

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

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

STATE OF FLORIDA

vs.

SHEILA KEEN-WARREN,
Defendant

**DEFENDANT'S MOTION TO SUPPRESS EVIDENCE
OBTAINED PURSUANT TO UNLAWFUL SEARCH WARRANTS**

The Defendant, Sheila Keen-Warren, through undersigned counsel, pursuant to the Fourth and Fourteenth Amendments to the United States Constitution, Article I, section 9 of the Florida Constitution, sections 933.02 and 933.04, Florida Statutes, and Florida Rule of Criminal Procedure 3.190(g), moves this Court to exclude the evidence obtained as a result of searches of Ms. Keen-Warren's apartment and Ms. Keen-Warren's person pursuant to unlawful warrants.

This Court should grant this Motion because the affidavits for the two search warrants contain false or incomplete statements of fact that, when corrected, result in a lack of probable cause to believe evidence of a crime would be found in Ms. Keen-Warren's apartment or from evidence seized from Ms. Keen-Warren's person. Additionally, the affiant omitted material facts from the applications that, if added, would defeat probable cause. Even without the corrections and additions, the Court should grant this Motion because the search warrant affidavits are facially insufficient. Finally, the good faith exception does not apply where the supporting affidavits fail to establish probable cause to justify a search.

STATEMENT OF FACTS

I. Factual Background

On May 26, 1990, within 30 minutes of the shooting of Marlene Warren, lead Detective William (Bill) Williams of the Palm Beach County Sheriff's Office (PBSO) arrived on scene and began his investigation. Because this was Detective Williams's first time acting as a lead detective in a homicide investigation, he was assisted by "co-lead" Detective Dewayne Kelley.

On May 30, 1990, four days after the shooting, Detective Williams applied for a search warrant for Sheila Keen's residence, located at 4769 Sable Pine Circle, Apartment C-1, West Palm Beach, Florida.¹ Exhibit 1, Aff. for Search Warrant (Apartment) (May 30, 1990). That same day, the court issued a search warrant for the apartment. Exhibit 2, Search Warrant (Apartment) (May 30, 1990). Later that night, Detective Williams and several other officers executed the search warrant at the apartment.

On June 11, 1990, Detective Williams, relying primarily on the same information set forth in the first affidavit, coupled with the evidence seized during the execution of the first warrant, applied for a second search warrant to collect evidence from Ms. Keen's person. Exhibit 3, Aff. for Search Warrant (Keen's Person) (June 11, 1990). The court subsequently issued a search warrant to collect hair, blood, and trace evidence for Ms. Keen's person. Exhibit 4, Search Warrant (Keen's Person) (June 11, 1990).

¹ This Motion is limited to May 27 through June 11, 1990, so for purposes of the "Statement of Facts," Sheila Keen-Warren will be referred to by her name at the time, "Sheila Keen."

II. The Search Warrant Affidavit²

On May 26, 1990, at approximately 10:51 a.m., a person dressed in a clown costume drove a white car, “tentatively identified as a Chrysler LeBaron,” to the home of Michael and Marlene Warren located at 15470 Takeoff Place in Wellington, Florida. Ex. 1, Aff. 2. The clown approached the house carrying two balloons and a flower arrangement and knocked on the front door. *Id.* When Marlene Warren answered, the clown, “without saying a word,” shot her in the head and fled the area. *Id.*

EYEWITNESS IDENTIFICATIONS

At the time of the shooting, Ms. Warren was inside her house with her son, Joseph Ahrens, and his three friends, Jean Pratt, Wendel Pratt, and Mindy Perez. *Id.* According to Detective Williams, the four witnesses “were inside the living room area of the residence in full sight of the front door area where the shooting occurred.” *Id.*

At approximately 12:45 p.m., Detective Williams and Detective Kelley transported the four eyewitnesses to the Detective Bureau to obtain sworn, recorded interviews. Exhibit 5, Williams Supp. 16, at 7. In the search warrant affidavit, Detective Williams writes the following regarding the witnesses’ description of the shooter:

Joseph Lee Ahrens stated that the clown suspect was described as having *orange hair* with a *red nose* and a *white face*, made up in a “happy” clown type face. The clown suspect was also wearing white gloves and black army boots that were laced up the front. *Ahrens could not determine if the clown suspect was a male or a female and stated that the clown walked in a male fashion.* . . . He noted that the clown suspect did have dark brown eyes. The other witnesses, Jean Ann Pratt, Wendell Pratt, and Mindy Perez all indicated that the clown suspect was described as having *orange afro type hair* with a red nose and wearing a *multi colored* [sic] clown outfit.

² Since the admissibility of the first warrant is determinative of the admissibility of the second search warrant, this Motion focuses on the facts in the first search warrant affidavit.

Ex. 1, Aff. 2-3 (emphasis added). The eyewitnesses' recorded statements, however, illustrate that Detective Williams provided false and misleading statements in his affidavit, and Detective Williams omitted material facts.

Height, Weight, Build: The four eyewitnesses described the clown as over 6 feet tall, yet Detective Williams omitted this material information in his affidavit. Joey Ahrens described the shooter as "about six-one, tall, skinny" and about 187 pounds. Exhibit 6, Ahrens Interview Tr. 6:20, 12:25 (May 26, 1990). Jean Pratt provided a similar description of the shooter as a tall man. She said the clown "was real tall, over six-foot tall." Exhibit 7, J. Pratt Interview Tr. 3:4 (May 26, 1990). She also said, "He was real tall, and he was . . . I don't know. It looked like he was a little bit built." *Id.* at 4:2-4. And then again, she said, "He was tall." *Id.* at 4:6. Finally, for a fourth time, she said the clown was "about six-foot, six-foot two." *Id.* at 4:14. Wendel Pratt also identified the shooter as a tall man. He said the clown "was about 6-foot" and "about 185 pounds." Exhibit 8, W. Pratt Interview Tr. 4:15-17 (May 26, 1990). Finally, Mindy Perez said, "He's about the height of Wendel, and Wendel's what, six . . . about 6-foot." Exhibit 9, Perez Statement 7:13-14 (May 26, 1990). She described the clown as having a medium build. *Id.* at 7:25-8:3.

Gender: Three of the four witnesses described the clown as a man, and the fourth witness could not identify the shooter's gender. However, Detective Williams lied about Joseph Ahrens's statement and omitted the material statements of the other three witnesses. According to the affidavit, "Ahrens could not determine if the clown suspect was a male or a female" Ex. 1, Aff. 2. But the truth lies in the recorded statement:

Detective Williams: It was definitely male, though, it wasn't a female?

Joseph Ahrens: Male.

Ex. 6, Aherns Interview Tr. 13:8-10. He also refers to the clown as a man through the interview, *id.* at 6-7, 12-13, and he never says the clown walked in a male fashion. Jean Pratt also described the clown as a man:

Detective Williams: The guy in the clown suit, you're pretty sure it was a man.

Jean Pratt: *He* didn't have breasts. *He* was flat, *he* was *real tall*, and *he* was . . . I don't know. It looked like *he* was a little bit built.

Ex. 7, J. Pratt Interview Tr. 3:25-4:4 (emphasis added). Later in her interview, she said, ". . . I saw his beady eyes. *I saw him.*" *Id.* at 7:16-17 (emphasis added). Wendell Pratt also described the clown as a man. He said, "*He* was wearing a clown, a clown outfit. I looked right at *him.*" Ex. 8, W. Pratt Interview Tr. 4:3 (emphasis added). Mindy Perez could not identify the clown's gender.

Makeup, Mask, and Nose: According to the affidavit, Joseph Ahrens described the clown as having "a red nose and a white face." Ex. 1, Aff. 2. However, the affidavit omits the rest of the statement, where Joseph Ahrens claims the clown wore a white mask, and he could not tell if the red nose was part of the mask or something you put on your actual nose. Ex. 6, Ahrens Interview Tr. 10. Detective Williams also omits the other three eyewitnesses' descriptions of the clown's face. Jean Pratt claimed the clown was wearing a mask and no makeup. Ex. 7, J. Pratt Interview Tr. 7, 13 ("It had to have been a mask—no. It wasn't makeup. It was a mask. I saw the beady eyes. I saw him."). Wendell Pratt said the clown had a white face with a red nose *painted on*. Ex. 8, W. Pratt Interview Tr. 4. Mindy Perez said the clown's face was painted on. Ex. 9, Perez Interview Tr. 8.

The Wig: Joseph Aherns did tell the detectives that the clown was wearing an orange wig, but the affidavit omits his statement that the wig was "bald on top." Ex. 6, Ahrens Interview Tr. 9-11. Wendell Pratt, Jean Pratt, and Mindy Perez did not say the clown had "*orange* afro type

hair.” Wendel Pratt and Mindy Perez claimed that the clown was wearing a *red* wig. Ex. 8, W. Pratt Interview Tr. 4, 19-21 (“big, red wig”); Ex. 9, Perez Interview Tr. 8 (“It was one of them red clown hairs.”). Jean Pratt could not recall the color of the clown’s hair. Ex. 7, J. Pratt Interview Tr. 7 (“I don’t know what color it was.”).

The Clown Costume: All four of the eyewitnesses provided dissimilar descriptions of the clown suit, yet Detective Williams omitted Joseph Ahrens’s description and provided a misleading, conclusory statement regarding the other three descriptions. Joseph Ahrens stated that the clown wore a “jumpsuit” that was an “all grey color.” Ex. 5, Ahrens Interview Tr 9-11. Jean Pratt only remembered that the outfit had “bright colors.” Ex. 7, J. Pratt Interview Tr. 7:5-6. Wendell Pratt said the clown outfit was “all white and red with hearts or diamonds.” Ex. 8, W. Pratt Interview Tr. 4, 19-21. Mindy Perez said the costume was “multiple colors,” which she described as “some blue with dots on it” Ex. 9, Perez Interview Tr. 9:18-21.

ALTERNATIVE SUSPECTS

According to the affidavit, on May 26, 1990, at 1:33 p.m., shortly after the interviews, “an anonymous female caller” contacted PBSO’s Communications Division. Ex. 1, Aff. 3. The anonymous caller stated that “Marlene Warren was just shot” and suggested that PBSO “question Sheila Keen and Mike Warren.” *Id.* The affidavit does not provide any additional information about the caller, who answered the call, or who relayed the information to Detective Williams.

In addition to this call, and noticeably absent from the affidavit, are the multitude of other tips from the day of the shooting. Detective Williams addresses these in his supplemental offense report, but he fails to include them in the search warrant affidavit: “On 05/26/90, immediately following the press released of the shooting involving a clown and for the next several days[,] the

Palm Beach County Sheriff's Office had received numerous clown sightings and citizen leads[,] all of which were evaluated and placed in a clown sighting file." Ex. 5, Williams Supp. 16, at 12.

PUBLIX SUPERMARKET

The Affidavit: The same day, PBSO "detectives canvassed retail flower shops, supermarkets and costume shops in an attempt to locate purchasers of clown costumes, flower arrangements and balloons similar to those flowers and balloons that were left at the crime scene by the clown suspect." Ex. 1, Aff. 3. The investigation led the detectives to a Publix Supermarket located at 2895 N. Military Trail in West Palm Beach. *Id.* "This Publix Supermarket is approximately 6/10 (six tenths) of a mile from" Ms. Keen-Warren's apartment at "4759 Sable Pine Circle, Apartment C-1." *Id.* Per the affidavit, a "buyer," who was "described as a white female with dark brown hair wearing gloves," purchased "the identical flower arrangement and balloons" from this Publix at 9:22 a.m. on May 26, 1990.³ *Id.*

The Evidence: Once again, Detective Williams's affidavit contains glaring omissions and false statements. According to Detective Williams, on May 26 at 6:00 p.m., Lieutenant Steve Newell spoke with an employee, Mary DeFrancesco, who determined that the store sold "an identical set of balloons . . . and an identical set of flowers" at approximately 9:22 a.m.⁴ Ex. 5, Williams Supp. 16, at 9. At 6:30 p.m., Detective Kelley responded to the Publix and interviewed Ms. DeFrancesco. *Id.* She indicated that "the flowers were *similarly described*," not identical, "to the ones found at the scene." Exhibit 10, Kelley Supp. 15, at 9. DeFrancesco described the purchaser as a white female with "dark hair." *Id.* Contrary to Williams's statement in the search warrant affidavit, she did not describe the buyer's hair as "brown."

³ Detective Williams does not indicate who or how many people he spoke with at the Publix Supermarket.

⁴ Both Ms. DeFrancesco and Lieutenant Newell have since passed away.

Detective Williams further omits that the flowers were part a Memorial Day arrangement that was manufactured by a company in Miami. The flowers were advertised as a special for all Publix stores in South Florida.

At 7:10 p.m., Detective Kelley met with the Publix florist, Regina Albro, at her residence. *Id.* Ms. Albro told Detective Kelley that “she recalled what she *believed to be* a W/F” *Id.* (emphasis added). She said “the purchaser had brown hair which was possibly *just short of shoulder length*” *Id.* (emphasis added). Finally, Ms. Albro confirmed that the flower arrangement was “consistent with,” not identical to, the flowers found at the scene. *Id.* at 9-10. Detective Kelley did not record this interview.

The following day, the detectives returned to Publix to show Ms. Albro and Ms. DeFrancesco a photo line-up containing a picture of Sheila Keen and five other women. *Id.* at 10. Notably, neither Ms. Albro nor Ms. DeFrancesco could identify the person who bought the flowers and balloons—a critical fact that Detective Williams omitted from the warrant affidavit. *Id.*

The following year, Ms. Albro provided a sworn statement to Assistant State Attorney [REDACTED] and SAO Investigator [REDACTED]. Exhibit 11, Albro Interview Tr. (June 21, 1991). Significantly, Ms. Albro denies telling the detectives that she identified the purchaser as a woman, but instead told [REDACTED] and [REDACTED] that she said she thought the person was a man or a boy:

I thought originally when I told them it was a man or a boy. I thought it was a boy from the back view. They showed me pictures of women and I told them that all I know is the person seemed like a skinny, tall and slender and thin face, that was only the side-view that I saw.

. . . .

I mean, he, I am going to say he, I thought it was a male first off. He was kneeling down. He had his hand on the door of the cooler and had it opened. . . . He was inside like kneeling . . . I saw like a painter’s hat, a white hat with some

kind of lettering on it, longer hair, sort of tied back like a lot of guys are wearing it, sort of like down the back.

. . . .

I thought like I said, was a man or boy, I thought mainly a boy, they had the hair, I mean it was long enough to put --

Id. at 8:3-5, 12:13-21, 18:23-25 (emphasis added).⁵ Thus, based on Ms. Albro's sworn statement in 1991, where she denies stating in 1990 that she identified the purchaser as a woman, it is reasonable to believe that Detective Williams lied and omitted crucial information in the search warrant affidavit, i.e., the fact that she identified the buyer as a man, not a woman.

COSTUME SHOP

The Affidavit: At 7:30 p.m., Detective Williams received a call from the owner of a costume shop in West Palm Beach Ex. 1, Aff. 4. She stated that a female customer came to the store and "purchased a clown costume *and make-up and an orange with a red clown nose*" on Thursday, May 24, 1990, at approximately 6:00 p.m. *Id.* On May 27, 1990, Detective Williams spoke with one of the employees from the costume store, and on May 28, he spoke with the second employee.⁶ *Id.* Both employees described the female customer as having long brown hair, and both indicated that she "seemed to be in a hurry" and did not ask about purchasing any clown feet shoes. *Id.* The customer also "indicate[d] that a woman would be wearing the clown costume." *Id.* Detective Williams showed each clerk a photographic lineup "consisting of six photographs, one being that of Sheila Keen." *Id.* According to Detective Williams, "[b]oth clerks *tentatively* identified Sheila Keen as the woman who had purchased the clown costume" *Id.* (emphasis added)

⁵ Ms. Albro made other exculpatory statements in her 1991 interview, but because there is no evidence that she provided this information to the detectives in 1990, it cannot be considered by this Court and will not be included in this Motion.

⁶ In the search warrant affidavit, Detective Williams does not identify the owner of the costume shop, the name of the costume shop, or the name of either employee at the costume shop.

The Evidence: The owner, Barbara Caztricone, stated that the customer bought a clown costume. Ex. 5, Williams Supp. 16, at 12. Contrary to Detective Williams's statements in the search warrant affidavit, Ms. Caztricone never mentioned the customer purchasing make-up, an orange wig, or a red clown nose. *See id.*

Additionally, while it is true that the two store clerks, Dinah Rosales and Deborah Small, did say that the customer "seemed to be in a hurry," they also said that, before the customer arrived, they just closed the store for the night. *Id.* at 14, 16. This would certainly explain the customer's desire to get in and out of the store.

Detective Williams also omits Rosales's and Small's description of the clown costume, which does not match the description provided by any of the eyewitnesses. Specifically, Rosales described the costume as "hot pink and yellow in color." *Id.* at 14. Small described the costume "as being yellow orange on one side and a candy pink color on the other side." *Id.* at 16.

According to Williams, Rosales "stated that the female did not have any distinguishable accents." *Id.* at 14. Williams omits this from the search warrant affidavit, which is critical, because Ms. Keen had a strong southern accent.

Detective Williams's comment that the clerks "tentatively identified Sheila Keen" is also misleading. *See* Ex. 1, Aff. 4. On May 27, 1990, Rosales identified Ms. Keen as the person who "looked *most like* the subject that bought the clown costume." Ex. 5, Williams Supp. 16, at 15 (emphasis added). Thus, she never truly identified her. On May 28, 1990, Small initially selected Ms. Keen's photograph and stated that the woman "looked *somewhat like* the customer who purchased the clown costume." *Id.* at 16 (emphasis added). After making her initial identification, "Small then continued to look at the photographic line-up and then began to waiver her identification" and stated that another photograph "also resembled the woman" *Id.* (emphasis

added). Small initialed the back of two of the six photographs. In the search warrant affidavit, Detective Williams omits that Small identified two people.

MICHAEL WARREN, RICHARD KEEN, SHEILA KEEN, & THE NEIGHBORS

Affidavit: On May 26, 1990, at 3:18 p.m., Detective Williams interviewed Ms. Warren's husband, Mike Warren. Ex. 1, Aff. 3. Mr. Warren stated that at the time of the shooting, he was enroute to Calder Racetrack with two friends. *Id.* He "denied having any extra marital affairs with a Sheila Keen, but did corroborate the fact[] that there were rumors about Sheila Keen and himself being romantically involved." *Id.*

On May 27, 1990, at 11:21 a.m., Detectives Williams and Kelley interviewed Richard Keen, who was Sheila Keen's husband and Michael Warren's former acquaintance. *Id.* at 4. Richard Keen stated that Sheila Keen left him in January of 1990. *Id.* He heard that Sheila Keen was having an affair with Michael Warren, but he stated that he was not upset with Michael or Sheila about the affair. *Id.* Richard Keen also stated that "Michael Warren had numerous extra marital affairs with other women in addition to Sheila Keen." *Id.* Finally, Richard Keen told the detectives that Sheila Keen had called him and questioned him about her missing .38 caliber revolver, which was not a Smith & Wesson or a Colt, that she misplaced a month ago. *Id.*

At 2:08 p.m., Detective Williams interviewed Sheila Keen, whom he described as having long brown hair. *Id.* She denied possessing a clown costume and shopping at any Publix stores on May 26, 1990. *Id.* Sheila Keen acknowledged her close friendship with Michael Warren but denied the affair. *Id.* She "did confirm that there were rumors going around about her and Michael Warren being romantically involved but they were untrue. Sheila Keen did admit to going on business trips with Michael Warren, but insisted that they were just good friends." *Id.* Additionally, "[w]hen questioned about her whereabouts on the morning of the crime, Sheila Keen

stated that she was looking for vehicles for repossession in Lake Worth, Boynton Beach and Riviera Beach. However, she could not specifically provide any addresses or description of vehicles that she was looking to repossess.” *Id.*

On May 28, 1990, at 9:30 p.m., Detectives Williams and Kelley conducted “a neighborhood canvass in the area of 4759 Sable Pine Circle, where Sheila Keen resides.” *Id.* at 5. The detectives spoke with “two subjects who reside in the complex near Sheila Keen’s residence.”⁷ *Id.* According to the residents, for the past few months, they saw Michael Warren at Sheila Keen’s apartment a few times a week at all hours of the day night. *Id.*

That evening, Marlene Warren was pronounced dead. *Id.* at 3. The following day, on May 29, 1990, PBSO Ballistics Examiner John O’Rourke examined a projectile recovered during Ms. Warren’s autopsy. *Id.* at 5. He opined that “the projectile is a .38/.357 caliber, and the projectile was fired from a weapon other than a Smith and Wesson or Colt.” *Id.*

Evidence: In the search warrant affidavit, Detective Williams’s recitation of his interviews with Mike Warren, Richard Keen, and the two neighbors is pretty consistent with the evidence available to him at the time. However, Detective Williams’s narration of his interview with Sheila Keen is both misleading and incomplete.

As to the allegation that Sheila Keen admitted to going on “business trips” with Mike Warren, Ex. 1, Aff. 4, Ms. Keen simply stated that they occasionally go to Miami for business:

Detective Kelley: What about you going out with just you and Mike, going to different places together?

Ms. Keen: Just strictly business. I mean, we go down to Miami, he’s shipping cars down there to go back to GMAC, went down there, we had to sign a bunch of titles and do a bunch of paperwork, you know, strictly it’s all business. I mean, Mike is my good friend, yeah.

⁷ Detective Williams does not identify the two residents in the Affidavit.

Exhibit 12, Sheila Keen Interview Tr. 12:14-21 (May 27, 1990).

Detective Williams states in the search warrant affidavit that, “[w]hen questioned about her whereabouts on the morning of the crime, Sheila Keen stated that she was looking for vehicles for repossession in Lake Worth, Boynton Beach and Riviera Beach.” Ex. 1, Aff. 4. His allegation that Sheila Keen, in response to Detective Kelley’s questioning, “could not specifically provide any addresses of vehicles she was looking to repossess,” *see id.*, is yet another attempt to mislead the magistrate into issuing a warrant. In her recorded statement, Sheila Keen told Detective Kelley where she went in Lake Worth. Ex. 12, Sheila Keen Interview Tr. 18:9-19:11. And Detective Kelley never questioned her about her whereabouts in Boynton Beach or Riviera Beach, so the allegation that she could not provide specific addresses is false. *Id.* at 19:12-21:18.

THE WHITE CHRYSLER LEBARON

Affidavit: According to Detective Williams, on April 15, 1990, six weeks before the shooting, a 1990 Chrysler LeBaron rented by Vincent and Elissa Restivo from the Payless Car Rental was reported stolen. *Id.* Based on the police report prepared by the deputy assigned to the theft, Detective Williams states that the Restivos attempted to return the vehicle to the Payless Rental Car office on April 14, 1990, but the business was closed. *Id.* The Restivos looked in the telephone book and found an ad for “Payless” (“A Bargain Auto Rentals”), which they thought might be a related company. *Id.* Ms. Restivo called the company and spoke with a man who advised her that she was calling the same company. *Id.* He told her to leave the keys in the car outside of Payless Rental Car, and they would send a person to retrieve the vehicle. *Id.* After dropping off the car and returning to her residence, the Restivos called “A Bargain Auto Rentals” to let them know they dropped the car off. *Id.* at 5-6. The same man answered, and he advised

her that he did not know what she was talking about. *Id.* at 6. The Restivos returned to Payless Rental Car, and the car was gone and not in the impound lot. *Id.*

Michael Warren is listed as president and director of “A Bargain Auto Rentals, Inc.” *Id.* Marlene Warren is listed as president and director of “Bargain Motors.” *Id.* Richard and Sheila Keen stated that they repossess cars for Bargain Motors, but since separating, Sheila Keen handles most of the repossessions for Bargain Motors. *Id.* at 7.

On May 30, 1990, the Royal Palm Beach Police recovered a 1990 Chrysler LeBaron from the parking lot of the Winn Dixie store in Royal Palm Beach. *Id.* at 6. The VIN matched the Chrysler LeBaron stolen from Payless Car Rental. *Id.* While searching the vehicle, members of PBSO found brown hair and orange-colored fibers, “appearing to be similar to the orange wig fiber that was purchased by a female at the costume shop on South Dixie Highway,” inside the vehicle and a Publix brown paper bag in the trunk. *Id.*

Evidence: For the most part, this portion of the search warrant affidavit is irrelevant and relates to an uncharged crime committed by male employees of Bargain Motors. However, Detective Williams’s statement that PBSO located orange-colored fibers that appeared to be similar to the orange wigs fibers purchased at the costume shop is without evidentiary support. PBSO never recovered a wig, and the detectives did not purchase a “similar” wig from the costume shop until after Detective Williams drafted this affidavit. Additionally, PBSO did not conduct any fiber comparison on the fiber in the car and the fake wig until after the execution of this search warrant. Moreover, Detective Williams omits the fact that PBSO recovered and processed two other white LeBarons.

III. Evidence Seized

On May 30, 1990, Detective Williams, Detective Kelley, and Sergeant Mike Free executed the search warrant at the apartment. Exhibit 13, Williams Supp. 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. 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.

Exhibit 14, Free Supp. 13, at 8 (July 6, 1990).

On June 11, 1990, relying primarily on the same information from the first affidavit coupled with the evidence seized from the apartment, Detective Williams applied for, and the court issued, a second search warrant to collect Ms. Keen's hair and blood. Ex. 3, Aff. for Search

Warrant (Keen's Person); Ex. 4, Search Warrant (Keen's Person). Upon executing that search warrant, PBSO seized approximately 80 head hairs and 3 vials of blood from Ms. Keen.

In 1990, PBSO conducted microscopic hair analysis on the hairs seized from Ms. Keen. In 1990 and 2016, the FBI conducted microscopic fiber analysis on the fibers seized from the apartment and microscopic hair analysis on the hairs seized from Ms. Keen. In 2016, the FBI performed DNA testing on the hairs seized from Ms. Keen. As such, Ms. Keen-Warren moves this Court to suppress all evidence seized from the apartment, all evidence seized from her person, and the results of any forensic or biological testing of these items.

ARGUMENT

I. THE APPLICATION FOR THE SEARCH WARRANT CONTAINS FALSE OR INCOMPLETE STATEMENTS OF FACT AND OMISSIONS THAT, WHEN CORRECTED AND ADDED, RESPECTIVELY, RESULT IN A LACK OF PROBABLE CAUSE TO BELIEVE EVIDENCE OF A CRIME WOULD BE FOUND IN THE APARTMENT.

Detective Williams, desperate to search Ms. Keen-Warren's apartment, drafted an affidavit for a search warrant replete with factual misstatements. He also omitted from the affidavit numerous exculpatory facts. In the absence of these misstatements and with the addition of the omitted facts, the remaining basis for the search warrant is non-criminal conduct. The is insufficient to provide probable cause and the search was, thus, illegal.

The Fourth Amendment to the United States Constitution and Article I, section 12 of the Florida Constitution guarantee citizens the right to be free from unreasonable searches and seizures. The Warrant Clause, viewed as the bedrock of Fourth Amendment protection, provides: "No Warrants shall issue, but upon probable cause, supported by Oath or affirmation" *See also* Art. I, § 12, Fla. Const.; § 933.04, Fla. Stat.

Additionally, section 933.02(3), Florida Statutes, provides that a search warrant for property may be issued “[w]hen any property constitutes evidence relevant to proving that a felony has been committed.” In determining that probable cause exists for the issuance of a search warrant, a magistrate must find that the affidavit being relied upon satisfies two elements: “(1) the commission element-that a particular person has committed a crime-and (2) the nexus element-that evidence relevant to the probable criminality is likely to be located at the place searched.” *State v. Abbey*, 28 So. 3d 208, 211 (Fla. 4th DCA 2010) (quoting *State v. Vanderhors*, 927 So. 2d 1011, 1013 (Fla. 2d DCA 2006)).

“If an affidavit for a search warrant contains intentional falsehoods or statements made with reckless disregard for the truth, the trial court must excise the false material and consider whether the affidavit’s remaining content is sufficient to establish probable cause.” *Thorp v. State*, 777 So. 2d 385, 391 (Fla. 2000) (citing *Franks v. Delaware*, 438 U.S. 154, 156 (1978)). If, in the absence of these statements, the remaining content in the affidavit does not establish probable cause, then “the search warrant must be voided and the evidence seized as a result of the search excluded.” *Id.* (citing *Terry v. State*, 668 So. 2d 954, 958 (Fla. 1996)).

Intentionally or recklessly omitted facts, as well as intentionally or recklessly inaccurate facts, may be contested on a motion to suppress. *Id.* at 392 (citing *Johnson v. State*, 660 So. 2d 648, 656 (Fla. 1995)); see also *Redini v. State*, 84 So. 3d 380, 383 (Fla. 4th DCA 2012) (citing *Pilieci v. State*, 991 So. 2d 883, 893 (Fla. 2d DCA 2008)). When addressing omitted facts, “the reviewing court must first determine whether the omitted facts, if added to the affidavit, would have defeated probable cause.” *Thorp*, 777 So. 2d 385, 392 (citing *Johnson*, 660 So. 2d at 656). Next, the reviewing court must determine whether “the omission resulted from intentional or reckless conduct that amounts to deception.” *Id.* (citing *Johnson*, 660 So. 2d at 656).

A. Eyewitness Identifications

In the instant case, Detective Williams drafted the affidavit four days after the four eyewitnesses provided sworn recorded statements describing the shooter. Three of the four witnesses unequivocally described the clown as a tall man ranging in height from six feet to six feet and two inches. The fourth witness confirmed the shooter's height but could not identify the shooter's gender.

Detective Williams omitted from the affidavit the fact that all four witnesses described the clown as being six to eight inches taller than Sheila Keen-Warren. He omitted from the affidavit the fact that three of the four witnesses described the clown as being a different gender than Sheila Keen-Warren. And he lied when he wrote that Ahrens could not determine if the suspect was a male or female.

Eyewitness testimony that exculpates a person is clearly material. Detective Williams wanted the reviewing magistrate to believe that the clown, the customer at Publix, and the customer at the costume shop were the same person: Sheila Keen. To make his theory plausible, he omitted the eyewitness statements describing the clown as a very tall man. This is deception at its core.

But it doesn't stop there. Detective Williams omitted the fact that two of the witnesses said the clown wore a mask, while the other two said the clown's face was painted white. Detective Williams omitted this information because it negates his theory that the person dressed in the clown outfit is the woman who bought white makeup at the costume shop to cover her face.

Additionally, he lied about the color of the wig and omitted information about the style of the wig. He did so to make the eyewitness identifications match the orange wig the costume shop employees claim they sold. Detective Williams alleged that all four eyewitnesses said the clown was wearing an *orange* wig. This is false. Two of the four eyewitnesses said the clown was

wearing a *red* wig, and one of the eyewitnesses could not recall if the clown was wearing a wig. He omitted the fact that the only eyewitness who identified an orange wig, Joey Ahrens, also stated that the wig was bald on top. The wig from the costume shop was not bald on top. Clearly, Detective Williams lied and omitted facts from the search warrant affidavit to lead the reviewing magistrate to believe that the clown was wearing the same wig purchased from the costume store. He also omitted the two statements about the red wig because this contradicts his narrative about the orange fiber purportedly found in the Winn Dixie LeBaron.

Finally, all four of the eyewitnesses provided dissimilar descriptions of the clown suit, none of which matched the clown suit the customer purchased from the costume store. Yet, Detective Williams provided, and omitted, just enough information to mislead the magistrate into believing that the eyewitnesses provided a description that matched the clown suit the customer purchased from the store. Specifically, he claims that Jean Pratt, Wendell Pratt, and Mindy Perez all described a “multi-colored” clown outfit. However, he neglects to mention that all three described a multi-colored outfit that does not match the outfit sold at the costume store. He also outright omits Ahrens’s description of a “grey” outfit because this does not fit his narrative.

Clearly, Detective Williams did not want the magistrate to believe the shooter was a very tall man wearing a clown costume and wig that did not match the clown costume and wig purchased at the costume store. He did not want the magistrate to believe that the shooter was wearing a mask and not makeup. To do so, he provided false facts and he intentionally and recklessly omitted facts to establish probable cause. Even with the other information in the search warrant affidavit, had Detective Williams included the omitted facts and not included the lies, the affidavit would not support a finding of probable cause for the magistrate to issue a search warrant.

But there’s more. He omitted the fact that that the clerks at Publix could not identify Ms.

Keen-Warren in a photo line-up. He omitted Albro's statement that she thought the person who purchased the flowers was a boy.⁸ He omitted the fact that Small identified two different people in the six-person photo lineup. He omitted Rosales's statement that the customer did not have an accent, whereas Ms. Keen-Warren did have an accent.

Although the evidence showed otherwise, Detective Williams wanted the magistrate to believe that the clown, the customer at Publix, and the customer at the costume shop were all the same person: Sheila Keen-Warren. To do so, he removed, minimized, or excluded facts that the eyewitnesses to the shooting described the clown as a very tall man, Albro described the customer as a boy, DeFrancesco and Albro couldn't identify Ms. Keen-Warren in a lineup, etc.

B. Alternative Suspects, the "Affair," and the Alibi

Equally misleading is Detective Williams's inclusion of an anonymous, unverified call to dispatch that PBSO should question Sheila Keen and Mike Warren, and his omission of the clown sighting file, which contained identifiable, unverified tips about alternative suspects. To include one but not the other serves three purposes. First, it gives added weight to an otherwise unavailing piece of evidence. Next, it illustrates a deliberate attempt to include an inculpatory lead while excluding 30 exculpatory leads. Finally, it's a weak attempt at corroborating this alleged affair between Mike Warren and Sheila Keen. With the addition of all of the other leads in the clown sighting file, this call—which has very little evidentiary weight to begin with—becomes just another one of the many leads PBSO received in the days following the shooting. Once again, Detective Williams includes the one piece of information that fits his "story." This is deceptive.

⁸ The State may argue that Albro stated in her 1991 interview, after the search warrant, that the customer was a boy. This argument is without merit. In 1991, Albro told the ASA that in 1990, she told the detectives that the customer was a boy. Her statement is therefore relevant to show that Detective Williams lied in his affidavit.

The detective's recitation of Sheila Keen's alibi is also very troubling. Ms. Keen-Warren said she was repossessing cars in Lake Worth, Boynton Beach, and Riviera Beach. Detective Williams claims that when questioned about her whereabouts, she could not specifically provide any addresses of the vehicles. This is a lie. He never asked her to provide the addresses of the vehicles. In the absence of this false statement, the search warrant affidavit establishes nothing more than innocent conduct: Ms. Keen-Warren was repossessing cars in Lake Worth, Boynton Beach, and Riviera Beach.

C. Conclusion

In sum, the false statements and material omissions in Detective Williams's affidavit are egregious. There is no reason to include the false statements and omit the material information aside from deception. In the absence of the false facts, and with the addition of the omitted facts, the search warrant affidavit establishes the following:

- The four eyewitnesses described a very tall clown, between six-feet and six-feet two inches, who drove to the Warren residence in a car tentatively described as a white LeBaron.
- Three of the eyewitnesses identified the clown as a man. One could not identify the clown's gender.
- Two eyewitnesses identified the clown as wearing a red wig. One of the eyewitnesses described an orange wig that was bald on top. The fourth could not identify the wig. Two of the four eyewitnesses stated that the clown was wearing a mask, the other two stated that the clown was wearing face paint.
- Three of the eyewitnesses described a multi-colored outfit. One of the eyewitnesses described a grey outfit.

- The detectives spoke to two store clerks at a costume shop who, two days before the shooting, sold a clown costume, clown wig, and makeup to a woman with brown hair and brown eyes.
- The store clerks sold a multi-colored clown costume, but it did not match the description of the costume provided by the eyewitnesses to the shooting. The wig did not match the description provided by any of the eyewitnesses to the shooting.
- The detectives showed the store clerks a six-person photo lineup containing a picture of Sheila Keen. One of the clerks said the photo of Sheila Keen looked “most like” the customer. The other clerk said the photo of Sheila looked “somewhat like” the customer, but she then said another person “also resembled the woman.” She ultimately “identified” two of the six people.
- On the morning of the shooting, an unidentified person with brown hair bought a very similar, if not identical, flower arrangement and balloons from Publix. One clerk, Albro, said the person was a boy with hair just short of shoulder length. The other clerk, DeFrancesco, described the customer as a white female with dark brown hair. The detectives showed both clerks a six-person photo lineup with Sheila Keen’s photo. Neither clerk identified Sheila Keen as the customer.
- An anonymous caller told communications to contact Sheila Keen. PBSO did not follow-up on the call. PBSO also received at least 30 other leads involving other suspects that it placed in a clown sighting file.
- There are rumors that Mike Warren and Sheila Keen are having an affair. Mike Warren denied the affair. Sheila Keen denied the affair. Richard Keen heard the rumors. Two anonymous neighbors claimed they frequently saw Sheila Keen and Mike Warren

together at random hours.

- According to Sheila Keen, she was working the morning of the shooting. Specifically, she was repossessing cars in Lake Worth, Boynton Beach, and Riviera Beach. PBSO has no information showing otherwise.
- Five weeks before the shooting, a male employee from Bargain Motors was involved in the theft (by deception) of a white LeBaron from Bargain Motors' competitor. PBSO has no reason to believe that Sheila Keen had anything to do with the theft.
- The detectives located a white LeBaron in the Winn Dixie parking lot. This was the car that the male employee from Bargain Motors stole.
- The detectives recovered orange-colored fibers in the LeBaron. The fibers have not been compared to anything because the detectives never recovered the clown wig. The fiber is inconsistent with the description provided by two of the three eyewitnesses who described the clown wig.
- PBSO also recovered two other white LeBarons, one of which was reported stolen out of Riviera Beach.

Needless to say, this does not establish probable cause to believe that Sheila-Keen Warren committed the homicide and that evidence of a homicide would be found in her apartment. Therefore, the warrant was unlawful, and all evidence obtained from the search of the apartment must be suppressed.

Furthermore, the subsequent search warrant affidavit for Ms. Keen-Warren's person is based, for the most part, on the same facts and the evidence unlawfully seized from Ms. Keen-Warren's apartment. Thus, with the false statement removed and the material omissions added, this affidavit does not establish probable cause. Accordingly, all evidence obtained from the

search of Ms. Keen-Warren's person, and all derivative testing, must be suppressed.

Finally, the State cannot argue that the search should be upheld under the good faith exception to the exclusionary rule because there was insufficient cause to believe evidence of the homicide would be in Ms. Keen-Warren's apartment or on her person, and the good faith exception of *United States v. Leon*, 468 U.S. 897 (1984), does not apply. In the context of material facts that would have mitigated against the issuance of a warrant, the state cannot claim the good faith exception to cure the constitutional infirmity. See *Garcia v. State*, 872 So. 2d 326, 330 (Fla. 2d DCA 2004) ("Where, as here, the supporting affidavit fails to establish probable cause to justify a search, Florida courts refuse to apply the good faith exception.").

II. EVEN WITHOUT THE ABOVE CHANGES TO THE APPLICATIONS, THE INFORMATION CONTAINED IN THE AFFIDAVITS DO NOT PROVIDE SUFFICIENT PROBABLE CAUSE FOR THE ISSUANCE OF THE SEARCH WARRANTS.

The task of an issuing magistrate is to review circumstances set forth in a supporting affidavit and make a practical, common-sense decision as to whether there is probable cause to issue a search warrant. *State v. Williams*, 46 So. 3d 1149 (Fla. 1st DCA 2010). The duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed, and this determination must be made by examining the four corners of the search warrant affidavit. *Garcia*, 872 So. 2d at 329. "In determining whether probable cause exists to justify a search, the trial court must make a judgment, based on the totality of the circumstances, as to whether, from the information contained in the warrant, there is a reasonable probability that contraband will be found at a particular place and time." *Id.* (quoting *Pagan v. State*, 830 So. 2d 792, 806 (Fla. 2022), cert. denied, 539 U.S. 919 (2003)).

In the case at bar, the affidavit is lacking in the commission element. The four corners of the affidavit, even without the above-referenced changes, does not provide a substantial basis for this Court to conclude that probable cause existed to search Ms. Keen-Warren's apartment. There is nothing asserted in the affidavits to suggest that she committed the murder. Detective Williams's basis in believing so, as laid out in the affidavit, is at best conclusory and wrought with rank speculation.

The affidavit, prior to the modifications warranted under *Franks*, alleges that a person in a generic clown costume, carrying an identifiable flower/balloon arrangement sold at Publix, drove a car "tentatively described" as a white LeBaron to Marlene Warren's residence. The person shot and killed Marlene Warren. Earlier that morning, a woman with brown hair bought the same arrangement from the Publix near Sheila Keen's apartment. A few days before the shooting, a woman with brown hair bought a clown costume from a costume store. The two clerks from the store "tentatively" identified Sheila Keen as the person who purchased the costume. Sheila Keen and Mike Warren were possibly having an affair. Five weeks before the shooting, a man working at Bargain Motors stole a white LeBaron.

Based on the four corners of the affidavit, even with the false statements and material omissions, the magistrate did not have a substantial basis for concluding that probable cause existed that Ms. Keen-Warren committed the homicide, and that evidence of the homicide would be found in her apartment. Because the affidavit is facially insufficient, the Court should suppress all evidence seized from her apartment. Additionally, because the subsequent affidavit for the search of her person is based on the same facts and the evidence unlawfully seized from her apartment, the Court should also suppress this evidence.

WHEREFORE, Sheila Keen-Warren respectfully requests that this Honorable Court grant this Motion and exclude all evidence seized from her apartment and her person, as well as the results of forensic 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 the Office of the State Attorney, Division "MCU," at FELMCU@sa15.org; 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 Greg Rosenfeld, Esq., Attorney for the Defendant, at Greg@rosenfeldlegal.com, on this 23rd day of February, 2023.

/s/ Greg Rosenfeld

Greg Rosenfeld, Esq.
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