 1, Harrison Property Receipt (May 26, 1990).

According to Detective Harrison, he visually inspected the evidence before packaging it, and he did not observe or recover a six-to-eight-inch fiber on the balloon ribbons:

[1] Ms. Keen-Warren filed her initial Motion to Obtain, Disclose, and Produce *Brady* Information and Incorporated Memorandum of Law on August 28, 2018. [D.E. No. 99].

Mr. Rosenfeld: And did you conduct a visual examination of the ribbons for any -- the presence of any trace evidence like hairs or fibers?

Detective Harrison: Yes, sir. Physically.

. . . .

Mr. Rosenfeld: So, again, you said prior to packaging you visually examined both the balloon ribbons and the balloons for the presence of hairs and fibers; right?

Detective Harrison: Yes.

Mr. Rosenfeld: And, if there had been any visible trace evidence on either of the balloons while still at the crime scene, you would have collected them at that time and packaged them; right?

Detective Harrison: Yes, sir.

Mr. Rosenfeld: And you didn't notice any trace evidence on either of the ribbons while still at the crime scene and prior to packaging the balloons?

Detective Harrison: I did not.

Mr. Rosenfeld: You didn't notice any long hairs in either of the ribbons while still at the crime scene and prior to packaging the balloons?

Detective Harrison: I did not.

. . . .

Mr. Rosenfeld: All right. So you didn't notice any trace evidence on either of the two balloons while still at the crime scene and prior to packaging, correct?

Detective Harrison: No, I did not.

Mr. Rosenfeld: And you didn't notice any long hairs in either of the two balloons while still at the crime scene and prior to packaging?

Detective Harrison: No, I did not notice anything.

Mr. Rosenfeld: And you would have documented that by photographs and packaged those separately, right?

Detective Harrison: Yes, I would have.

. . . .

Mr. Rosenfeld: But as we discussed before, you never saw a six-to-eight-inch hair or fiber on the balloon ribbons or balloons when you visually inspected them?

Detective Harrison: No, I did not.

Mr. Rosenfeld: And as a seasoned crime-scene investigator, as you said, you visually inspected them for trace evidence?

Detective Harrison: Yes, sir.

Exhibit 2, Harrison Dep. 79-81, 122 (Aug. 5, 2022).

On May 27, 1990, one day after the shooting, the PBSO Crime Lab received the paper evidence bag containing the balloons and balloon ribbons. Latent Examiner Jay Mullins opened the bag to process the balloons for latent prints. He did not see a fiber, a hair, or any other trace evidence on the balloons or the balloon ribbons:

Mr. Rosenfeld: Did you observe a six-to-eight-inch hair or fiber on either ribbon?

Latent Examiner Mullins: I don't recall seeing hair or fiber on the ribbons.

. . . .

Latent Examiner Mullins: I don't recall seeing anything attached to the balloons or the ribbons.

. . . .

Latent Examiner Mullins: I don't recall seeing any hair or anything on the ribbons or the balloons.

Exhibit 3, Mullins Dep. 58-59 (July 26, 2022).

In 2013, Detective Paige McCann took over the investigation. She tasked Celynda Sowards from the PBSO Crime Lab with reviewing the evidence. One of the items reviewed by Detective McCann and Ms. Sowards was the balloon ribbon from the crime scene. On the ribbon, Ms. Sowards discovered a six-to-eight-inch fiber.

The property receipt for the balloons indicates that they were handled by multiple people, all of whom initialed and dated the receipt. Ex. 1. Not one of them mentioned the fiber. *See id.* In 2013, in blue marker, Ms. Sowards added the fiber to the property receipt. *Id.* Significantly, at the bottom of the property receipt, there is a signature and a notation indicating that the evidence was handled during an audit. *Id.*

This fiber is the only forensic evidence from the crime scene. For 23 years, this evidence was packaged and unpackaged, viewed by several people in various agencies, and processed, yet apparently, this six-to-eight-inch fiber went unnoticed. Not a single detective, crime scene investigator, or crime lab analyst saw this mysterious fiber.

II. The Internal Audit

In 1999, the Palm Beach County Internal Audit Committee (Committee) conducted an internal audit of PBSO's Evidence Unit in response to ongoing problems with the handling of evidence. On November 10, 1999, the Committee issued an Internal Audit Report outlining several issues with the evidence unit, one of which was "evidence bags were not always sealed properly." Exhibit 4, Internal Audit Rep., PBSO Evidence Room Controls 99-09 (Nov. 10, 1999). On February 10, 2000, PBSO issued an inter-office memorandum concurring with the Committee's finding. *Id.* Both the Committee's report and PBSO's response are summaries, neither of which provide information on the specific cases.

On February 16, 2000, The Palm Beach Post published an article, "Errors Founds in Sheriff's Evidence Procedures," which discusses the internal audit. Exhibit 5, Marc Caputo, *Errors Found in Sheriff's Evidence Procedure*, P.B. Post, Feb. 16, 2000, at 1B. The article references specific cases, including Ms. Keen-Warren's case, and additional information not included in the audit report. *Id.*

According to the article, "Nearly 10 years after a clown murdered Marlene Warren, county auditors have discovered some of the evidence was improperly stored. Open bags containing a white clown glove, seven types of clown makeup, an orange wig, and a Bozo-type suit linked to the Wellington murder were found this fall inside the sheriff's evidence room. The bags should have been sealed to preserve evidence." *Id.*

In this article, Mike Edmondson addressed the improperly packaged evidence and the internal audit:

> State attorney's office spokesman Mike Edmondson said the open bags of evidence don't alarm prosecutors. "Our only issue is if a defense attorney can successfully raise an evidence-tampering issue," Edmondson said. "That hasn't happened. . . . We have complete confidence in Sheriff (Robert) Neumann and the sheriff's office."

Id. At the time, Mr. Edmondson was the spokesman for former State Attorney Barry Krischer.

Following Ms. Keen-Warren's arrest, the Defense, through its investigation, discovered this undisclosed audit. The Defense subsequently deposed Detective McCann, Mr. Edmondson, and Mr. Krischer. All three witnesses displayed a disturbing indifference to this evidence.

On June 26, 2019, at her first deposition, Detective McCann denied having any knowledge of any evidence in this case being improperly stored. Exhibit 6, McCann Dep. 151-52 (Part 1) (June 26, 2019). She also denied having any knowledge of the internal audit. *Id.* at 152.

On March 30, 2021, at the hearing on the Defendant's motion to set bond, the Defendant confronted Detective McCann with the internal audit report. Exhibit 7, Bond Hr'g Tr. 214-15. For the second time, Detective McCann denied having any knowledge of the evidence tampering issues and the internal audit. *Id.*

On May 2, 2022, at her second deposition, Detective McCann appeared confused about the audit report and testified that she had made no effort to investigate the audit:

Mr. Rosenfeld: Just in regard to the audit report. I know you said you had the -- you received a copy of the report?

Detective McCann: I believe I did. I believe I -- I believe I read it. That report. I don't know if it was a full report. I don't know specifically what it contained, but I do at some point recall -- or maybe did you give -- did you show it [to] me at –

Mr. Rosenfeld: I think I did.

Detective McCann: Oh, maybe that's when it was. Okay.

Ms. Rosenfeld: Did you do any further investigation into -- into PBSO's internal audit or the internal audit of PBSO's evidence room involving this case?

Detective McCann: No.

Exhibit 8, McCann Dep. 49-50 (Part 2) (May 2, 2022).

To be clear, over a year after learning that the evidence in this case may have been contaminated, Detective McCann did absolutely nothing. She willfully turned a blind eye to evidence that could exculpate Ms. Keen-Warren, or at the very least, aid in her defense.

On June 15, 2021, the Defendant deposed Mr. Edmondson. Exhibit 9, Edmondson Dep. (June 15, 2021). At the time of the deposition, Mr. Edmondson was the Executive Assistant for State Attorney Dave Aronberg. Mr. Edmondson showed an even greater indifference to this documented evidence contamination than Detective McCann.

Mr. Edmondson testified that he did not remember making the statements to The Post. *Id.* at 10-15. He testified that the press frequently misquoted him, so he could have been misquoted. *Id.* He claimed that if the author did misquote him, he may not have requested a correction because not every misquote is corrected. *Id.* He maintained that he did not remember an audit of Palm Beach County's largest law enforcement agency's evidence unit. *Id.*

Additionally, Mr. Edmondson testified that, after receiving a copy of the article and audit report, he did nothing to look into the internal audit, and he did not find it prudent to look into it:

> Mr. Rosenfeld: So, after receiving a copy and reviewing a copy of this article and finding out that we were intending on deposing you, did you do anything at all to refresh your memory about this audit, or you know, these evidence issues back in 1999-2000?
>
> Mr. Edmondson: No.
>
> Mr. Rosenfeld: I mean, in that there were allegations by the county about [] evidence contamination -- possible evidence contamination, possible unpreserved evidence . . . and several other issues, did you find it prudent to go back and . . . look into some of your issues or your role . . . in all of this back from 1999-2000.
>
> Mr. Edmondson: No.

Id. at 18.

To summarize, the executive assistant to the elected state attorney testified that he did not think it was necessary to look into allegations of contaminated evidence. *Id.* He testified that, knowing he was coming to a deposition about the audit, he did not even bother to read the audit to see if it would refresh his recollection. *Id.* at 22 ("I don't have any reason to look at the audit.").

On May 20, 2022, the Defendant deposed former State Attorney Barry Krischer. Exhibit 10, Krischer Dep. (May 20, 2022). Mr. Krischer spoke with Mr. Edmondson prior to his deposition. *Id.* at 4-5. Despite Mr. Edmondson testifying that he did not remember the audit or the statement to the press, Mr. Krischer testified that Mr. Edmondson told him that The Post misquoted him. *Id.* at 5-6. Yet, later in the deposition, he acknowledged that [redacted] made the statement, but he suggested that Mr. Edmondson could have phrased it better:

> Mr. Rosenfeld: . . . Why don't open bags of evidence alarm prosecutors? Because they did find open bags of evidence.
>
> Mr. Krischer: That's what I'm saying. He could have said it more artfully. It's not that it doesn't alarm us.

Id. at 23.

Mr. Krischer also testified that he does not remember the audit report, and he does not know if evidence was contaminated in this case or any case during that period. *Id.* at 23-25. He stated that, because he does not remember the report, he does not recall whether he did anything after the auditor issued the report, but he "probably wouldn't have done anything because the suggestions to fix were appropriate." *Id.* at 27.

Throughout the deposition, Mr. Krischer passed the buck to PBSO, and he danced around the impact of the auditor's finding on prior prosecutions:

> Mr. Rosenfeld: I mean but respectfully, Mr. Krischer, you're the elected State Attorney and evidence of open evidence bags in the largest police department in your county is brought out and brought to your attention, which very well or possibly could have led to wrongful convictions, and your answer is "Well, it's self-correcting in moving forward."?
>
> You don't think you had a responsibility . . . as elected State Attorney to make sure that a human being wasn't deprived of their liberty?
>
> . . . .
>
> Mr. Krischer: You--you could try to twist and turn it any way you want. I'm telling you again: I have no supervisory--supervisory responsibility or authority over the police department, the Sheriff's Department of the evidence rooms. They do whatever they want in there.
>
> . . . .
>
> Mr. Rosenfeld: So as far as you know, . . . the State Attorney's office did nothing to follow up on the auditor's finding of unpreserved evidence in this case?
>
> . . . .
>
> Mr. Krischer: My answer was: I don't recall the report. I don't recall what my response was. Again, based on what is in the report, I probably wouldn't have called anybody because they had -- they were taking appropriate action.
>
> *So in answer to your question, no, I didn't talk to anybody because it wasn't necessary in my mind. And I had no authority to stick my nose in it to begin with.*

Id. at 29-30, 35 (emphasis added).

As of the date of this Motion, the State and PBSO have failed to provide any information about, and have chosen to ignore, the internal audit of PBSO's evidence unit. The State's unwillingness to disclose anything about this audit is especially disconcerting because the information pertaining to the internal audit would aid in Ms. Keen-Warren's defense. As such, Ms. Keen-Warren moves this Court to enter an Order requiring the State to search for and immediately turn over all information pertaining to the internal audit of the Palm Beach County Sheriff's Office Evidence Unit.

ARGUMENT

Pursuant to Florida Rule of Criminal Procedure 3.220(b)(4), "the prosecutor shall disclose to the defendant any material information within the state's possession or control that tends to negate the guilt of the defendant as to any offense charged . . . ." This requirement is significant for several reasons. First, it obligates the prosecutor to disclose material information not only within the state's possession but also within its "control." That statement requires the prosecutor to turn over any *Brady* material which is within the possession or knowledge of law enforcement as well as any team working on the prosecutor's behalf as it relates to the above matter. Second, all information that "tends to negate the guilt of the defendant" encompasses not only material that exonerates an accused but also any information or evidence which would aid a defendant in presenting any valid defense. In short, the Florida Rules of Criminal Procedure require the prosecutor to comply with *Brady v. Maryland*, 373 U.S. 83 (1963).

In *Brady,* the Supreme Court 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." *Id.* at 87. The United States Supreme Court has since held that the duty to disclose such evidence is

applicable even though there has been no request by the accused. *United States v. Agurs*, 427 U.S. 97, 107 (1976).

Significantly, the rule encompasses evidence "known only to police investigators and not to the prosecutor." *Kyles v. Whitley*, 514 U.S. 419, 438 (1995). This obligation is echoed by the Florida Supreme Court in *Hurst v. State*, 18 So. 3d 975, 988 (Fla. 2009), when it ruled "that *Brady* obligates the prosecutor even when the police know of discoverable evidence and the prosecutor does not."

In order to comply with *Brady*, therefore, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police." *Id.* at 437; *see also Strickler v. Greene*, 527 U.S. 263, 275 n.12 (1999) (prosecutor has constructive knowledge of all favorable evidence known to those acting on government's behalf, even if no actual knowledge of materials, and even if materials are in file of another jurisdiction's prosecutor); *Rose v. State*, 787 So.2d 786, 796 (Fla. 2000) (nondisclosure of exculpatory material is *Brady* violation, even where prosecutor does not know of its existence, if state's agents possess evidence and it is not disclosed).

Here, the State has violated *Brady* and Rule 3.220(b)(4) by failing to learn of favorable evidence known to others acting on the State's behalf. This favorable evidence—i.e., evidence that PBSO had improperly stored evidence in this case (and other cases)—would necessarily aid Ms. Keen-Warren in presenting a defense.

In this matter, as far as the State's case is concerned, the fiber on the balloon ribbon is the only piece of forensic evidence from the crime scene. In 1990, the fiber was not on the balloon ribbon. In 1999, the county auditor found open bags of evidence in this case. In 2013, Ms. Sowards miraculously discovered a fiber on the balloon ribbons, which was not there 23 years

earlier. Now, the State intends on arguing that the fiber from the balloon ribbon is consistent with originating from the same source as a fiber allegedly found at Ms. Keen-Warren's apartment and a fiber allegedly found in a white Lebaron. In other words, the State intends on using this evidence to place Ms. Keen-Warren at the crime scene.

Rather than complying with *Brady*, the State has chosen to ignore the audit. The Defense put the State and PBSO on notice of this evidence three years ago, and the State and PBSO have admittedly done nothing to look into this probable evidence contamination. The State has opted to proceed with its prosecution as if the audit never occurred.

In the crucible of our criminal justice system, the integrity of a prosecution is always premised on a prosecutor's recognition that her duty is to ensure that justice is done rather than a devotion to a pursuit that places another "defendant's skin" on the wall. *See Berger v. United States*, 295 U.S. 78, 88 (1935) (concluding that the government's interest in a criminal prosecution "is not that it shall win a case, but that justice shall be done."); *Donnelly v. DeChristoforo*, 416 U.S. 637, 648-49 (1974) (Douglas, J., dissenting) ("[A prosecutor's] function is not to take as many skins of victims as possible to the wall, [but] to vindicate the right of the people as expressed in the law and give those accused of crime a fair trial.").

In a world of prosecutorial privilege, however, there are certain constitutional and ethical standards that still protect a defendant's constitutional rights to due process and a fair trial. In the instant case, these standards were not met as the State has intentionally chosen to disregard evidence that will aid in Ms. Keen-Warren's defense.

WHEREFORE, the Defendant respectfully requests that this Honorable Court grant Defendant's Motion to Compel and enter an Order requiring the State to search for and turn over all information pertaining to the internal audit of PBSO's evidence room. If any of these items do

not exist, the Defendant requests that this Court order the State to indicate in writing which items do not exist and what efforts it took to comply with its discovery obligations.

Respectfully submitted,

/s/ Greg Rosenfeld
GREG ROSENFELD, ESQ.
Florida Bar No.: 92006
LAW OFFICES OF GREG ROSENFELD, P.A.
515 N. Flagler Drive, Suite P-300
West Palm Beach, FL 33401
(561) 409-5804
Greg@RosenfeldLegal.com
Attorney for Defendant

/s/ Amy Morse
AMY MORSE, ESQ.
Florida Bar No.: 388475
MORSE AND MORSE, L.L.C.
2240 Palm Beach Lakes Boulevard, Suite 300
West Palm Beach, FL 33409
(561) 651-4145
Amy@MorseLegal.com
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-service to the Office of the State Attorney, Division "MCU," at FELMCU@sa15.org; Reid Scott, Assistant State Attorney, at RScott@sa15.org; Kristen Grimes, Assistant State Attorney, at KGrimes@sa15.org; and Amy Morse, Esq., Attorney for the Defendant, at Amy@morselegal.com, on this 2nd day of October, 2022.

/s/ Greg Rosenfeld
Greg Rosenfeld, Esq.
LAW OFFICES OF GREG ROSENFELD, P.A.