

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

**MOTION IN LIMINE TO ADMIT
EDWARD BAHR'S OFFER TO TALK IF THE LEAD DETECTIVE WOULD
"PROMISE HIM THAT HE WOULD NOT GET THE ELECTRIC CHAIR"
AND OTHER EVIDENCE OF THIRD-PARTY CULPABILITY**

The Defendant, Sheila Keen-Warren, moves this Court for an order permitting her to admit as substantive evidence at trial certain out-of-court statements and other evidence related to third-party culpability in the murder of Marlene Warren. The statements and corroborating evidence constitute exculpatory evidence necessary to present Sheila Keen-Warren's defense thus, even where the Florida Evidence Code might otherwise counsel exclusion, due process requires their admission. *See Chambers v. Mississippi*, 410 U.S. 284 (1973); *Bearden v. State*, 161 So. 3d 1257 (Fla. 2015); Art. I, §§ 9, 16, Fla. Const.; U.S. Const. amend. XIV; §§ 90.803(18)(d), 90.804(2)(c), Fla. Stat. In support, Ms. Keen-Warren offers the following:

PRELIMINARY STATEMENT

*Bahr then stated to me, that he would tell me everything he knows concerning this if I could promise him that he would **not get the electric chair**.*

- Detective Bill Williams notes from Edward Bahr interview, October 4, 1991.¹

¹ Williams Supp. Rep. 33, at10.

The only way for Sheila Keen-Warren to receive a fair trial is for the jury to hear evidence that another person, Edward Bahr, confessed to dressing up like a clown and murdering Marlene Warren. This Court has inherent authority to address evidentiary issues such as this pretrial to avoid unnecessary delay mid-trial or risk of mistrial. *See Fischman v. Suen*, 672 So. 2d 644 (Fla. 4th DCA 1996). It is essential for Sheila Keen-Warren's defense that she be permitted to admit at trial evidence that Edward Bahr made statements confessing to the murder. The jury should hear the recording of Jeffrey Libby's account of Bahr's confession to the murder. The jury should learn that Detective Williams confirmed details of the confession, including that Bahr was associated with the Outlaws motorcycle club and that Bahr lived at the Palm Beach County address that Bahr told to Libby. The jury should hear that in 1991 Bahr did not deny that he confessed to Libby, nor did he agree with the detective's suggestion that he had merely been falsely claiming responsibility for a crime he did not commit to impress Libby. Instead, Bahr offered to talk as long as Detective Williams could promise that he would not receive the electric chair for what he had done. In order to present her defense at trial, Ms. Keen-Warren should be permitted to introduce all these details and corroborating evidence, even if Bahr now denies committing the murder.

Sheila Keen-Warren seeks to admit at trial 1) Detective Williams's report of Bahr's inculpatory comments during his interview in 1991; 2) the 1991 audio recording of Jeffrey Libby's account of Bahr's confession; and, 3) portions of Bahr's 2021 sworn interview and 2022 deposition that corroborate his confessions. Finally, Ms. Keen-Warren seeks to call Edward Bahr as a witness to testify about his confessions and details that corroborate those confessions. Admitting these out-of-court statements and records would offset some of the prejudice Sheila Keen-Warren's defense

has suffered due to the approximately 30-year delay in filing charges.²

EDWARD BAHR'S CONFESSIONS TO THE MURDER OF MARLENE WARREN

The following factual background summarizes the evidence most relevant to the admissibility of Edward Bahr's confessions:

I. 8/23/1991: Williams receives Bahr tip and begins initial investigation.

On August 23, 1991, Detective Williams received a tip from a detective in Maine that a prisoner had confessed to another prisoner that he murdered a woman in Wellington, Florida. Exhibit 1, Williams Supp. Rep. 31, at 11. The confessing prisoner was Edward Joseph Bahr, III. *Id.* The Palm Beach County Sheriff's Office (PBSO) confirmed that Bahr was from Florida. *Id.*

Bahr told the other prisoner several details that matched the Marlene Warren murder. *Id.* Bahr said he dressed up as a clown and shot the woman, that her husband owned a used car lot named Bargain Motors, that a young male had come out of one of the rooms right after the shooting. *Id.* Bahr told the other prisoner that a "female biker type" got the clown costume from the Spotlight costume shop in West Palm Beach. *Id.*

In a follow up call with the Maine detective, Williams was told that Bahr said he was hired by the husband of the murder victim during a meeting at the Mermaid bar. *Id.* at 12. Bahr also told the other prisoner that he was living at 3804 Patio Court at that time. *Id.* at 13.

After receiving the tip, Williams confirmed from PBSO computer records that Bahr had been in the Palm Beach County area from 1986 to 1991. *Id.* at 11. His last known address was at 3804 Patio Court in Lake Worth. *Id.* at 12. Bahr was not incarcerated at the time of Marlene Warren's murder. *Id.* According to information received by PBSO, Bahr associated with the

² See Defendant's Motion to Dismiss for Preindictment Delay [D.E. No. pending].

Outlaw motorcycle club and was known to brag about committing a murder in the Ft. Lauderdale or Metro Dade area. *Id.*

II. 10/04/1991: Williams interviews Libby.

On October 4, 1991, Detective Williams traveled to Maine to investigate Bahr's confession. Exhibit 2, Williams Supp. Rep. No. 33, at 8. At the Maine State Prison in Thomaston, Maine, he met with Jeffrey L. Libby, the prisoner to whom Bahr had confessed. *Id.* at 8-10. During a sworn, recorded interview, Libby recounted what Bahr had told him about his role in the clown murder case. *Id.*

Libby said Bahr was brought up to the segregation unit where he was held around July 17, 1991. Exhibit 3, Libby Interview Tr. at 6:22-25. Although he and Bahr were held in separate cells, they managed to communicate through their locked doors. *Id.* at 7:1-11. Bahr first talked about his involvement in the clown case on August 27 or 28. *Id.* at 7:12-15.

Bahr told Libby that the murder was the "biggest thing" he had ever done. *Id.* at 8:16-17. According to Libby, Bahr said he was hired to dress up as a clown and kill a woman in Wellington:

... a year, a year and a half ago, he was hired as a hitman to kill a woman in the Wellington area in West Palm Florida, and he stated that in broad daylight he dressed up as a clown, then he went up to this residence where this woman was living and had knocked on the door and said delivery, and she opened the door, he pointed a gun to her face and said, ha-ha, and shot her in the face. He said after he shot her, he saw a male figure running out of the other room. He said he was approximately 20 and 22. At this point he stated also that this guy that hired him had a stepson, and that the step son was to inherit from his mother. At this point he told me that the costume that he bought was purchased by a girl who was associated with the Outlaw association, and that she went into Spotlight Costumes, and that was located off US1, Dixie Highway in West Palm, and had purchased a clown outfit, and that the clown hair was green. He said that - - he said that the suit was never returned, and that the letters on top of the store were orange in color. At this point he went on to say that the guy that hired him ran Bargain Motors. . . . He said that approximately two weeks before the hit, this guy had came to Mermaid Bar in West Palm and was looking for a hitman. Ed stated that one of his friends, associates, whatever you want to call him, escorted Ed back to the bar where he

was behind a closed door, and Ed then stated that this guy had offered him a substantial amount to kill his wife. He said he wanted – he wanted his wife dead because . . . she was divorcing him (Inaudible) and she was to take over the car dealership. At this point Eddie said that he received one half of the substantial amount. I tried to get the amount out of him, but he wouldn't tell me. He said he did receive one half of the amount the week prior to the hit and the other half after the hit was completed. He said that the car that was used from Bargain Motors, and that it was lent to him by the same guy that hired him. I tried to get the make of the car out of him. He wouldn't tell me that. At this point he told me that Norman Reisenger³ [sic] – a guy by the name Norman Reisenger [sic] was doing the driving for him. He said he did the hit in broad daylight because he thought that nobody would think that was looking conspicuous in any way, nobody could suspect anything. . . . can't be positive . . . think he said the package was a telegram . . . can't be positive if he said a telegram or flowers.

Id. at 8:22-10:25.

During the interview, Libby sometimes referred to notes that he wrote to help him remember what Bahr was telling him. *Id.* at 11:1-3, 6. Libby allowed Williams to make a copy of his notes, which the detective transcribed in his report:

Ed stated that about one to one a half years ago, he was hired as a hitman to kill a woman who lived in the Willington [sic] community in West Palm Florida. Ed sated in broad daylight he dressed as a clown. Then approached the door of the residence, knocked, said delivery. She opened the door Ed said ha ha. Pointed the pistol at her face and killed her. Ed stated after he shot the woman, he saw a male figure run out of the other rooms which was in his twenties or so. Ed stated that the guy had a step-son and that he was to inherit from his mother. Ed stated that he had a girl from the Outlaw Association go into Spotlight Costumes on U.S. route number one, Dixie Highway in West Palm and purchase a clown outfit. He said the clown hat hair was green in color and that the outfit was never returned. Ed stated that the letters on the top of the store area was orange in color.

Ed stated he was hired by a guy who ran Bargain Motors in West Palm. He said two weeks prior to the hit a guy had came to the Mermaide [sic] Bar in West Palm, looking to hire a hitman. Ed stated an associate of his escorted this guy to the back

³ Norman "Spider" Risinger was a member of the Outlaws motorcycle gang who in 1991 was on the FBI most wanted list in connection with murders in Broward County. *See* Maria Elena Fernandez, *13-year hunt ends in arrest extradition sought for biker wanted in deaths of 3 rivals*, Sun-Sentinel (Jun. 9, 1991), 1991 WLNR 4052985; *see also* Kevin Davis, *Wrong man nabbed in biker murders*, Sun-Sentinel (Jun. 11, 1991), 1991 WLNR 4053362.

of the bar behind closed doors where Ed was at the time. Ed stated this guy offered him a substantial amount of money to kill his wife and that he wanted her dead because she was getting a divorce right off and was going to take over the car dealership. Ed said he was paid half the amount one week prior and the other half when the hit was complete. Ed stated the car he used came from Bargain Motors and Norman Righsinger [sic] was doing the driving. Ed stated he did the hit in broad daylight so nothing would look suspicious. Ed stated that he threw the gun out of the passengers's side shortly after leaving the scene and that the gun landed in flower garden or near flowers. Was living at 3804 Patio Court at the time. Ed stated that he knew police could place him in the area. . . .

Ex. 2 at 9; *see also* Exhibit 4, Libby Notes.

Libby said no one had paid him or made any deals with him in exchange for his cooperation and that he did not want any special treatment. Ex. 3 at 13:2-6, 7-9, 13-14. Libby said he came forward because he was “a righteous person, a just person, and I’m trying to do the right thing, basically show a human interest and concern and to do something positive in the course and in the interest of justice.” *Id.* at 13:14-19.

Libby said he was afraid that the Outlaws would put a hit out on him if he were to testify. *Id.* at 13:20-14:5. Bahr was “not in the Outlaw association, he said, he works for the Outlaw association.” *Id.* at 15:20-21.

Libby said he had seen nothing on TV about Marlene Warren’s murder. *Id.* at 18:17-24. There were no TVs in segregation where he was held. *Id.* Bahr told Libby that he had bragged about the murder to two deputy sheriffs in the Cumberland County Jail: Heidi Bigolo and Cheryl Corbin. Ex. 2 at 12.

III. 10/04/1991: Williams meets with Bahr.

Following his interview with Libby, Detective Williams had Bahr brought out from the segregation unit for an interview. Ex. 2 at 10-12. Unlike with Libby, Williams chose not to record his interview with Bahr or swear him in. *Id.* at 12. Before questioning Bahr, Williams read him his

Miranda rights and Bahr signed a written waiver. *Id.* at 10.

After some small talk about Bahr's work history, which involved working in used car lots, but not for Bargain Motors, Detective Williams switched gears. *Id.* Williams told Bahr he was a Palm Beach County detective assigned to the Marlene Warren investigation and that he was up there in Maine because he had heard that Bahr had been bragging about committing the murder.

Id. Williams then "offered him an out":

I then offered Bahr an out by stating that if he was just up here in prison bragging about something he didn't do to impress jail guards and other inmates to tell me now and that I would not waste my time talking to him. Bahr declined to answer me at this time and did not take advantage of the out that I had offered.

Id. Rather than tell Williams that he had just made up his story about dressing as a clown and murdering a woman in Wellington, Bahr said nothing. He did not deny that he committed the murder. He did not deny that he told jail guards and other inmates that he committed the murder. He said nothing.

Then, Bahr spoke. Bahr told Williams that "he would tell him everything he knows" concerning the death of Marlene Warren if Williams "could promise him he would not get the electric chair." *Id.* When Detective Williams told Bahr that he could not promise him that, Bahr requested to speak to an attorney before answering any more questions. *Id.*

Detective Williams first reached out to Bahr's attorney in Maine, who claimed that he no longer represented Bahr. *Id.* at 10-11. Williams then allowed Bahr to meet privately with an inmate legal advocate. *Id.* at 11. When their meeting concluded, Bahr told Williams he still wanted to speak with an attorney. *Id.* Williams then contacted the Palm Beach County Public Defender's Office. *Id.* An attorney from that office called back and spoke with Bahr, who then invoked his right to remain silent and right to counsel. *Id.* at 11-12.

While they waited for the public defender to call them back, Bahr talked to Williams about other things. *Id.* at 11. Bahr boasted of how easily he could disguise his tattoos by covering them up with makeup. *Id.* Bahr said he had covered up his tattoos in that way when he committed the robbery in Maine for which he was serving his prison sentence. *Id.* Bahr said when he has done this in the past “sometimes it causes confusion when the victims try to identify him and see that big spider web tattoo on his face.” *Id.* Bahr asked Williams about his service weapon and said he likes to use a .357 loaded with .38 caliber ammunition because “he can shoot quicker and has less recoil.” *Id.*

IV. 1991: Williams conducts follow-up investigation.

Before leaving Maine, Detective Williams confirmed that Cheryl Corbin and Heidi Bigolo were employed as corrections deputies at the Cumberland County Jail. Ex. 2 at 12. Williams interviewed Corbin, who confirmed that Bahr had bragged about killing a woman in Florida and in Virginia. *Id.* at 13. Bigolo was unavailable because she was on bereavement leave. *Id.* Upon returning to Florida, Williams contacted Bigolo by telephone. Exhibit 5, Williams Supp. Rep. No. 34, at 6. Bigolo also remembered Bahr bragging about a murder in Florida. *Id.* at 6-7

Williams followed up on information Bahr and Libby provided. He confirmed that Bahr was in Palm Beach County during the relevant period because Bahr coached a t-ball team for the Greenacres City little league. *Id.* at 18. The season ran from February through June. *Id.*

V. 1993: Bahr confesses to Connecticut cellmate.

On February 3, 1993, Ken Anderson of the Connecticut Attorney General’s Office contacted Detective Williams about an inmate named Edward Bahr, who was being held in an adult correctional institution in Connecticut. Exhibit 6, Williams Supp. Rep. 40, at 18-19. Anderson said that a cellmate of Bahr had “come forward and stated that he had been hired to kill

someone wearing [a] clown suit in West Palm Beach, Florida.” *Id.* at 18. Anderson kept the identity of the cellmate anonymous, but he confirmed that it was not Libby. *Id.* Anderson was unaware that detectives in Palm Beach County already knew that Bahr had confessed to the murder. *Id.* at 19.

VI. 5/05/2021: McCann interviews Bahr.

After she was deposed, Detective McCann was directed to seek out Bahr for an interview. Exhibit 7, McCann Supp. Rep. 64, 7. During her deposition, McCann had claimed Bahr was dead, and admitted that she had not investigated him as a suspect during her cold case investigation.⁴

On May 5, 2021, McCann and SAO Investigator William Hoover interviewed Bahr in Texas. During his sworn, recorded interview, Bahr said he recalled being interviewed by detectives in 1992 or 1993. Exhibit 8, Bahr Interview Tr. 31:18-32:24. Bahr said he knew Libby when they were in prison together. *Id.* at 14:15-16. The two men were in cells next to one another in solitary. *Id.* at 17:25-18:7. He admitted talking to Libby about the “clown homicide.” *Id.* at 20:11-14; 23:9-11. He claimed, however, that he had seen news about the case on TV. *Id.* at 20:15-21. He was familiar with the Spotlight Capezio because he had driven by it many times, but then claimed the name did not sound familiar. *Id.* at 29:16-25; *see also* 21:21-22:3. Bahr denied telling Libby he committed the murder. *Id.* at 29:11-15.

⁴ The State’s discovery violations related to Bahr were presented in Ms. Keen-Warren’s Memorandum in Support of Defendant’s Motion to Continue Trial, Motion to Extend Deadlines, and Motion to Compel Discovery and Comply with Discovery Rules. [D.E. No. 667] (attached as Exhibit 9). Efforts by Detective McCann and the State to interview Bahr and compel his testimony with a promise of immunity were addressed in Defendant’s Third Motion to Compel the State to Produce *Brady* Information [D.E. No. 845] and exhibits submitted in support [D.E. No. 846] and in Defendant’s Motion to Compel the State to Comply with Discovery and List Witnesses [D.E. No. 734].

Bahr said he used to hang out at the Mermaid Bar, an Outlaws hangout. *Id.* at 10:8-14; 11:7-10. Bahr said he was not a member of the Outlaws, but he just associated with them and hung out with them. *Id.* at 11:11-20. He claimed that he only knew of Norman Risinger and did not know him personally. *Id.* at 12:18-14:5.

McCann and Hoover did not question Bahr about his confessions to his cellmate in Connecticut in 1993 or his other confessions in 1991.

VII. 9/24/2022: Bahr appears for deposition.

On September 24, 2022, Edward Bahr appeared for a defense deposition by Zoom from Tennessee, where he was relocating from Texas. Bahr Dep. 5:1-14. Bahr said he lived in Palm Beach County from about 1986 to 1991. *Id.* at 14:10-17. One of his addresses during that time was at 3804 Patio Court in Lake Worth. *Id.* at 16:25-17:2.

Although not a member, he hung out with the Outlaw motorcycle club. *Id.* at 14:19-21; *see also* 14:22-24 (“It counted as the Outlaws.”). One of the places he hung with Outlaws and other bikers was at the Mermaid Lounge. *Id.* at 15:4-7. He knew someone named Norman Risinger, who was a member of the Outlaws. *Id.* at 17:6-12.

Bahr admitted that he remembered speaking with Libby when they were both held in solitary at the Maine State Prison. *Id.* at 18:3-12; 19:4-11. Even though they were in separate cells, Bahr and Libby could speak to one another. *Id.* at 19:14-16. Libby’s cell was next to Bahr’s. *Id.* at 19:22-23.

Bahr denied telling Libby that he murdered Marlene Warren. *Id.* at 20:2-4. But he admitted that he talked with Libby and told him details about the case, claiming those details came from TV and newspapers. *Id.* at 20:18-20; 22:16-19. There was, however, no TV in solitary. *Id.* at 22:8-15. The details Bahr admits telling Libby included the clown costume and wig. *Id.* at 23:16-18. He

denied telling Libby his address on Patio Court, but could offer no other explanation for how Libby would have gotten that information while the two men were in solitary. *Id.* at 25:10-17.

Similarly, Bahr recalled meeting in October 1991 with a detective who was investigating the murder of Marlene Warren. *Id.* at 25:18-21; 26:1-3. But he denied telling the detective that he liked to use .357s loaded with .38 caliber ammunition, that he concealed his tattoos with makeup during his crimes, or many other details of his statement memorialized by Detective Williams. *Id.* at 26-29. He admitted that he used to have a spider web tattoo on his face. *Id.* at 90.

Bahr also claimed he could not recall being in prison in Connecticut in 1993 or telling a cellmate there that he was hired to dress up like a clown and murder a woman. *Id.* at 37-38. Bahr said, regarding the Marlene Warren murder, “I don’t think anybody knows who did it.” 87:4-5, 87:21-88:4.

SHEILA KEEN-WARREN’S RIGHT TO PRESENT A DEFENSE

[W]here constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice.

Chambers v. Mississippi, 410 U.S. 284, 302 (1973).

If a confession by a third party is critical evidence that should have been admitted in evidence to protect the constitutional rights of the accused, the particular reason for excluding it under state law will make little difference.

Bearden v. State, 161 So. 3d 1257, 1265 (Fla. 2015).

A fundamental principle of the American system of criminal justice is that the accused must be given “a meaningful opportunity to present a complete defense.” *See, e.g., Crane v. Kentucky*, 476 U.S. 683, 690 (identifying the Fourteenth Amendment’s Due Process Clause and provisions of the Sixth Amendment as the origin of the right); *Chambers*, 410 U.S. at 294 (“The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity

to defend against the State's accusations.). "Few rights are more fundamental than that of an accused to present witnesses in his own defense." *Chambers*, 410 U.S. at 302; *see also Washington v. Texas*, 388 U.S. 14, 19 (1967). "If there is any possibility of a tendency of evidence to create a reasonable doubt, the rules of evidence are usually construed to allow for its admissibility." *Vannier v. State*, 714 So. 2d 470, 472 (Fla. 4th DCA 1998). Yet at times the rules of evidence themselves must yield to an accused's right to present a defense. *See, e.g., Chambers*, 410 U.S. 284, 302 (1973); *Bearden*, 161 So. 3d at 1265. The facts here present one of those times.

The U.S. Supreme Court in *Chambers v. Mississippi* considered the circumstances under which rules of evidence must yield to considerations of due process to ensure that a defendant has a chance to effectively present a defense at trial. *Chambers* was on trial for shooting a police officer. 410 U.S. at 285-87. The state's proof at trial excluded the theory that more than one person participated in the murder. *Id.* at 297. *Chambers* called as a witness a man, named McDonald, who had confessed to committing the murder himself. *Id.* at 291. After the state's questioning revealed that McDonald had since recanted, *Chambers* sought to call him as an adverse witness. *Id.* at 291-92. Relying on a Mississippi rule of evidence that prohibited a party from impeaching its own witness, the trial court precluded *Chambers* from recalling McDonald and cross-examining him about the confession. *Id.* The U.S. Supreme Court held that the trial court violated *Chambers*'s rights under the due process clause of the Fourteenth Amendment. *Id.* at 303. The Court noted that "[t]he right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." *Id.* at 294-95.

In the decades since *Chambers*, the U.S. Supreme Court has applied the *Chambers* rule to affirm a criminal defendant's right to introduce a hearsay confession of a third-party, despite state law to the contrary. Writing for a unanimous court in *Holmes v. South Carolina*, 547 U.S. 319,

331 (2006), Justice Alito held that a South Carolina evidence rule (excluding evidence of third party guilt if the prosecution has introduced forensic evidence that, if believed, strongly supports a guilty verdict) violated a defendant's right to present a defense. The alleged confessor in that case had made a pretrial statement denying that he ever made the incriminatory statements and providing an alibi for the time of the assault. *Id.* at 323; *see also Green v. Georgia*, 442 U.S. 95, 97 (1979) (citing *Chambers* in support of its conclusion that the trial court violated Green's due process rights by precluding him from introducing during the penalty phase of his capital murder trial the former testimony of a witness at his codefendant's trial during which the witness testified that the codefendant committed the murder after sending Green away on an errand).

Florida courts have also applied the *Chambers* rule, treating the factors analyzed by the U.S. Supreme Court in that decision as a four-factor test:⁵

- 1) The statement is made spontaneously to a close acquaintance shortly after the events;
- 2) The statement is corroborated by some other evidence in the case;
- 3) The statement is in a very real sense self-incriminatory and unquestionably against the purported confessor's penal interest; and,
- 4) If the veracity of the hearsay statement is in dispute, the purported confessor is present at trial to testify and be cross-examined.

Macauley v. State, 306 So. 3d 196, 204 (Fla. 3d DCA 2020) (citing *Chambers*, 410 U.S. at 300-01).

⁵ But "*Chambers* does not necessarily establish an immutable checklist of four requirements. Instead, the primary consideration in determining admissibility is whether the statement bears sufficient indicia of *reliability*." *Bearden*, 161 So. 3d at 1265 n.3 (quoting with approval *Bearden* 62 So. 3d at 661) (emphasis in original).

In *Bearden v. State*, 161 So. 3d 1257, 1259 (Fla. 2015), the Florida Supreme Court reviewed *Bearden v. State*, 62 So. 3d 656 (Fla. 2d DCA 2011), which expressly and directly conflicted with *DeWolfe v. State*, 62 So. 3d 1142 (Fla. 1st DCA 2011). The question of law at issue was whether the judge or jury is charged with determining the credibility of an in-court witness testifying as to an out-of-court statement against penal interest made by a third party. *Id.* The Court quashed the Second District's decision and approved *DeWolfe*. *Id.*

At his trial for murder, *Bearden* called Ray Allen Brown as a witness. *Id.* at 1260. Brown had confessed to an acquaintance, Tyler, to being in the car when the victim was murdered, contrary to a statement he gave police claiming that *Bearden* drove away in the car, leaving Brown at home. *Id.* at 1260-61. Brown's statement to Tyler implicated another passenger in the car, Brown's cousin, and exonerated *Bearden*. *Id.* at 1261. The trial court applied the *Chambers* four-factor test and ruled that Tyler's testimony was inadmissible. *Id.* The court found that *Bearden* satisfied the first and fourth factors, but not the second and third. *Id.* The trial court speculated that

Any person in Polk County in the last year and a half could have surmised that information by reading the extensive press coverage on this case, and certainly could have picked it up from listening to television coverage of this case.

Id. at 1263. The trial court also expressed concern that Tyler waited until *Bearden*'s trial had begun to tell anyone about Brown's statements. *Id.* at 1263. *Bearden* was not permitted to present Tyler's testimony or question Brown about his comments to Tyler. *Id.* at 1261.

On appeal, the Second District Court of Appeal echoed the trial court's concerns about Tyler's credibility. *Id.* at 1262. The Florida Supreme Court, however, approved the First District Court of Appeal's analysis in *DeWolfe*, in which it held that it is for the jury and not the judge to determine the credibility of an in-court witness who testifies about an out-of-court declaration against penal interest. The Florida Supreme Court agreed with the *DeWolfe* decision and *Bearden*'s

argument that the trial court improperly infringed on the role of the jury in evaluating Tyler's credibility. *Id.* at 1263; *see also Carpenter v. State*, 785 So. 2d 1182, 1203 (Fla. 2001). The trial court incorrectly focused on Tyler's credibility, but the proper focus for the *Chambers* analysis was the reliability of the hearsay statements themselves. *Id.* at 1264. The Florida Supreme Court also held that the trial court erred in how it evaluated the fourth *Chambers* factor – corroboration – because it ignored Bearden's own testimony, which was sufficient corroboration to admit the statement under *Chambers*. *Id.* at 1257, 1266-67; *see also Larry v. State*, 241 So. 3d 246, 248 (Fla. 2d DCA 2018) (considering statement of accused as one factor corroborating third party statement.).

The *Bearden* court also concluded that the trial court erred in excluding testimony from the alleged confessor. *Bearden*, 161 So. 3d at 1267. Bearden had called the confessor as a witness. After the confessor recanted his confession on cross-examination, Bearden attempted to recall him to cross-examine the confessor about his confession. *Id.* The trial court, relying on *Morton v. State*, 689 So. 2d 259 (Fla.1997), barred Bearden from recalling the confessor. *Id.* The Florida Supreme Court agreed that recalling the witness in the manner Bearden intended violated the rule against calling a witness solely for the purpose of impeachment. *Id.* Yet, in light of *Chambers*, the Florida Supreme Court held that the trial court violated Bearden's due process rights by barring the testimony. *Id.*; *see also Curtis*, 876 So. 2d at 20; *Larry*, 241 So. 3d at 248.

**THE COURT SHOULD ADMIT BAHR'S CONFESSIONS
AND ALLOW MS. KEEN-WARREN TO CALL HIM AS A WITNESS**

Due process requires that the jury learn about Edward Bahr's confession to murdering

Marlene Warren. It is essential for Sheila Keen-Warren's defense that she be permitted to admit at trial evidence that Edward Bahr made statements confessing to killing Marlene Warren and that there was evidence corroborating his confessions. The Court should allow Sheila Keen-Warren to (1) admit Bahr's statements to Detective Williams under *Chambers* or as statements against interest; (2) introduce Libby's out-of-court statements about Bahr's confession, (3) admit evidence corroborating Bahr's confession, and (4) call Bahr as a witness to cross-examine about his involvement in the murder and his confessions.

I. Edward Bahr's statements to Detective Williams during Bahr's 1991 interview.

This Court should admit Bahr's statements to Detective Williams during an interview in 1991 because they constitute a confession to the murder of Marlene Warren. Each layer of hearsay for the statements falls under an exception: Detective Williams's report falls under § 90.803(18)(d) as an admission of an agent of a party opponent; and Bahr's statement falls under either the *Chambers* exception or the hearsay exception for statements against penal interest under § 90.804(2)(c), depending on his availability to testify at trial.

1. Detective Williams's reports as admissions of an agent of a party opponent.

First, Detective Williams's written report contains admissions of an agent of a party opponent and are thus admissible, regardless of the declarant's availability. This Court should permit Sheila Keen-Warren to admit this and other PBSO and SAO reports as admissions of agents of party admissions under 90.803(18)(d). The admission of such records is not only permitted by the Florida Evidence Code, but required by the Due Process Clause to allow Sheila Keen-Warren the opportunity to present a defense at trial.

When offered by a defendant in a criminal case, police reports are admissible as admissions of an agent of a party opponent. *Garland v. State*, 834 So. 2d 265, 267 (Fla. 4th DCA 2002). In

Garland, the Fourth District Court of Appeal noted that this view is consistent not only with most federal courts but also “the most deeply rooted of common-law traditions.” *Id.* at 267 (quoting Irving Younger, *Sovereign Admissions: A Comment on United States v. Santos*, 43 N.Y.U. L.Rev. 108, 115 (1968)). Before a trial court allows a defendant to admit evidence of this type, the court must first determine whether there are sufficient independent indicia of reliability. *Id.* at 267.

Here, the State has furnished copies of many reports written by, and recordings made by, PBSO deputies and personnel over the more than three decades since Marlene Warren’s murder on May 26, 1990. The State has also provided through discovery reports written by, and recordings made by, SAO personnel. Having been provided by the State in discovery, the authenticity of these records is not in dispute. *See Jones v. State*, 127 So. 3d 622, 624 (Fla. 4th DCA 2013) (“[w]hen an adverse party manifests a belief in or adopts the statement of another person as his or her own, the statement is treated as an adoptive admission under section 90.803(18)(b).” (quoting 1 Charles W. Ehrhardt, *Florida Evidence* § 803.18b (2012 ed.))).

While the principle for the admissibility of admissions by agents of a party opponent is well-established, Sheila Keen-Warren asks this Court to apply the rule more broadly than in a typical criminal prosecution to mitigate the prejudice caused by the substantial delay in prosecution. Although such admissions, unlike statements against penal interest, are admissible regardless of the availability of the declarant, the unavailability of a declarant forecloses other avenues for Sheila Keen-Warren to introduce this evidence to a jury and justifies a broader application of section 90.803(18)(d) than in a typical case.

Many salient records were written by Detective Bill Williams, the original lead detective. Detective Williams is unavailable for trial due to a medical issue that renders him incompetent as

a witness.⁶ His reports are the best evidence of what steps PBSO did and did not take in the murder investigation that Detective Williams led. Whereas a defendant might otherwise be able to use the reports to refresh his memory at trial, under these circumstances, the reports will have to speak for themselves.⁷

2. Bahr's statements against penal interest are admissible under *Chambers* or 90.804(2)(c).

Of particular importance to Ms. Keen-Warren's defense is Detective Williams's Supplement 33, which details the steps he took to investigate Bahr's confession to Libby while the two men were imprisoned at the Maine State Prison. Aside from Williams's investigative steps, Bahr's statement, after waiving his *Miranda* rights, that he would tell Williams everything about his involvement in the murder if Williams "could promise him that he would not get the electric chair" is admissible as substantive evidence. The notes themselves are admissions of an agent of a party opponent, and Bahr's statement is a statement against penal interest. In the context of an interview about a person's alleged involvement in first-degree murder, Bahr's attempt to condition his statement on the waiver of the death penalty constitutes an admission of guilt. The only reason for Bahr to attempt to elicit a promise from Williams not to seek the death penalty would be because a candid confession of his involvement in the murder would establish his culpability for Marlene Warren's death. *See, e.g., Enmund v. Florida*, 458 U.S. 782, 797-801 (1982) (holding that the Eighth Amendment does not permit imposition of the death penalty on a person "who aids and abets a felony in the course of which a murder is committed by others but who does not himself

⁶ *See* Joint Motion to Declare Detective Bill Williams Incompetent to Testify as a Witness [D.E. No. 944] and Agreed Order Granting Joint Motion to Declare Detective Bill Williams Incompetent to Testify as a Witness [D.E. No. 949].

⁷ The admission of a party opponent exception, of course, does not allow the State to admit their own reports.

kill, attempt to kill, or intend that a killing take place or that lethal force will be employed”). In the context of a conversation about a confession to shooting and killing a woman in Wellington, Florida, the only reasonable interpretation of Bahr’s response to Williams’s question was as a tacit admission to first-degree murder.

Further, Bahr’s initial silence when Williams “offered him an out” by asking Bahr to just admit if he had just been bragging to guards and other inmates about something he did not actually do is a tacit admission of guilt. “Bahr declined to answer me at this time and did not take advantage of the out that I had offered him.” In this context, Bahr’s silence constitutes an admission of guilt. *See Robards v. State*, 214 So. 3d 568, 574 (Fla. 2017); *Douglas v. State*, 89 So. 2d 659, 660 (Fla. 1956); *see also Cruz v. State*, 437 So. 2d 692, 696 (Fla. 1st DCA 1983), *disapproved on other grounds by Edwards v. State*, 548 So. 2d 656 (Fla. 1989) (“[T]he legislature in enacting section 90.410 did not intend to exclude such statements from being used to impeach persons other than the defendant on trial.”).

Finally, Bahr’s comments to Detective Williams, after he had waived *Miranda* and after speaking with the inmate legal advocate but before speaking with Assistant Public Defender Nancy Jardini, are also relevant. When Williams asked about his tattoos, including one on his face, Bahr said they were not a problem because he would conceal them under makeup when he was committing crimes. He laughed about how hiding his tattoos made identification harder and confused eyewitnesses due to the spider web tattoo on his face. Bahr also asked about the detective’s service weapon and commented that he liked to use .357 loaded with .38 slugs on his jobs because he can shoot quicker and there is less recoil.⁸ Ex. 2, Williams Supp. 33 at 11. These

⁸ Ex. 2, Williams Supp. 33 at 11.

comments tend to incriminate Bahr in a case in which the shooter was wearing makeup and used .38 caliber ammunition.

If Bahr is available at trial, Ms. Keen-Warren asks this Court to admit his statement under *Chambers*, which will be analyzed in depth in the following section. The fourth *Chambers* factor's requirement that the alleged confessor be available to testify at trial only comes into play "if the veracity of the hearsay statement is in dispute." *Chambers*, 410 U.S. at 301. Here, Bahr's statement to Detective Williams was not recorded, but the detective made contemporaneous notes. There can be no reasonable dispute that Bahr made those statements. The Court should permit Ms. Keen-Warren to introduce these statements under *Chambers*, even if she does not call Bahr as a witness.

Should Bahr become unavailable at trial, this Court should rely on alternative ground for admissibility, section 90.804(2)(c), to admit Bahr's comments as statements against penal interest. Any statements Bahr has made that constitute admissions to criminal activity or that tend to corroborate Bahr's confession to Libby should be admitted under this hearsay exception.

For these reasons, Bahr's statements to Detective Williams, as reported by Williams, are admissible at trial as substantive evidence when offered by the defense as evidence that Bahr, and not Ms. Keen-Warren, murdered Marlene Warren.

II. Libby's out-of-court statement about Bahr's confession is admissible under *Chambers v. Mississippi*.

Detective Bill Williams interviewed Jeff Libby on October 4, 1991, in Thomaston, Maine, at the Maine State Prison. In his sworn, recorded interview, Libby told Detective Williams that Edward Bahr had confessed to the murder of Marlene Warren during conversations Libby and Bahr had in July and August 1991. At the time, Libby and Bahr were in adjacent cells in a solitary confinement ("segregation") unit at Maine State Prison.

Bahr described how he was hired to dress as a clown and murder a woman in Wellington, Florida. In broad daylight, Bahr walked up to her front door as if he had a delivery and shot the woman in the face. After he shot her, a man in his early twenties ran out of another room. Libby said Bahr claimed the getaway car was driven by Norman “Spider” Risinger, a notorious member of the Outlaw motorcycle club who was wanted by the FBI for the murders of rival bikers in South Florida. Bahr said he was also associated with the Outlaws.

Bahr’s statement exonerates Sheila Keen-Warren by describing how he, and not Ms. Keen-Warren, dressed as a clown and fatally shot Marlene Warren and how a female Outlaws associate obtained the clown costume. As the following analysis of the *Chambers* factors will demonstrate, Libby’s statement is admissible under *Chambers* and its progeny, regardless of Libby’s availability.

1. First *Chambers* factor: spontaneity

The first *Chambers* factor is “whether the statement was made spontaneously to a close acquaintance shortly after the events.” *Chambers*.... Bahr’s statement to Libby was approximately a year after the murder. *See Bearden*, 161 So. 3d at 1259-61, 1267 (concluding that out-of-court statement about third party’s involvement in murder made nearly years after the crime and after defendant’s trial had begun was admissible under *Chambers*.). Although Libby did not have a long acquaintance with Bahr, the two of them met in a setting where there was little contact with other people or the outside world. This setting is one in which prisoners are known to share confidences, including details about their personal lives and criminal activities.⁹

⁹ For example, Frederick Cobia claimed that nearly 70 fellow inmates of Palm Beach County jails confessed their crimes to him. Jane Musgrave, *Jailhouse snitch Frederick Cobia gets 40 years in prison*, P.B. Post (Feb. 11, 2019),

Bahr's statement was spontaneous in that it was not the product of an interrogation. *See Curtis*, 876 So. 2d at 21 ("By [spontaneous], the [*Chambers*] Court did not mean that the statements had been blurted out, but rather that they were made without any compulsion and without any apparent motive to lie."). Bahr had nothing to gain by lying to Libby about his involvement in a specific murder in Wellington, Florida. This factor favors admission of Bahr's confession to Libby. *See Macauley*, 306 So. 3d at 204; *Curtis*, 876 So. 2d at 21.

2. Second *Chambers* factor: corroboration

The second *Chambers* factor is whether the statement is corroborated by "some other evidence in the case." *Chambers*, 410 U.S. at 300. The Florida Supreme Court has defined corroborating evidence as "[e]vidence that differs from but strengthens or confirms what other evidence shows (esp. that which needs support)." *Bearden* at 1266 (quoting *Black's Law Dictionary* 674 (10th ed. 2014)). There is abundant corroboration of Bahr's confession to Libby, including evidence gathered in the homicide investigation, Bahr's comments to Detective Williams, Detective Williams's investigation to corroborate Libby's statement, Bahr's sworn statement in 2021, and Bahr's deposition testimony in 2022.

a. Eyewitness testimony corroborates details of Bahr's confession to Libby.

Many details that Bahr provided Libby are corroborated by evidence gathered by PBSO in the murder investigation. Examples include the basic details of the crime as described by

<https://www.palmbeachpost.com/story/news/crime/2019/02/11/jailhouse-snitch-frederick-cobia-gets-40-years-in-prison/6021584007/>. Given that prosecutors made use of several of these confessions, despite skepticism by the defense bar over their reliability, the State must concede that sharing incarceration creates conditions under which some people feel comfortable confessing serious crimes. Is there really any doubt that, if Cobia were to claim Ms. Keen-Warren confessed to him under circumstances similar to those of Bahr's confession to Libby, the State would hesitate to call him as a witness?

eyewitnesses: that a woman in Wellington (Marlene Warren) was shot in broad daylight by a man dressed as a clown who pretended to be delivering something to the residence and then shot the woman in the face when she opened the door. Bahr's description of being chased by a young man [Joey Ahrens] after the shooting also mirrored witness statements. Bahr was correct about the name of car dealership owned by Michael Warren, Bargain Motors. He was also correct about the fact that Mr. Warren had a stepson. These details alone are enough to satisfy *Chambers*. See *Bearden*, 161 So. 3d at 1266-67.

b. Bahr's statements to Detective Williams corroborate his confession to Libby.

As discussed above, *supra* at 18-20, Bahr's statements to Detective Williams when the detective interviewed him at Maine State Prison in 1991 constitute a separate confession to the Marlene Warren murder. That confession directly corroborates the previous confession Bahr made to Libby. When Detective Williams told Bahr who he was, that he was investigating the murder of Marlene Warren, and that he was there to follow up about Bahr telling corrections officers and prisoners that he committed the murder, Bahr did not deny making those previous confessions. Instead, he offered to tell his story again, but only if Detective Williams could promise him that he would not receive the electric chair. That offer, made after Bahr was informed of his *Miranda* rights and affirmatively waived those rights, is strong corroboration of the confession to Libby.

The Court should also consider as corroboration Bahr's comments to Detective Williams after he had asked to speak with an attorney, a break in the interview during which Bahr spoke with an inmate legal advocate, and Bahr reinitiated conversation with the detective while the pair waited to hear back from an attorney with the Office of the Public Defender in Palm Beach County. Bahr bragged about his success in confusing eyewitnesses to crimes that he committed by concealing his tattoos, including one on his face, with makeup. Bahr made unsolicited comments

about his preference for using a .357 caliber handgun loaded with .38 caliber ammunition in jobs because it has less recoil. As noted above, these statements corroborate Bahr's confession because Marlene Warren was murdered by someone wearing makeup who used .38 caliber ammunition.

c. Detective Williams's investigation of Libby's statement provides other corroboration.

Detective Williams corroborated other information that Libby provided. Libby told Williams that Bahr, shortly after his arrest in Maine, had also confessed to two corrections deputies at the Cumberland County Jail. Libby gave Williams their names: Cheryl Corbin and Heidi Bigolo. Williams confirmed that deputies with those names worked at the jail. He interviewed Corbin in person and Bigolo by phone. Both corrections deputies confirmed that Bahr had boasted to them about murdering a woman in Florida.

Williams was also able to confirm that Bahr was living in Palm Beach County. He was not incarcerated at the time of the murder. Several witnesses told Williams that Bahr was coaching a little league team. The season lasted from March to June. Bahr also confirmed that Bahr had lived at the Patio Court address that Libby said Bahr gave him.

d. Bahr's 1993 confession to his cellmate in a Connecticut prison confirms Libby's account.

In 1993, Detective Williams spoke with someone in the Connecticut Attorney General's Office, Ken Anderson, who told him that a cellmate of Bahr's reported that Bahr had confessed to murdering a woman in Florida. Bahr gave his cellmate details similar to those he related to Libby in 1991. This confession corroborates Libby's account of how Bahr confessed the murder to him because it occurred under similar conditions.

e. Bahr's 2021 sworn statement to Detective McCann corroborates other aspects of Bahr's confession.

When Detective McCann and Investigator Hoover interviewed Bahr in Texas, he denied

confessing to the murder. Bahr did, however, confirm that he talked with Libby about the murder. Among the other details he gave that corroborate Libby's account, Bahr admitted that he was associated with the Outlaw motorcycle gang, just as Libby told Detective Williams in 1991.

f. During a deposition in 2022, Bahr corroborated additional details of his confession to Libby.

At a defense deposition in 2022, Bahr also admitted that he talked with Libby about Marlene Warren's murder while the two men were in solitary in Maine State Prison. He confirmed that he was in Palm Beach County at the time of the murder, that he was associated with Outlaw motorcycle club, that he was aware of Risinger, that he did frequent the Mermaid Bar, and other details consistent with his confession to Libby.

g. Recantation does not negate corroboration for purposes of the Chambers analysis.

Even though Bahr later recanted, he has never provided an alibi for the murder. As the First District Court of Appeal explained in *Curtis*, it is not necessary for a criminal defendant, in order to satisfy the *Chambers* test, to show that no facts contradict the confession:

The state argues that Butler's confession was not reliable, because some of the facts were contradicted by other evidence. This argument misses the point. It is true that certain aspects of Butler's statement, such as the location of the purse and the kind of weapon used, were inconsistent with other facts, but the question is not whether there is *some* evidence casting doubt on the confession. Rather, the question is whether there is substantial evidence to corroborate the confession. *See Rivera*, 915 F.2d at 282; *United States ex rel. Gooch v. McVicar*, 953 F.Supp. 1001, 1009 (N.D. Ill. 1997). If so, the confession should be admitted in evidence, and the jurors should be allowed to consider the alleged discrepancies, along with the evidence of corroboration.

Curtis v. State, 876 So. 2d 13, 22-23 (Fla. 1st DCA 2004).

3. Third *Chambers* factor: self-incriminatory

The Third *Chambers* factors is whether statement was in a very real sense self-incriminatory and unquestionably against the purported confessor's penal interest. Bahr's own

words highlight just how incriminatory his confession was. When Detective Williams told him he was there to talk to him about what he had told Libby, Bahr refused to talk unless he was promised that he would not receive the death penalty. A confession to being the person who shot a person in the face in cold blood in exchange for money – a crime for which Bahr himself implicitly conceded could be punishable by death – easily satisfies the third *Chambers* factor.

4. Fourth *Chambers* factor: availability to testify

Bahr is available to testify, and Ms. Keen-Warren intends to call him as a witness at trial so that “the purported confessor is present at trial to testify and be cross-examined.” *See Chambers*, 410 U.S. at 301. Indeed, Ms. Keen-Warren has a due process right to cross-examine Bahr about his confession. *See Chambers*, 410 U.S. at 292.

As noted above, *supra* at 20, the fourth *Chambers* factor only comes into play “if the veracity of the hearsay statement is in dispute.” *See Chambers*, 410 U.S. at 301. Here, the veracity of Libby’s statement should not be in dispute, given the abundant corroboration. As discussed above, Bahr made similar statements to at least one corrections deputy at the jail in Cumberland County, where Bahr was held just after his arrest. When Detective Williams told him he was there to talk to him about Bahr bragging about committing a murder, Bahr did not deny that he had made that statement. Nor did he take the “out” that Detective Bahr offered him when he suggested Bahr may just have been telling stories. Nor did he offer an alibi. Instead, he asked for immunity from the electric chair. After Detective Williams told Bahr he did not have the power to grant that request, Bahr asked to speak with an attorney. Then, after speaking with the attorney, he invoked his right to remain silent, one of the rights he had expressly waived at the beginning of the interview. Bahr’s pre-invocation conversation with Detective Williams constitutes a confession to the murder and a tacit admission that he previously confessed to Libby.

At any rate, Ms. Keen-Warren intends to avail herself of the due process right to cross-examine Bahr in front of a jury about his involvement in the murder, his confession to Libby at the Maine State Prison, and the corroborating circumstances of his confession.¹⁰ So this fourth and final factor also supports admission of Libby's out-of-court statement.

In summary, all four *Chambers* factors weigh in favor of the admissibility of Libby's out-of-court statement about Bahr's confession to the murder.¹¹ Bahr's confession was made spontaneously without coercion or any expected benefit and under circumstances that often encourage prisoners to speak candidly about criminal activity. Bahr's confession is corroborated by evidence in the case indicating that the crime occurred as Bahr described it, by Bahr's prior confession to a corrections deputy, and by Bahr's own tacit admission that he committed a crime punishable by the electric chair. Bahr's confession to murder for hire is, "in a very real sense," incriminatory. And Bahr is available to testify and trial and be cross-examined about his involvement in the murder, his confession, and facts tending to corroborate his confession. While *Chambers* "does not necessarily establish an immutable checklist of four requirements," *Bearden*, 161 So. 3d at 1265 n.3, here, Ms. Keen-Warren has nevertheless checked all the boxes.

III. Portions of Bahr's 2021 sworn statement and 2022 deposition testimony are admissible under *Chambers* or section 90.804(2)(c) because they incriminate Bahr by corroborating his confessions.

As noted under the discussion of the second *Chambers* factor, *see supra* at 25, Bahr's sworn statements and deposition testimony have corroborated details of his confession to Libby and

¹⁰ If Bahr should become unavailable, his statement to Libby would be admissible as a statement against penal interest under section 90.804(2)(c). *See Bearden*, 62 So. 3d at 1264.

¹¹ The unavailability of Libby as a witness at trial is not a factor for the Court to consider when applying the *Chambers* test. *See Macauley*, 306 So. 3d at 204.

established that he had the means to carry out the murder. In the context of this case, those statements constitute statements against penal interest that are admissible under *Chambers*, or, if he is unavailable at trial, section 90.804(2)(c).

IV. Ms. Keen-Warren has the right to call Bahr as a witness at trial and cross-examine him about his confessions.

To deny Ms. Keen-Warren the opportunity to call Bahr as a witness to question him about his involvement in Marlene Warren's murder and his confessions would deprive her of her right to due process. *See Chambers*, 410 U.S. at 292; *Bearden*, 161 So. 3d at 1267. As discussed above, *supra* at 15, the Florida Supreme Court has held that, even where doing so would violate the prohibition against calling a witness solely for the purpose of impeachment, due process requires that a criminal defendant be permitted to call a third-party at trial to cross-examine the person about a confession. *Bearden*, 1267. In any case, Ms. Keen-Warren's purpose in calling Bahr at trial would not merely be to cross-examine him about his confession, but also to elicit testimony about the abundant facts that corroborate his confession and bear on its reliability. The Court should provide her that opportunity so that she may receive a fair trial.

CONCLUSION

Sheila Keen-Warren respectfully requests that this Court exercise its authority under *Chambers v. Mississippi* and inherent authority to grant a pretrial motion in limine allowing her to introduce police records and out-of-court statements related to Edward Bahr's confession to murdering Marlene Warren. Denial of the relief sought in this motion would prevent Sheila Keen-Warren from effectively presenting her defense to the offense of first-degree homicide and thus violate her right to due process.

Respectfully submitted,

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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 22nd day of February, 2023.

/s/ Jesse W. Isom

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