

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

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**DEFENDANT'S MOTION IN LIMINE TO EXCLUDE  
FIBER SAMPLES AND DERIVATIVE EVIDENCE**

The Defendant, Sheila Keen-Warren, through undersigned counsel, pursuant to section 90.105, Florida Statutes, and this Court's inherent authority, moves this Court to exclude the following items from evidence, as well as the results of forensic testing of these items:

1. The mysterious fiber allegedly discovered on a balloon ribbon by Celynda Sowards in 2014;<sup>1</sup>
2. The fiber allegedly found in miscellaneous debris at Ms. Keen-Warren's apartment by Detective Bill Williams in 1990;<sup>2</sup> and,
3. The carpet-type fibers allegedly recovered from two pairs of sneakers found at Ms. Keen-Warren's apartment in 1990.<sup>3</sup>

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<sup>1</sup> PBSO Submission # 0038-01-D, Possible Hair / fiber from the ribbon (FBI Lab Item 55, Debris from ribbon).

<sup>2</sup> PBSO Submission # 0048-F-17, slides "Q23 + Q27" (FBI Lab Item 39, TEU Secondary Evidence, Q23 Debris). Slide Q23 is the relevant slide from this evidence submission.

<sup>3</sup> PBSO Submission # 0048-G-04, 2 slides "Q28-Q29" (FBI Lab Item 42, TEU Secondary Evidence from Q28-Q29 Sneakers); and PBSO Submission # 0048-G-05, 2 slides "Q30-Q31" (FBI Lab Item 42, TEU Secondary Evidence from Q30-Q31 Sneakers).

## **STATEMENT OF FACTS**

### **I. The Case of the Balloon Ribbons and the Manifesting Fiber**

On May 26, 1990, a person dressed in a clown costume drove a white Chrysler LeBaron to the home of Michael and Marlene Warren at 15470 Takeoff Place in Wellington, Florida. The clown approached the house carrying two balloons and a floral arrangement and knocked on the front door. When Marlene Warren answered, the clown shot her in the head and fled the area.

Shortly after the murder, Detective Michael Harrison of the Palm Beach County Sheriff's Office (PBSO) responded to the Warren's residence as the lead crime scene investigator. While processing the crime scene, he documented, photographed, and collected evidence gathered throughout the house, including the two balloons.



*Figure 1 – Balloons and Ribbons (May 26, 1990)*

Detective Harrison packaged the two balloons with their ribbons still attached into a single evidence bag. He filled out an evidence log and a property receipt for the evidence. Exhibit 1, Harrison Evidence Log (May 26, 1990); Exhibit 2, Harrison Property Receipt (May 26, 1990).

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

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 3, 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, and he did not see a fiber or a hair 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 4, Mullins Dep. (Part 1) 58-59 (July 26, 2022).

Before processing the evidence, Examiner Mullins visually inspected the balloons and balloon ribbons for trace evidence. He did not see a six-to-eight-inch wig-like fiber. He visually inspected the balloons and balloon ribbons for latent prints. He did not see a six-to-eight-inch wig-like fiber. He examined the balloons with a laser for latent prints. He did not see a six-to-eight-inch wig-like fiber. He placed the balloons and balloon ribbons into a superglue fuming cabinet to test for latent prints, and then removed the balloons and balloon ribbons and visually examined them again. He did not see a six-to-eight-inch wig-like fiber. He applied black powder to the balloons to look for latent prints. He did not see a six-to-eight-inch wig-like fiber. After completing all of this testing, Examiner Mullins has no independent recollection as to who, if anyone, repackaged the balloons and balloon ribbons and sealed the evidence bag. *See generally id.* at 65-86 (discussing his processing of the balloons and balloon ribbons).

In 2013, Detective Paige McCann took over the investigation. She tasked Celynda Sowards from the PBSO Crime Lab with reviewing the evidence. In 2014, one of the items Sowards reviewed was the balloon ribbons from the crime scene.



*Figure 2 - Balloon Ribbons (Apr. 6, 2022)*

On one of the ribbons, Sowards purportedly discovered a six-to-eight-inch fiber. The property receipt for the balloons indicates that they were handled by multiple people, all of whom had initialed and dated the receipt. Ex. 2, Harrison Property Receipt; *see also* Exhibit 5, Chain of Custody Logs, PBSO Item Nos. 0038, 0038-01, 0038-01-C (May 17, 2022). Not a single person who handled the balloons and ribbons noted the mysterious fiber. Ex. 2, Harrison Property Receipt. In 2014, in blue marker, Sowards added the fiber to the property receipt. *Id.*

This fiber is the only forensic evidence from the crime scene that purportedly, through a series of inferences and circumstantial evidence, links Ms. Keen-Warren to the crime. For 24 years, this evidence was packaged and unpackaged, and viewed and processed by several people in various agencies. Yet, apparently, this six-to-eight-inch wig-like fiber went unnoticed. While looking for evidence of a clown wig, not a single detective, crime scene investigator, or crime lab analyst saw this mysterious, six-to-eight-inch wig-like fiber before it purportedly materialized in 2014. *See* Exhibit 6, Williams Supp. 16 at 7 (July 6, 1990) (discussing Williams’s request to have crime scene unit process evidence brought to the scene by a person in a clown costume).

On September 2, 2014, Detective McCann released evidence, including the balloon ribbons, to the FBI for further testing. Exhibit 7, McCann Supp. 54 at 4 (July 16, 2015). On March 10, 2016, FBI Analyst Joshua Friedman issued a report discussing the results of his microscopic fiber analysis. Exhibit 8, Friedman FBI Laboratory Report (Mar. 10, 2016). Mr. Friedman found that the mysterious fiber from the balloon ribbons (FBI Lab Item 55) exhibited the “same microscopic characteristics” as the fibers that were purportedly recovered from the Winn Dixie LeBaron (Q3, Q11, Q13), the fiber that was purportedly recovered from miscellaneous debris from Ms. Keen-Warren’s apartment (Q23), and the fiber from a random clown wig that detectives purchased from the costume store (Q27). *Id.* at 3.

## **II. The Case of the Enigmatic Debris Fiber, the Missing T-Shirts, and the Comingled Sneakers**

On May 30, 1990, Detective Bill Williams, Detective Dewayne Kelley, and Sergeant Mike Free executed a search warrant at Ms. Keen-Warren's apartment at 4759 Sable Pines Circle in West Palm Beach. Exhibit 9, Williams Supp. Report 17 at 8 (July 6, 1990). According to Detective Williams, he recovered the following items during the search:

*A bathroom trash bag containing hair. A brown hairbrush containing hair. The aforementioned items were taken from the master bedroom of the apartment attached to Sheila Keen's residence. Three pairs of black high top sneakers. As well as approximately 10 to 12 tee shirts were taken from the master bedroom closet of Sheila Keen's residence. Among searching through the tee shirts in [the] closet area, several strands of orange fibers were found. Upon visual eye examination of the fibers found on the clothing, it appeared to be very similar to those orange fibers found in the white Chrysler LeBaron. However, they were turned over into evidence for crime lab evaluation at a later date. Two denim [sic] jackets, one with what appeared to be blood stains on the left shoulder area were also taken. The fibers and hairs collected inside the residence were subsequently placed in envelopes by Det. Sgt. Mike Free. Also taken was a black glove out of a child's bedroom, and a semi-filled vacuum cleaner bag.*

*Id.* (emphasis added).<sup>4</sup>

Sergeant Free provides a similar description of the items recovered from the apartment:

*Items of interest that were recovered from the residence were three pair of black high top sneakers with laces. Two pair of which came from the living room, one pair from the master closet. On the inventory return are 10 tee shirts with hangers. This should be corrected to 12 tee shirts with hangers. A miscount on the part of Det. Bill Williams. Number 3 was a hairbrush, brown in color. Number 4 a trash bag and contents from the master bathroom. Number 5 an envelope containing miscellaneous hairs and fibers gathered at the scene some of which were orange in color. Number 6 was one filled vacuum cleaner bag. Number 7 was a black glove from the child's closet. Number 8 was two denim [sic] jackets one of which contained a blood like substance on its front.*

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<sup>4</sup> In 2014, Sowards tested the five purported "blood stains" on the denim jacket. Exhibit 10, Sowards Dep. (Part 2) 330-32 (Aug. 8, 2022). The presumptive test indicated that the five stains were not blood stains. *Id.* Subsequent DNA testing of four of the stains revealed that one of the stains contained male DNA and three were not blood. *Id.*

Exhibit 11, Free Supp. Report 13 at 8 (July 6, 1990) (emphasis added).

Significantly, it appears that Detective Williams did not package most of the evidence separately when he collected it at the apartment. He did not document or photograph how he packaged the evidence, and his property receipts do not reflect that he separated the evidence. According to Sergeant Free, “All of these items were examined by me as they were turned over to me on a property receipt from Det. Bill Williams.” *Id.* Sergeant Free indicates that “[d]uring the day of the 31st of May, June 1st, 4th, and 5th, all of the evidence collected at the residence was *separated*, examined, *packaged*, and delivered to various locations.” *Id.* (emphasis added).

Sergeant Free describes “an envelope” with “miscellaneous hairs and fibers” recovered during the search of Ms. Keen-Warren’s apartment. *Id.* However, Detective Williams and Sergeant Free do not identify who found and collected the miscellaneous fiber and other fibers in the envelope. They also failed to document or photograph where this unidentified person found the debris fiber or the other miscellaneous hairs and fibers.

During the search, Detective Williams also collected three pairs of black sneakers from different locations in the apartment. Detective Williams did not document finding any fibers when he collected the sneakers, and Sergeant Free did not document finding any fibers when he separated, examined, and packaged the sneakers. Neither Detective Williams nor Sergeant Free photographed the sneakers.

On June 14, 1990, Sergeant Free sent the evidence recovered from the apartment (along with other evidence) to the FBI for microscopic hair and fiber testing. Exhibit 12, Deedrick FBI Laboratory Report (Sept. 5, 1990). He then packaged all three pairs of sneakers into “one sealed brown bag without separate wrapping.” Exhibit 13, Friedman Dep. (Part 2) 113, 115. He also packaged two carpet samples, recovered from the Winn Dixie Lebaron, “together in one small



sealed brown paper bag without separate wrapping.” *Id.* at 115. On June 29, 1990, Sergeant Free placed both bags in the same box and sent them to the FBI for further testing. Ex. 12, Deedrick FBI Laboratory Report at 2.

When FBI Analyst Douglas Deedrick received the sneakers, most of the debris was loose in the bag. Ex. 13, Friedman Dep. 114. The FBI recovered fibers from two of the three pairs of sneakers, which it mounted on slides for microscopic fiber analysis. Notably, Mr. Deedrick recovered fibers from a Velcro strap on one of the pairs of shoes. *Id.* Mr. Deedrick determined that the fibers were consistent with originating from the same source as the carpet sample from the Winn Dixie Chrysler LeBaron. Ex. 12, Deedrick FBI Laboratory Report at 3.

Mr. Deedrick tasked disgraced FBI examiners Roger Martz and Robert Webb with assisting him in analyzing the fibers and hairs. Mr. Martz and Mr. Webb were part of an Office of the Inspector General (OIG), Department of Justice (DOJ), investigation into wrongdoing and improper practices by 13 examiners in the FBI Laboratory. Exhibit 14, Summary of OIG, DOJ, Investigation (May 17, 1999). Pursuant to the OIG, “If the forensic work contained in this file is used in any way in the future, both the OIG’s findings and the forensic analysis of the examiners should be reviewed.” *Id.*

On November 25, 2013, when the case was reopened for the third time, Detective McCann met with Celynda Sowards to discuss reprocessing the evidence, including the items recovered from Ms. Keen-Warren’s apartment. Ex. 7, McCann Supp. 54 at 2. On May 5, 2014, Detective McCann met with Sowards to discuss her review of the evidence. *Id.* at 3. During this meeting, Detective McCann learned that “[o]nly four shirts were discovered in evidence . . . .” *Id.* Thus, at

some point between 1990 and 2013, PBSO lost 8 of the 12 t-shirts recovered from Ms. Keen-Warren's apartment.<sup>5</sup>

On September 2, 2014, Detective McCann resent the evidence from the apartment to the FBI for microscopic hair and fiber testing and DNA analysis. *Id.* at 4. In 2016, the FBI analyzed all the fibers collected from the apartment, including fibers from the t-shirts, the three pairs of shoes, the vacuum sweepings, and the miscellaneous fibers collected from unknown locations in the apartment. Ex. 8, Friedman FBI Laboratory Report. The miscellaneous fibers purportedly recovered from the apartment are not the same fibers collected by Sergeant Free from the 12 t-shirts. Ex. 11, Free Supp. at 8-9. The fibers that Sergeant Free collected from the t-shirts during the search of the apartment are inconsistent with any of the other fibers recovered in this case. *C.f.* Ex. 12, Deedrick FBI Laboratory Report at 3; Ex. 8, Friedman FBI Laboratory Report at 3.

On March 10, 2016, after completing his microscopic analysis of the fibers, FBI Analyst Joshua Friedman concluded that, of all the fibers collected from the apartment, a *single fiber* from the apartment—the miscellaneous debris fiber (Q23)—exhibited the same microscopic characteristics as the mysterious balloon ribbon fiber (FBI Lab Item 55), the fibers that were purportedly recovered from the Winn Dixie LeBaron (Q3, Q11, Q13), and the fibers from the clown wig the detectives purchased from Spotlight (Q27).<sup>6</sup> Ex. 8, Friedman FBI Laboratory Report at 3.

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<sup>5</sup> Sowards claims that the eight missing t-shirts are in a separate bag, but when Ms. Keen-Warren looked for the t-shirts when reviewing the evidence at the Evidence Unit, the shirts were not there.

<sup>6</sup> Throughout its prosecution of Ms. Keen-Warren, the State has argued that fibers from Ms. Keen-Warren's boots were consistent with originating from the same source as the fiber from the balloon ribbon, fibers in the white LeBaron, and the wig purchased by the detectives. *See, e.g.*, State's Resp. to Def.'s Mot. to Set Conditions of Pretrial Release (Feb. 8, 2021). This is false.

Mr. Friedman also concluded that the comingled sneaker fibers (Q28-Q31) exhibited the same microscopic characteristics as the carpet sample from the Winn Dixie LeBaron (K5). *Id.* However, during his deposition, Mr. Friedman acknowledged the problem with Sergeant Free's packaging of the sneakers in 1990: "I'll say it is not my preferred packaging. I can still do the analysis. It just limits my ability to say where fibers came from on specific items." Ex. 13, Friedman Dep. 115.

### **III. The Case of the Internal Audit and the Open Evidence Bags**

In 1999, the Palm Beach County Internal Audit Committee (Audit Committee) conducted an internal audit of PBSO's Evidence Unit to determine if PBSO complied with the standard operating procedures and "to ensure that evidence and property was safeguarded and properly accounted for." Exhibit 15, Internal Audit Rep., PBSO Evidence Room Controls 99-09, at 2 (Nov. 10, 1999). On November 10, 1999, the Audit Committee issued an Internal Audit Report outlining several issues with the evidence unit, one of which was "evidence bags were not always sealed properly." *Id.* at 3. On February 10, 2000, PBSO issued an inter-office memorandum concurring with the Audit Committee's finding. *Id.* at 6. Both the Audit 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 Found in Sheriff's Evidence Procedures," which discussed the internal audit. Exhibit 16, Marc Caputo, *Errors Found in Sheriff's Evidence Procedure*, P.B. Post, Feb. 16, 2000, at 1B. The article referenced specific cases, including Ms. Keen-Warren's case, and additional information not included in the audit report summary. *Id.* at 1-2.

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 the evidence." *Id.* at 1.

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

Following Ms. Keen-Warren's arrest, she discovered this undisclosed audit. Ms. Keen-Warren 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 17, McCann Dep. (Part 1) 151-52 (June 26, 2019). She also denied any knowledge of the audit. *Id.* at 152.

On March 30, 2021, at the hearing on the Defendant's motion to set bond, Ms. Keen-Warren confronted Detective McCann with the internal audit report. Exhibit 18, Bond Hr'g Tr. 214-15. For the second time, Detective McCann denied having any knowledge of evidence tampering 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 19, McCann Dep. (Part 2) 49-50 (May 2, 2022).

On June 15, 2021, Ms. Keen-Warren deposed Mr. Edmondson. Exhibit 20, 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.<sup>7</sup> *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 the audit of Palm Beach County's largest law enforcement agency's evidence unit. *Id.*

On May 20, 2022, Ms. Keen-Warren deposed former State Attorney Barry Krischer. Exhibit 21, 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

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<sup>7</sup> Ms. Keen-Warren has since confirmed that the State Attorney's Office did not request a correction from The Palm Beach Post.

misquoted him. *Id.* at 5-6. Yet, later in the deposition, he acknowledged that Mr. Edmondson 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 Audit Committee 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 Audit Committee'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).

On December 21, 2022, and January 12, 2023, Ms. Keen-Warren deposed Barbara Caraballo, who worked as the Forensic Quality Assurance Manager for PBSO's Crime Laboratory from December 1999 to July 2016. Exhibit 22, Caraballo Dep. (Part 1) (Dec. 21, 2022); Exhibit 23, Caraballo Dep. (Part 2) (Jan. 12, 2023). While her knowledge of the audit is limited, Ms. Caraballo is the first person from PBSO or the SAO to acknowledge being aware of the audit. Ex. 22 at 19-21; Ex. 23 at 67. Ms. Caraballo explained her concern with open bags of evidence and contamination:

Mr. Rosenfeld: In your extensive experience, . . . should open bags of evidence alarm prosecutors?

Ms. Caraballo: They should be concerned.

Mr. Rosenfeld: And do open bags of evidence alarm you as a scientist and a quality-assurance manager?

Ms. Caraballo: They concern me.

. . . .

Mr. Rosenfeld: You had said though that after hearing about those problems --those issues -- that open bags of evidence "concern you"?

Ms. Caraballo: I said it's concerning, yes.

Mr. Rosenfeld: Why?

Ms. Caraballo: Well, evidence shouldn't be open. Evidence should be sealed properly and stored properly. It should have a chain of custody. Ah [sic], you want to be able to establish the provenance [sic] of that evidence. Where it's been. And you do want to show that items couldn't be lost or -- contaminated I guess is a word to use. And if you find a bag of evidence that does lead to those questions.

Ex. 22, Caraballo Dep. (Part 1) at 21-22; Ex. 23, Caraballo Dep. (Part 2) at 63.

#### **IV. The Case of the Comingled Evidence and the Open Evidence Bags: Part 2**

As outlined above, Detective Williams comingled evidence collected from Ms. Keen-Warren's apartment on May 30, 1990. Sergeant Free also comingled items, such as the sneakers and carpet samples, when he sent them to the FBI for further testing. *Supra* Part II. The packaging of the rest of the evidence in this case is equally problematic.

Open bags of evidence have been a recurring theme in this case beginning with the open bags of evidence discovered during the internal audit in 1999. Four years after the audit, bags of evidence remained unsealed in the Evidence Unit. On April 28, 2003, Sergeant William Springer assigned Detective Patrick Wright with reopening the investigation. Exhibit 24, Wright Supp. 46 at 1 (Sep. 22, 2003). On April 30, 2003, Detective Wright picked up 22 evidence submissions, i.e., evidence bags, from the Evidence Unit. *Id.* At the time, there were approximately 55 evidence submissions, which included everything from forensic evidence to cassette tapes. The 22 evidence bags he picked up contained cassette tapes. *Id.* Detective Wright states the following in his report: "It should be noted that none of the evidence bags had been sealed with evidence tape, with the exception of submission #0005, which is the communications center tape." *Id.*

While the evidence bags obtained by Detective Wright contained cassette tapes, it's significant (and horrifying) that 22 of the 55 evidence submissions were in open evidence bags. Detective Wright does not know if the other evidence bags—i.e., the bags containing the balloon ribbon, clown costume, forensic evidence, etc.—were properly sealed because, at the time, only



evidence custodians could physically go back to collect evidence. Exhibit 25, Wright Dep. 7 (July 21, 2020). At his deposition, Detective Wright discussed the open evidence bags:

Ms. Morse: According to your report, you went to take custody of some items that were in evidence to review and you noted that none of the evidence bags were sealed?

Detective Wright: That's correct. Um, and I was looking at that last night.

I simply don't know if that was protocol in 1990 when the -- when the homicide occurred. I wasn't even employed in law enforcement yet. So I -- it -- it -- wasn't that they weren't sealed and they were never sealed. I don't remember if they had ever been sealed. And, like I said, that might have been just an issue of that's the way they did it then. I have no idea.

*Id.* at 7-8.

After finishing his review of the evidence, Detective Wright sealed the evidence bags and returned them to the Evidence Unit. It is unclear whether any evidence custodians or any of the other detectives who worked on the case in 2003 located and sealed other open evidence bags.

From January 23, 2014, to August 29, 2014, Celynda Sowards inventoried some of the evidence submissions. Exhibit 26, FB Evid. Summ. Worksheet Form (Aug. 29, 2014). In her deposition, Sowards was reluctant to acknowledge the decrepit condition of the evidence she reviewed in this case, but her notes reflect at least some of the issues she observed:

Submission 37 – Clown Nose: “Some evidence seals appear torn.”

Submission 49 – Miscellaneous Items (from Winn Dixie LeBaron): “Some evidence tape coming loose.”

Submission 49E – Barcode Sticker: “One end open—not sealed.”

Submission 16 – Miscellaneous Items (from 1988 LeBaron): “Some holes in bag → age/wear?”

Submission 48E3 – Left Prowings (sneaker from apartment): “Mold?”

Submission 48K – “Vac.” Bag + Hair Like Fibers (hair and fibers from apartment):  
“Q23-Q26” “Ex. 6-1, 6-2, 6-3, 6-4” “Seals were present but bag is torn/ripped open.  
Will not inventory.”

Handwritten notes in blue ink on a worksheet. The top section, enclosed in a box, reads: "Plb 'vac.' bag + 48K- hair like fibers". The bottom section, also boxed, reads: "NIE 'Q23-Q26' 'Ex 6-1, 6-2, 6-3, 6-4' Seals were present but bag is torn / ripped open. Will not inventory."

*Figure 3 - Forensic Biology Evidence Summary Worksheet Form (Aug. 24, 2014)*

Submission 48G – Baggie of Slides + Debris (fibers from sneakers in apartment and fibers from carpet sample from Winn Dixie LeBaron): “Ziploc type (not sealed).”

Handwritten notes in blue ink on a worksheet. The top section, enclosed in a box, reads: "Plb baggie of 48G- slides + debris". The bottom section, also boxed, reads: "Plb = ziploc type (not sealed). See original item on page 8 evidence worksheet"

*Figure 4 - Forensic Biology Evidence Summary Worksheet Form (Aug. 24, 2014)*

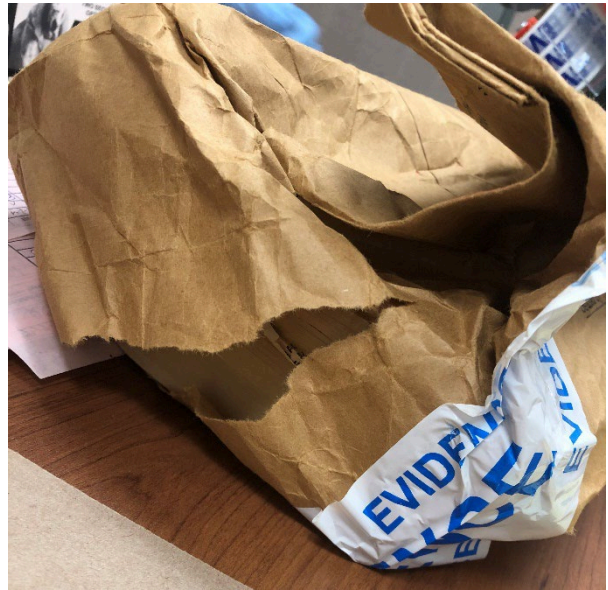
Submission 48F20 – Slide Box 48F20 (slides with victim’s hairs): “K1 K2” “open to verify.” “2 slides, 1 broken.”

Ex. 26, FB Evid. Summ. Worksheet Form, at 1, 2, 3, 7, 8, 11.

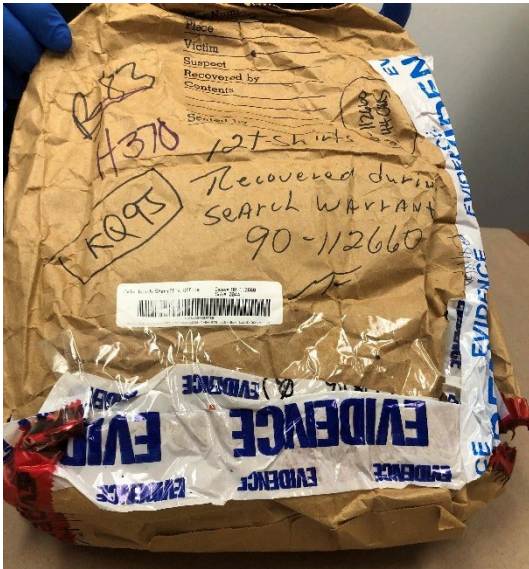
Ms. Keen-Warren went to view and photograph the evidence and evidence bags on four occasions: May 10, 2021, March 9, 2022, April 6, 2022, and April 21, 2022. The condition of the evidence bags was horrific. Bags were torn and had holes and broken seals—all things ripe for contamination. The following photographs are a small sampling of the evidence bags:



*Figure 5 - Sub. 0051 (May 10, 2021)  
(Jean Jacket)*



*Figure 6 - Sub. 0035 (May 10, 2021)  
(Phone Book)*

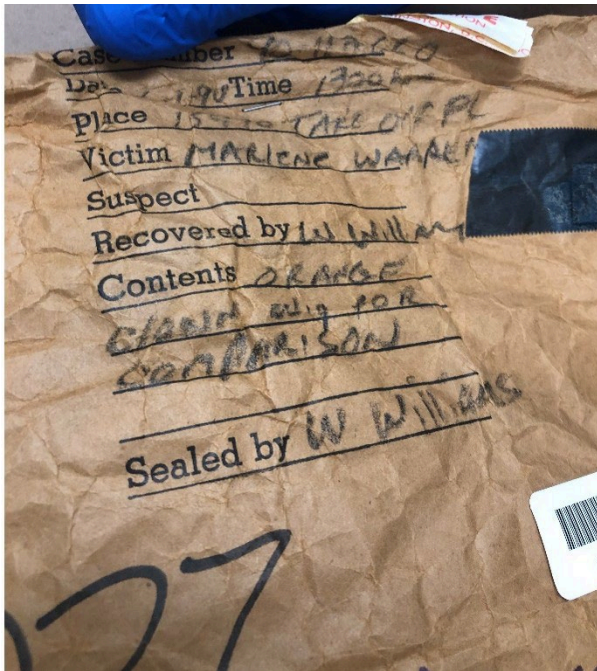


*Figure 7 - Sub. 0044 (May 21, 2021)  
(Items from Search Warrant)*



*Figure 8 - Sub. 0044 (May 21, 2021)  
(Items from Search Warrant)*





*Figure 9 - Sub. 0047 (May 21, 2021)  
(Clown Wig)*



*Figure 10 - Sub. 0047 (May 21, 2021)  
(Clown Wig)*



*Figure 11 - Sub. 0047 (May 21, 2021)  
(Clown Wig)*

Sure enough, the evidence bag containing the balloons and ribbons was also not properly sealed, exposing the evidence to further contamination:

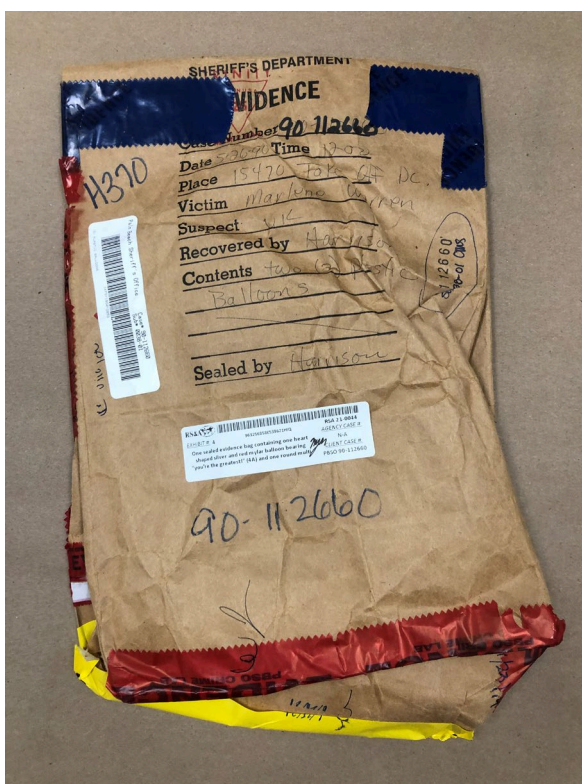


Figure 12 - Sub. 0038-01 (Apr. 6, 2022)  
(Balloons and Ribbons)

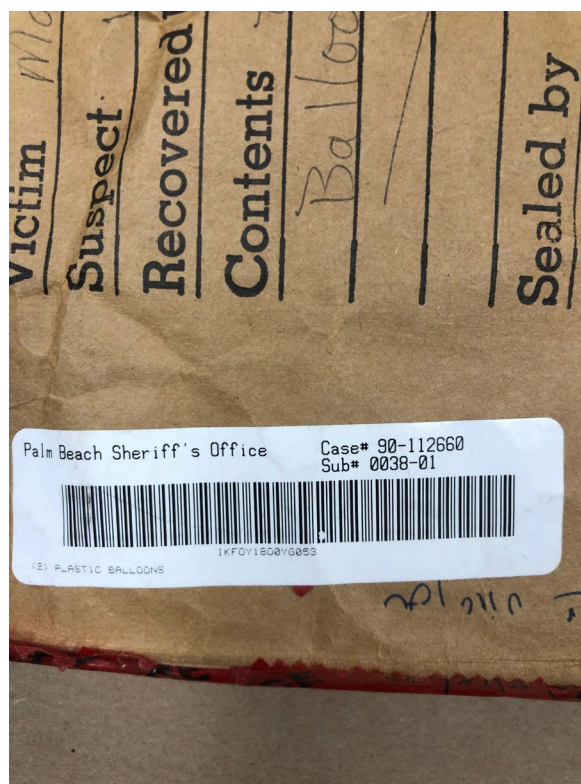


Figure 13 - Sub. 0038-01 (Apr. 6, 2022)  
(Balloons and Ribbons)



Figure 14 - Sub. 0038-01 (Apr. 6, 2022)  
(Balloons and Ribbons)

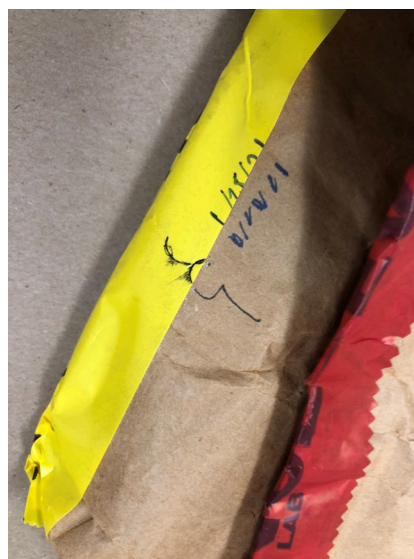


Figure 15 - Sub. 0038-01 (Apr. 6, 2022)  
(Balloons and Ribbons)

## ARGUMENT

When there is an indication of “probable tampering” with a piece of physical evidence, the party seeking to introduce the physical evidence must “establish a proper chain of custody or submit other evidence that tampering did not occur.” *Armstrong v. State*, 73 So. 3d 155, 171 (Fla. 2011). As such, when the state fails to account for a discrepancy within the chain of custody or submit other evidence that tampering did not occur, the evidence in question shall not be admitted. *Dodd v. State*, 537 So. 2d 626, 628 (Fla. 3d DCA 1988).

Courts have found “probable tampering” in cases where there are problems with the actual packaging of evidence and in cases where there are discrepancies in the contents of the packaging. In *Armstrong*, 73 So. 3d at 172, the Florida Supreme Court held that it was “certainly suspect and indicative of tampering” that two witnesses testified that either two or three bullet fragments were recovered and packaged, but only one fragment was contained inside the packaging. Similarly, a defendant established “probable tampering” where one witness testified that an initial bag of evidence that he packaged contained a nightgown *and* a bottle of lotion, but when that packaging was opened it contained only a nightgown. *Murray v. State (Murray I)*, 838 So. 2d 1073, 1083 (Fla. 2002).

In *Dodd*, 537 So. 2d at 627, one officer testified that he heat-sealed an evidence bag of cocaine “and marked the date and his initials on the outside of the bag,” but the chemist testified that the heat-sealed bag “showed no markings whatsoever.” The witnesses also testified to different weights of contraband. *Id.* The Third District Court of Appeal found that “the conflicting descriptions of the bag and the gross discrepancies in the weight and packaging details indicate probable tampering.” *Id.* at 628. Additionally, the appellate court found that “[i]t is plain that the contraband received by the crime lab was *not* in the same condition as was testified to by the officer

who seized the contraband. On this record we cannot tell whether the cocaine Dodd sold and the cocaine introduced at trial are one and the same.” *Id.*

These cases illustrate that showing “probable tampering” is not a high burden. If physical evidence is inadmissible due to an improper chain of custody, then testing done subsequent to that break in the chain of custody is also inadmissible. *Cf. Maddox v. State*, 414 So. 2d 22, 23 (Fla. 1st DCA 1982) (holding that chemist’s testimony was admissible even though actual drugs were not, because chemical testing was done prior to break in chain of custody).

#### **THE MYSTERIOUS FIBER ON THE BALLOON RIBBONS<sup>8</sup>**

On May 26, 1990, the lead crime scene investigator, Detective Harrison, collected the two balloons and ribbons from the crime scene. Before packaging the items, Detective Harrison visually inspected the items for trace evidence. He was looking for evidence related to a shooting committed by a person wearing a clown costume and clown wig. He maintains that he did not see a six-to-eight-inch wig-like fiber.

The following day, Latent Examiner Mullins opened the evidence bag containing the balloons and balloon ribbons. He visually inspected the balloons and balloon ribbons for trace evidence and latent prints, but he did not see a six-to-eight-inch wig-like fiber. He conducted extensive testing of the balloons for latent prints, which involved a laser, a superglue fuming cabinet, and black powder. During all this testing, he did not see a six-to-eight-inch wig-like fiber.

Perhaps even more remarkable is the period of time between when the evidence was initially packaged and opened as well as the number of people who had handled it. Between 1990 and 2014, before Detective McCann tasked Sowards with reviewing the evidence, at least 12

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<sup>8</sup> PBSO Submission # 0038-01-D, Possible Hair / fiber from the ribbon (FBI Lab Item 55, Debris from ribbon).



different people are documented as having handled the balloons and balloon ribbons. In the course of an investigation into a clown, not a single person saw a six-to-eight-inch wig-like fiber. And then in 2014, Sowards miraculously discovered a long fiber on the balloon ribbons, which was not there 24 years earlier.

It is clear the discrepancy presented by the evidence in the instant matter is significantly greater than that which has been illustrated in cases such as *Armstrong*, *Murray I*, and *Dobbs*. A miniscule number of tiny bullet fragments missing from the packaging in *Armstrong*, or the missing bottle of lotion in *Murray I*, pale in comparison to the six-to-eight-inch wig-like fiber found on the balloon ribbons *after* they had already been packaged into evidence.

In 1990, the fiber was not on the balloon ribbon. In 1999, the Audit Committee found open bags of evidence in this case. In 2003, Detective Wright noted that 22 of the 23 bags of evidence he checked out from the Evidence Unit were unsealed. In 2014, the fiber mysteriously appeared on the balloon ribbon.

It is possible that the packaging with the balloon ribbon was tampered with when the Audit Committee found open bags of evidence. It is possible that the packaging with the balloon ribbons was tampered with when Detective Wright found the unsealed bags of evidence. It is also possible that tampering occurred at some other time. But Ms. Keen-Warren is not required to prove *how* or *when* this tampering occurred. She is simply required to show probable tampering, and here, as in *Dobbs*, the ribbons received by Sowards were *not* in the same condition as was testified to by the crime scene investigator who seized the contraband.

Clearly, Ms. Keen-Warren has overcome her burden in demonstrating the likelihood of tampering, specifically, through the testimony of Detective Harrison and Examiner Mullins. The additional evidence of tampering—i.e., the internal audit (where it was established that there were



“several issues with the evidence unit, one of which was evidence bags were not always sealed properly”) and Detective Wright’s testimony about 22 open evidence bags—is not required for this Court to exclude the mysterious fiber, but it further demonstrates the issues that surrounded PBSO’s Evidence Unit. The recent photographs of the evidence bags are also not necessary for this Court to exclude the mysterious fiber, but they are indicative of PBSO’s continued recklessness in the handling of evidence in this case. Notably, the bag containing the clown wig—the probable source of the mysteriously manifesting fiber on the balloon string—remains open, as do the bags containing the balloon strings. Because the chain of custody in this case is as tangled as the ball of balloon ribbon, the mysterious balloon ribbon fiber (FBI Lab Item 55) should be excluded from evidence at trial.

#### **THE MISCELLANEOUS DEBRIS FIBER FROM THE SEARCH WARRANT<sup>9</sup>**

On May 30, 1990, Detective Williams executed a search warrant on Ms. Keen-Warren’s apartment and collected a variety of evidence, which he comingled by not properly separating and packaging on scene. Detective Williams listed the seized evidence and turned it over the Sergeant Free. It took Sergeant Free four days to separate and package the comingled evidence. For this reason alone, this Court should exclude all trace evidence collected by Detective Williams from Ms. Keen-Warren’s apartment because, from the outset, the trace evidence was probably tampered with and *not* in the same condition as it was when Detective Williams seized the evidence.

Of all of the evidence seized from the apartment, the miscellaneous debris fiber is the most problematic. Even if Detective Williams did package the miscellaneous fibers separately from the rest of the evidence, he still packaged the miscellaneous fibers together, which resulted in

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<sup>9</sup> PBSO Submission # 0048-F-17, slides “Q23 + Q27” (FBI Lab Item 39, TEU Secondary Evidence, Q23 Debris). Slide Q23 is the relevant slide from this evidence submission.

tampering. Additionally, Detective Williams failed to document or photograph where he found this mysterious fiber or any of the other miscellaneous hairs gathered from the apartment.

Detective Williams is now legally incompetent to testify and Sergeant Free is deceased, so the source of the miscellaneous debris fibers in the apartment (assuming it was ever in the apartment to begin with) remains unknown. Even if they were available to testify, there would be no way to identify the origin of the fiber in the apartment because they packaged the miscellaneous hairs and fibers together without any identifying information.

Detective Williams also collected 12 t-shirts, which he transferred to Sergeant Free. Sergeant Free analyzed and packaged the 12 t-shirts. PBSO subsequently lost 8 of the 12 t-shirts, which is very similar to the missing bottle of lotion in *Murray I*. This further establishes the probable tampering that occurred with the evidence seized from Ms. Keen-Warren's apartment.

When Sowards inventoried the evidence in 2014, she noted, in regard to the packaging with the miscellaneous fibers (including Q23), that "seals were present but bag is torn/ripped open." Again, the condition of this packaging establishes probable tampering, especially when considered in conjunction with the history of open and unsealed evidence in this case.

All of the evidence seized from Ms. Keen-Warren's apartment should be excluded because PBSO comingled the evidence from the outset while collecting the evidence. If this Court finds that all of the evidence from the apartment should not be excluded, then this Court should exclude the miscellaneous debris fiber. There is not a single witness for the prosecution who can testify to the origin of this fiber, which is further complicated by Detective Williams packaging this fiber with other unidentified hairs and fibers. The problem cannot be cured by photographs or documentation because Detective Williams failed to do either. It is impossible to determine the provenance of these fibers. Accordingly, all evidence seized from Ms. Keen-Warren's apartment

should be excluded as evidence at trial. At the very least, the debris fiber, including Q23, should be excluded from evidence at trial.

#### **THE SNEAKER FIBERS<sup>10</sup>**

The fibers allegedly found on two of the three pairs of sneakers recovered by Detective Williams are equally problematic. When he collected the three pairs of sneakers, he did not photograph or document finding any fibers on the sneakers, and when Sergeant Free packaged the three pairs of sneakers into one bag, he did not photograph or document finding any fibers. Additionally, in 1990, when the FBI recovered the sneakers, the bag contained loose debris. Thus, probable tampering occurred from the outset when PBSO packaged the evidence. Indeed, unless Ms. Keen-Warren was wearing two pairs of sneakers at the same time, according to the State's theory of the case, the "same" fibers should not be on two pairs of sneakers.

When Sowards inventoried the evidence in 2014, she noted that the baggie of slides and debris from the sneakers in the apartment and fibers from carpet samples from the Winn Dixie LeBaron were in an unsealed, Ziploc-type bag. This packaging establishes probable tampering, especially when considered in conjunction with the history of unsealed evidence in this case. Mr. Friedman conceded during his deposition that he could analyze the fibers, but based on the packaging, his ability to identify the possible source of the fibers is compromised. Needless to say, this all establishes probable tampering, and all evidence of the sneaker fibers should be excluded from evidence at trial.

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<sup>10</sup> PBSO Submission # 0048-G-04, 2 slides "Q28-Q29" (FBI Lab Item 42, TEU Secondary Evidence from Q28-Q29 Sneakers); and PBSO Submission # 0048-G-05, 2 slides "Q30-Q31" (FBI Lab Item 42, TEU Secondary Evidence from Q30-Q31 Sneakers).

**WHEREFORE**, the Defendant respectfully requests that this Honorable Court exclude the evidence of the balloon ribbon fiber, the search warrant evidence, the debris fiber, and the sneaker fibers, as well as the results of biological testing of those items.

Respectfully submitted,

/s/ Greg Rosenfeld

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### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by e-service to Reid Scott, Assistant State Attorney, at RScott@sa15.org; Aleathea McRoberts, Assistant State Attorney, at AMcRoberts@sa15.org; Amy Morse, Esq., Attorney for the Defendant, at Amy@MorseLegal.com; and Jesse W. Isom, Esq., Attorney for the Defendant, at Jesse@RosenfeldLegal.com, on this 18th day of February, 2023.

/s/ Greg Rosenfeld

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