

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

CASE NO. 2017CF008722AMB DIVISION: "X"

STATE OF FLORIDA

vs.

SHEILA KEENWARREN,

Defendant.

**STATE'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS
EVIDENCE OBTAINED PURSUANT TO SEARCH WARRANT**

COMES NOW, Dave Aronberg on behalf of the State of Florida, by and through the undersigned Assistant State Attorney, Reid Scott, and files this State's Response to Defendant's Motion Suppress Evidence Pursuant to Search Warrant would state the following:

I. STATEMENT OF THE CASE

At approximately 10:45 AM on Saturday May 26th, 1990 Sheila Keen ("Defendant") walked up to the front door of 15470 Take-Off Place in Wellington, Florida dressed as a clown carrying a red and white flower arrangement, two balloons, and a handgun. The Defendant knocked on the door; Mrs. Marlene Warren ("Victim") opened the front door and was handed the flowers and the balloons by the Defendant. Witnesses in the home stated that they observed the clown hand the flowers and the balloons to Warren, and then they heard gun shots. After shooting

the Victim, witnesses observed the clown walk calmly back to a late model white, full-top, Chrysler LeBaron parked in the driveway and flee the scene. Law enforcement and emergency medical professionals responded and found the Victim just inside the front door of her home. She died two days later at Palms West Hospital from a gunshot wound to the head.

At the time of her murder, Marlene Warren was married to Michael Warren and together they owned multiple residential properties and a car dealership/rental company titled “A Bargain Motors.” A repossession agent named Sheila Keen (“Defendant”) also worked for “A Bargain Motors.”

On May 30, 1990, during the investigation, Detective William Williams authored search warrants for the apartment of the Defendant¹ and for evidence from the body of the Defendant.² The search warrants affidavits contain the articulated facts that established probable cause for the searches.

**THE EVIDENCE DESCRIBED CONTAINED WITHIN THE WARRANT THAT
ESTABLISHED PROBABLE CAUSE FOR THE SEARCH OF THE
DEFENDANT’S APARTMENT**

¹ State’s Exhibit “A”: Search Warrant for the Defendant’s Apartment

² State’s Exhibit “B”: Search Warrant for the Defendant’s Person

1. The Witnesses on Scene

Detectives with the Palm Beach County Sheriff's Office interviewed several witnesses at the scene of the shooting. The witnesses included the Victim's [REDACTED] [REDACTED] and three of his friends, [REDACTED], [REDACTED] and [REDACTED]. All were in the living room at the time of the shooting. Although, the four witnesses varied on some of the particularities of the clown costume, they were consistent on many points. All four described the shooter as a person wearing a clown costume. Three of the four witnesses described the clown wig as being red or orange.³ [REDACTED] [REDACTED] told detectives that the clown was not wearing clown shoes but rather black lace up boots, and that it had dark brown eyes. All four describe the actions of the clown as bringing flowers and balloons. All four said the clown shot Marlene Warren in the face. All four described the clown retreating to a white in color Chrysler LeBaron and driving away from the scene.

2. The Call to Law Enforcement

On May 26, 1990, at approximately 1:33 PM (just hours after the Defendant shot Warren in the face), a caller contacted the Palm Beach County Sheriff's Office and stated "Marlene Warren was just shot earlier today . . . I think you just need to ask Sheila Keen and Mike Warren a few questions."⁴ This call occurred less than three

³By way of contrast, no witness described the wig as blue, purple, green etc.

⁴ State's Exhibit "C": Trans. Record. May 26, 1990 at 13:33 hours.

hours after the shooting and contained specific information and names of suspects that were connected to the Victim.

3. The Statements of the Publix Employees

On May 26, 1990, Detective Kelley responded to a Publix located at 2895 North Military Trail in West Palm Beach, just a short distance from the Defendant's apartment. Detectives spoke with two employees at the Publix who recalled a white female who purchased a similar flower arrangement to the ones located at the Victim's house. [REDACTED] recalled the purchaser to be a white female with dark hair. [REDACTED] Albro told detectives that the purchaser was a white female with brown hair.⁵ Neither of the two employees were able to make a positive identification of the purchaser from a photo array.⁶

4. The Statement of Richard Keen

On May 27, 1990, Detectives interviewed the then husband of the Defendant, Richard Keen. Richard Keen told the detectives that he suspected that the Defendant was having an affair with Michael Warren.⁷ Keen and Warren were formally friends and business associates. According to Detective Williams report, Keen also told the detectives that approximately one month prior to the murder, the Defendant asked

⁵ For the purposes of the determination of probable cause, the difference between "dark" hair and "brown" hair is insignificant.

⁶ This piece of information was omitted from the original search warrant, however no contradicting statement of identification was made in the warrant.

⁷ State's Exhibit "D": Stat. Richard Keen p. 4 – p. 8

Keen about the location of her .38 caliber revolver. Keen stated that the revolver was an off brand, not a Smith & Wesson or Colt.

5. The Interview with the Defendant

Detectives interviewed the Defendant on May 27, 1990. At the time, Keen was a taller, thin, white female with long brown hair and brown eyes (as described in the search warrant.)⁸ The Defendant was also a very close “friend” of Michael by her own admission.⁹ The Defendant admitted to going on business trips with Michael Warren. When confronted with allegations from others that she was having an affair with Warren, the Defendant herself acknowledged the rumors and allegations that they were intimately involved, however stated that they were just “good friends.”¹⁰ When questioned about her location the morning of the murder, the Defendant could only provide general information about her repossessing cars in Boynton and Riviera Beach. She did not provide any addresses or descriptions of vehicles for which she was looking.

6. The Testimony of Employees from Spotlight Capezio

In an attempt to identify the location where the costume was purchased, detectives conducted a thorough search of all costume shops in the area. One of the

⁸ The Defendant’s physical appearance on May 27, 1990 was consistent with the description provided by Rosales and Small as to the costumer who purchased the clown costume two days before the murder.

⁹ State’s Exhibit “E”: State. Sheila Keen (excerpt): May 27, 1990 p. 13 ln 2-12.

¹⁰ State’s Exhibit “E”: State. Sheila Keen (excerpt): May 27, 1990 p. 12 ln. 3 – p. 13 ln. 10

most popular costume shops in the area at that time was the Spotlight Capezio (“Spotlight”). The Spotlight was a costumer located at 5612 South Dixie Highway in West Palm Beach.¹¹ Detectives initially spoke with the manager/owner of the Spotlight, who told them that two days prior to the murder she was working at the Spotlight with [REDACTED]. All three ladies worked at the Spotlight selling various types of costumes, make-up and dance wear for the community of Palm Beach County. The owner stated told Williams that a women had purchased a clown costume and make-up on Thursday May 24, 1990.

On May 27 & 28, 1990, Detectives were able to speak with [REDACTED] separately regarding their interaction with the woman at the Spotlight two days before the murder. [REDACTED] told detectives that on May 24, 1990 (two days prior to the murder of the Victim) that she was working at the Spotlight with [REDACTED]. Just as the shop closed for the day (around 6:00 PM), a woman drove up to the Spotlight and stated that she needed something “real quick.” Both ladies stated that the woman was very persistent about entering the store to make a purchase. Both described the customer as a white female with long brown hair who was “in a hurry.” The customer purchased a clown costume, without clown shoes or feet, extra white face make-up and stated that a woman would be wearing the costume. Both women

¹¹ Identified in the search warrant as a “costume shop located on South Dixie Highway in West Palm Beach.”

were given photographic arrays to view to identify the purchaser of the costume.

[REDACTED] selected the Defendant as the person who purchased the costume.¹²

[REDACTED] selected the Defendant and also one other picture that looked like the person who purchased the clown costume.¹³

7. The Testimony of the Defendant's Neighbors

In May 1990, the Defendant was living in an apartment located at 4759 Sable Pine Circle, in West Palm Beach, Florida. Detectives canvassed the neighborhood on May 28, 1990 (two days after the shooting) and spoke with two individuals who provided them with information about the Defendant and Michael Warren.¹⁴ The two individuals stated that they had witnessed the Defendant and Michael Warren going in and out of her apartment since January 1990. They stated that Michael Warren was at the apartment several times a week. Both made positive identifications of both the Defendant and Michael Warren. Mrs. Katherine Wooten Limbaugh recounted the same information provided to Detective Williams in her deposition taken on October 1, 2019.¹⁵ Mrs. Limbaugh (Wooten) also recounted in

¹² State's Exhibit "F": Photo Array: Rosales

¹³ State's Exhibit "G": Photo Array: Small

¹⁴ Although not identified in the search warrant affidavit, the two individuals provided the Detectives with their identifying information so that they could be listed as witnesses. The two individuals were identifiable as Charles and Katherine Wooten and thus held the status of "citizen informants."

¹⁵ State's Exhibit "H": Depo. Katherine Limbaugh (Wooten) p. 22 – 32. (Oct. 1. 2019).

deposition that she had previously seen the white Chrysler LeBaron at the Defendant's apartment just prior to the murder of the Victim.

8. The white Chrysler LeBaron located in the Winn Dixie Parking Lot

On May 30, 1990, a white Chrysler LeBaron was located parking in a Winn Dixie parking lot at the intersection of Royal Palm Beach Boulevard and Okeechobee Boulevard in Royal Palm Beach. This LeBaron matched the VIN of a white Chrysler LeBaron that was reported stolen on April 15, 1990 from Payless Car Rental Co. The previous renters of the vehicle (Mr. and Mrs. Vincent Restivo) stated that when they attempted to return the vehicle to Payless, it was closed so they located an ad in the Yellow Pages and called the number. The ad read "Payless" however it was for Michael Warren's company "A Bargain Motors." When the Restivos called the number, a male answered and told them to leave the car and the keys at an address on south Congress Avenue. The Restivos complied with the instructions. The car was stolen from that location, as would be determined later by Donald Carter, Michael Warren, and the Defendant as part of an on-going feud Payless Car Rental. The VIN number of the white LeBaron located at Winn Dixie matched that of the missing white LeBaron rented by the Restivos. Inside the white LeBaron at the Winn Dixie, detectives observed orange colored fibers similar to a clown wig as well as longer strands of brown human hair.¹⁶

¹⁶ State's Exhibit "F": Perpet. Depo. Dewayne Kelley (excerpt) p. 52 ln 3 – p. 54 ln. 25

LEGAL AUTHORITY AND ARGUMENT

A. The standard for the granting of a search warrant is probable cause, or reasonable grounds based on articulated facts that evidence will be located in the place to be searched.

As the United States Supreme court stated in Texas v. Brown, 460 U.S. 730 (1983),

“Probable cause is a flexible, common-sense standard. It merely requires that the facts available to the officer would warrant a person of reasonable caution in the belief that certain items may be . . . useful as evidence of a crime. It does not demand any showing that such a belief be correct or more likely true than false. A practical, nontechnical probability that incriminating evidence is involved is all that is required.”

Citing to United States v. Cortez, 449 U.S. 411 (1981) “the process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as fact finders are permitted to do the same—and so are law enforcement officers. Finally, the evidence must be seen and weighed not in terms of library analyses by scholars, by as understood by those versed in the field of law enforcement.”

State v. Darter, 350 So. 3d 370, 381 (Fla. 4th DCA 2022) citing Brown. It is clear that probable cause is a low standard in the criminal justice system. As stated by the United States Supreme Court, the cause need not be correct, and it need not be more likely than not. It must simply be reasonable based on a common sense review of the facts. If such a common sense view of the information leads to a reasonable believe that a place or person could yield evidence of a crime, a search warrant should be granted.

B. The probable cause affidavit in the application for both search warrants contained ample probable cause for the granting of the warrant irrespective of any added or omitted information.

The United States Supreme Court held in Franks v. Delaware, 438 U.S. 154 (1978) that challengers to probable cause affidavits based on *misstatements* have the burden to show that (1) the misstatement was material to the question of probable cause and (2) there was a requisite level of intent of police to deceive. Johnson v. State, 660 So. 2d 648, 655 (Fla. 1995) citing Franks, 438 U.S. at 171-72. Under Franks, the second intent prong requires that the moving party to (1) point out specific portions of the affidavit alleged to be defective; (2) to allege that the defect consisted of deliberate falsehood or a statement in reckless disregard for the truth; and (3) to offer proof supporting the allegations. Id. Allegations of neglect or innocent mistake will not meet the intent requirement. Id.

The analysis outlined in Franks dealt solely with misstatements rather than *omissions* to a probable cause affidavit. The Florida Supreme Court articulated in Johnson, that,

“... misstatements are fundamentally a different problem than omissions. Some omissions may be ‘intentional’ but also reasonable in the sense that they exclude material police in good faith believes to be marginal, extraneous or cumulative. Moreover, some omitted information is simply overlooked in the exigencies of the moment without the intent to deceive or recklessness with respect to the truth.”

Id at 656. The Florida Supreme Court in Johnson cited to United States v. Coakley, 899 F.2d 297 (4th Cir. 1990) as the authority on challenges based on omissions. Id. Omissions are different than misstatements in that they must do more than “affect the outcome” of the probable cause determination. Coakley, 899 F.2d at 301. To be material under a Franks analysis, an omission must be such that the inclusion of the information in the affidavit would defeat probable cause all together. Id. See United States v. Reivich, 793 F.2d 957 (8th Cir. 1986). In determining whether the affidavit with the omitted information would be supported by probable cause, the Court must look to the ***totality of the circumstances*** test articulated in Illinois v. Gates, 462 U.S. 213 (Fla. 1983). Id at 302. This requires a commonsense decision whether all the circumstances set forth in the affidavit establish probable cause that the suspect committed the crime. Id.

The Courts of the State of Florida agree with the discussions outlined above in resolving the issue of an omission under the standard articulated in Franks. The reviewing court must determine (1) whether the omitted material, if added to the affidavit, would have defeated probable cause, and (2) whether the omissions was the result of intentionally reckless police conduct amounting to deception. Johnson, at 656. Negligent or innocent omissions from an affidavit are not enough to satisfy the moving party’s burden. To be unlawful under the Franks test, police conduct must rise to the level of “hoodwinking or bilking, duping the issuing judge or

magistrate into signing the warrant.” State v. Petroni, 123 So. 3d 62, 65 (Fla. 1st DCA 2013). The moving party must show that the police “cherry picked” specific information, while leaving out other ***pertinent, material information***, all the while ***intending*** (emphasis added) that the issuing judge would be duped into signing a warrant ***that they otherwise would not have signed***. Id. at 66. See also Luna v. State, 154 So. 3d 1181 (Fla. 4th DCA 2015).

In Johnson the victim was found stabbed to death on the sidewalk in front of her house. 660 So. 2d at 652. The defendant Emmanuel Johnson quickly became a suspect. Id. After a lengthy interrogation, Johnson confessed to the crime saying that he went to the victim’s house saying he needed to use the phone. Id. When the victim opened the door, Johnson stabbed her multiple times with a knife both inside the house and again repeatedly outside on the sidewalk. Id. The jury found the defendant guilty of First Degree Murder and Armed Burglary. One of the defendant’s multiple claims on appeal was that the arrest warrant was defective because the arresting officer neglected to inform the magistrate of the presence of another individuals fingerprints inside the victim home and that there was an alternative point of entry to the house. Id. at 656. The Supreme Court upheld Johnsons’ convictions finding that the omitted facts were insignificant at best and in no sense vitiated probable cause. Id. Further the court found no suggestion of reckless or intentional disregard of the truth. Id.

In Luna v. State, the defendant was arrested and convicted for cultivating marijuana. 154 So. 3d 1182. Officers were initially alerted to the defendant's home by a neighbor who provided information that the defendant was operating a grow house. Id. A road patrol officer was dispatched to the scene and after speaking to the neighbor, peered through a window inside the home. Id. The officer noted that the inside of the house did not contain furniture and appeared to be empty. Id. Four days later, a narcotics detective responded to the area and notice an overwhelming odor of marijuana, sounds of oscillating fans and water pumps. Id. Based on his training and experience, the detective believed that a grow house operation was being conducted at the home and applied for a search warrant. Id. The warrant did not include any of the information about the first officer's observations and that it was conducted without a search warrant. Id. The trial court denied the defendant's motion to suppress the search based on the omission of information from the warrant and the Fourth District Court affirmed. Id. The Court found that the illegal search of the first officer was not the "but for" cause of the discovery of the marijuana. Id. at 1184. The detective's discovery of the marijuana was based on independent probable cause and the totality of facts that did not require any information from the first officer's observation. Id.

It is clear from a common sense evaluation of the contents of the "four corners" of the search warrant in question that there is more than sufficient probable cause

for the issuance of a search warrant for the apartment of the Defendant. Frankly, the evidence of a romantic affair between the Defendant and Michael Warren as demonstrated by multiple sources and the observations of the Defendant's neighbors would alone provide sufficient reasonable grounds for a search of her apartment and her person. This would be true standing alone and irrespective of any additions or subtractions from the warrant as argued by the Defendant. However when taken in conjunction with the fact that the Defendant was identified as a person purchasing a clown costume two days before the murder, the consistent physical description of a person purchasing a similar floral arrangement hours before the murder, the connection to "A Bargain Motors" and the white LeBaron, the observations of wig fibers and brown hair inside the LeBaron and the anonymous caller who told police they needed to speak with "Sheila Keen" it cannot be argued that the search warrant lacked sufficient probable cause.

The Defendant argues that there are "misstatements" and "omissions" from the affidavit that would negate probable cause, however, this is not so. The overwhelming majority of points argued by the Defendant are irrelevant and do not affect the evidence outlined in the document. Further, it would be a leap to suggest that Detective Williams omitted any of the irrelevant materials in bad faith or with the intent to deceive.

Specifically, any articulation by witnesses inside the Warren home that the clown was a man is insignificant. By every witness account, the clown was donned head-to-toe in a clown costume, complete with a wig and painted face. There was simply no possible way to determine the gender of the clown in a brief observation under those circumstances. Any assignment of masculine pronouns during the interviews was clearly unintentional syntax. The same is true for any physical description of the clown beyond the general observation of a “clown.” The costume, wig, nose, make-up, balloons, and flowers made any further detailed description impossible.

As for any additional suspects or leads that were not outlined in the affidavit, those too, like articulated in Johnson are insignificant and do not affect probable cause. All but one of the leads contained in the “clown sightings” file were too general to provide any relevant information. Further, most of the “leads” contained information that was not consistent with involvement in this investigation.

The most significant of the insignificant information argued by the Defendant is that the employees at the Publix where the floral arrangement was purchased could not positively identify the Defendant as the purchaser. Although relevant, if this information were to be added to the affidavit, it would have no effect on the probable cause for a search of the Defendant’s apartment. Both Publix employees stated that a white female with either dark or brown hair purchased the floral arrangement. This general description is consistent with that of the Defendant. The fact they could not

make a positive ID is not fatal and would not otherwise compromise the established probable cause.

CONCLUSION

When the totality of the circumstances in the “four corners” of the document is examined, despite any suggested additions or omissions, the evidence in this case pointed to one person, the Defendant. The information clearly provides that common sense reasonable belief that the Defendant’s apartment and person would yield potentially useful evidence to justify a legal search. Further, there is no evidence of any intent to deceive on the part of Detective Williams. One can glean that any information not included in the affidavits was left out because it was de minimis and had no effect on the determination of probable cause.

WHEREFORE, the State prays this Honorable Court to **DENY** the Defendant’s Motion to Suppress Evidence Obtained from Search Warrant.

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT a true and correct copy of the foregoing Motion has been furnished by E-SERVICE to AMY MORSE ESQ at AMY@MORSELEGAL.COM, this the __2nd__ day of March, 2023.

Respectfully submitted,

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/s/



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