

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

CASE NO: 2017CF008722AMB

STATE OF FLORIDA

vs.

SHEILA KEEN-WARREN,
Defendant

_____ /

MOTION TO SET CONDITIONS OF PRETRIAL RELEASE

The Defendant, Sheila Keen-Warren, through undersigned counsel, moves this Court, pursuant to Article I, section 14 of the Florida Constitution, section 903.046, Florida Statutes, and Florida Rule of Criminal Procedure 3.131(d), to set bond in the pending case. The Court should grant this Motion because Ms. Keen-Warren is innocent. There is no reliable physical or testimonial evidence that she committed this crime, yet Ms. Keen-Warren has been incarcerated without a bond since October 4, 2017. Any continued restrictions on her liberty are both punitive and a violation of the presumption of innocence.

FACTS AND PROCEDURAL HISTORY

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

EYEWITNESS IDENTIFICATIONS

A few hours after the shooting, Detectives Bill Williams and Dwayne Kelley of the Palm Beach County Sheriff's Office (PBSO) obtained sworn, recorded interviews from the four eyewitnesses. 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.

In his sworn interview, Joseph Ahrens described the shooter as a skinny, six-foot-one-inch-tall man with dark brown eyes wearing a clown costume and mask:

Detective Williams: Can you describe him to me?

Joseph Ahrens: *He's about six-one, tall, skinny.* I couldn't see no hair, no arms, no skin, nothing.

Detective Williams: Okay. Could you see if he was wearing gloves, maybe?

Joseph Ahrens: He had dark eyes

Detective Williams: How do you know that?

Joseph Ahrens: Like, brown, 'cause I looked at him when I looked out (inaudible) color of his eyes were dark.

Detective Williams: Did he have a mask on?

Joseph Ahrens: Yes.

Detective Williams: Okay. How could you tell his eyes? Could you see through the mask or . . .

Joseph Ahrens: Yeah.

....

Detective Williams: Do you remember anything particularly unusual about this clown costume, like, a big bow around his neck or anything at all that you can think of?

Joseph Ahrens: Just long.

Detective Williams: Just real long?

Joseph Aherns: *And tall.*

Detective Williams: And tall guy? How much would you say he weighed?

Joseph Aherns: About one (inaudible) eight, seven.

Detective Williams: You said you looked at his eyes and they were, like, a dark-brown color?

Joseph Aherns: Right.

....

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

Joseph Aherns: *Male.*

Exhibit 1, Aherns Interview Tr. at 6:19-7:11, 12:16-13:3, 13:8-10 (emphasis added).

Jean Pratt provided a similar description of the shooter as a "real tall" man wearing a clown costume:

Jean Pratt: And we sat down getting ready to eat, and somebody pulled up in a white car. They had a clown suit on. They had flowers and a bunch of balloons and they had a clown suit on.

....

Jean Pratt: *Was real tall, over six-foot tall* (inaudible) glove, boots. I couldn't tell if he was white or black (inaudible).

...

Detective Williams: Okay. This -- this 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.

Detective Williams: Somewhat muscular?

Jean Pratt: *He was tall.* No, not muscular, just chunky but he was skinny, like, *real tall* but he had a little bit of meat on him.

Detective Williams: Like a beer belly?

Jean Pratt: No. Not like a beer belly. Like (inaudible) like a regular person.

Detective Williams: *And how tall would you say he was, six-foot?*

Jean Pratt: *About six-foot, six-foot-two.*

Exhibit 2, J. Pratt Interview Tr. at 2:24-3:5, 3:25-4:14, May 26, 1990 (emphasis added). In a second sworn interview provided over one year after the shooting, Ms. Pratt confirmed that the shooter was a man: *"It was a man, it wasn't a woman."* Exhibit 3, J. Pratt Interview Tr. at 2:24-3:5, 3:25-4:14, June 27, 1991 (emphasis added).

In her initial interview, Jean Pratt, like Joey Aherns, maintained that the clown was wearing a mask:

Detective Williams: What about the face? Was it a mask or was it, like, makeup?

Jean Pratt: It had to have been a mask -- no. It wasn't makeup. It was a mask. I saw the beady eyes. *I saw him.*

Detective Williams: What color eyes do you think?

Jean Pratt: I don't know. I just saw them.

....

Detective Williams: Could you remember the skin around the eyes, like, was it a white-man's skin?

Jean Pratt: It was a mask. It just, like . . . that's it. You could only see the eyelashes. You couldn't see nothing, nothing.

Ex. 2 at 7:13-19, 13:17-21 (emphasis added).

Wendel Pratt also identified the shooter as a tall man, but he described him as wearing face paint:

Detective Kelly: Okay. Did you see the guy that did it?

Wendel Pratt: He was wearing a clown, a clown outfit.

Detective Kelly: Did you see that or you heard that?

Wendel Pratt: No. I saw it. *I looked right at him.* All it was was a clown outfit, big red wig, bid ole red nose, white and red outfit.

Detective Kelly: Did it look to you like he had a mask or did it look like it was painted, his face was painted?

Wendel Pratt: It looked like it was painted.

....

Detective Kelly: *How tall would you say the clown was?*

Wendel Pratt: *About 6-foot.*

Detective Kelly: *How much would you say the clown weighed?*

Wendel Pratt: *About 185* (inaudible).

Exhibit 4, W. Pratt Interview Tr. at 4:2-11, 4:14-18 (emphasis added).

Wendel's girlfriend, Mindy Perez, could not definitively say whether the shooter was a man or woman, but she too described the shooter as a tall, thin person in a clown costume with clown makeup:

Detective Kelly: Okay. You saw this guy standing at or guy or girl. We don't know that - -

Mindy Perez: Yeah.

Detective Kelly: -- through the clown outfit. But this person's standing at the door, right? *How tall would you say it was?*

Mindy Perez: *Well, he's about the height of Wendel, and Wendel's what, six . . . about 6-foot.*

Detective Kelly: Okay. *He's approximately 6-foot?*

Mindy Perez: *Yes.*

Exhibit 5, Perez Interview Tr. at 7:7-8:3 (emphasis added).

Joseph Aherns told the detectives that the clown was wearing an orange wig, whereas Wendel Pratt and Mindy Perez claimed that the clown was wearing a red wig. Ex. 1 at 9:25-10:2; Ex. 4 at 4:5-7, 4:19-21; Ex. 5 at 8:17-24. Jean Pratt could not recall whether the clown was wearing a wig or the color of the clown's hair. Ex. 2 at 7:7-12.

All four of the eyewitnesses provided dissimilar descriptions of the clown suit. Wendel Pratt described the outfit as white with red hearts or diamonds. Ex. 4 at 5:5-10. Mindy Perez said the costume was "multiple colors," which she described as "some blue with dots on it" Ex. 5 at 9:18-21. Joseph Aherns stated that the clown suit was "a grey color." Ex. 1 at 12:4-6. Jean Pratt only remembered that the outfit had "bright colors." Ex. 2 at 7:3-6.

Regarding the clown's shoes, Joey Aherns stated that the man was wearing black boots. Ex. 1 at 11:19-12-3. Jean Pratt did not see his boots. Ex. 2 at 13:10. Wendell Pratt and Mindy Perez did not provide a description of the shoes.

After the shooting, all four witnesses saw the man dressed as a clown walk calmly toward a white Chrysler Lebaron and leave the community. Aherns, Perez, and Wendell Pratt told the detectives that the vehicle did not have a license plate.

THE PUBLIX EMPLOYEES

On May 26, 1990, approximately ten hours after the shooting, the detectives interviewed two employees from a Publix on North Military Trail in West Palm Beach. The employees, Regina Albaro and Mary Defrancesco, stated that earlier that morning, a woman bought flowers and balloons that were "similar" to the flowers found at the scene of the shooting. Exhibit 6, Kelley Supp. Report 15 at 9.

The following day, the detectives returned to Publix to show Ms. Albaro and Ms. Defrancesco a photo line-up containing a picture of Sheila Keen-Warren and five other women. *Id.* at 10. Notably, neither Ms. Albaro nor Ms. Defrancesco could identify the person who bought the flowers and balloons in the photo line-up. *Id.*

THE SPOTLIGHT CAPPEZZIO

On May 26, 1990, Detective Williams also received a call from the owner of the Spotlight Cappezzio, a costume shop in West Palm Beach. The caller stated that two days before the shooting, two of her employees, Dinah Rosales and Deborah Small, sold a woman a clown costume.

Detective Williams subsequently interviewed the two employees. Exhibit 7, Williams Supp. Report 16 at 14-16. Ms. Rosales and Ms. Small confirmed that they sold a woman a clown costume, an orange wig, and white makeup. Deborah Small described the costume “as being yellow orange on one side and a candy pink color on the other side.” *Id.*

On May 27, Detective Williams showed Ms. Rosales a photo line-up containing a picture of Ms. Keen-Warren and five other women. Ms. Rosales identified Ms. Keen-Warren as the person who “looked *most like* the subject that bought the clown costume.” *Id.* at 15 (emphasis added).

On May 28, Detective Williams showed Ms. Small a second line-up. Ms. Small initially selected Ms. Keen-Warren’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” of Ms. Keen-Warren’s photograph and stated that another photograph “also resembled the woman” *Id.* (emphasis added).

On June 19, 1991, approximately one year after the initial interviews, Assistant State Attorney Paul Moyle and Investigator Tim Valentine conducted a second recorded interview of both Ms. Rosales and Ms. Small at the State Attorney's Office. On June 20, 1991, Mr. Moyle and Mr. Valentine conducted a third recorded interview of Ms. Rosales, and on June 26, 1991, a third recorded interview of Ms. Small. The two witnesses, both of whom acknowledged discussing the case with one another and seeing newspaper articles with photographs of Ms. Keen-Warren, suddenly expressed more confidence in their identifications.

THE CHRYSLER LEBARON(S)

Between May 28 and 30, 1990, the detectives recovered several two-door, all white Chrysler Lebaron convertibles that they believed may have been the getaway car. On May 28, 1990, PBSO processed "a 1989 all white convertible Chrysler Lebaron" that was "possibly related to this incident." Exhibit 8, Harrison Supp. Report 8 at 9.

On May 29, 1990, the detectives received a call from a tow company about a stolen 1989 two-door, all white convertible, Chrysler Lebaron that was recovered in Riviera Beach. Exhibit 9, Easton Supp. Report 7 at 9. The detectives arranged to have the car transported to PBSO's headquarters for processing. Ex. 8 at 10; Ex. 9 at 9.

On May 30, 1990, four days after the shooting, the police recovered a 1990 two-door, all white Chrysler Lebaron convertible parked at a Winn Dixie shopping plaza. Exhibit 10, Griffith Supp. Report 9 at 6-7. Unlike the vehicle involved in the shooting, this vehicle had a license plate, but the license plate was registered to a different vehicle. PBSO processed the vehicle and recovered fibers and hair from the carpets in the vehicle.

PBSO linked this vehicle to a grand theft committed 30 days prior to the murder by Michael Warren, Donald Carter, and Ronald Carter as part of a feud Mr. Warren had with Payless Rent a

Car (Payless). Several employees and people associated with Bargain Motors, including Suzanne Martin and Della Rainona, claim that Michael Warren and Ronald Carter received a call from a married couple attempting to return a rental car to Payless. The witnesses allege that Michael Warren, Ronald Carter, and Donald Carter stole this car and two other cars as payback for Payless suing Bargain Motors over a misleading advertisement.

Another Bargain Motors employee, Claude Poitras, claims that he drove Michael Warren to Payless, but unbeknown to him, Michael Warren intended on stealing the Lebaron. He maintains that Ms. Keen-Warren was with him when he dropped Michael Warren at Payless, but he insists that she was not involved in the theft.

At least one of the eyewitnesses to the shooting, Jean Pratt, avers that the white Lebaron recovered from Winn Dixie is not the white Lebaron she observed fleeing from Marlene Warren's house after the shooting. When shown a picture of the car, Ms. Pratt stated:

Jean Pratt: I was shown this before. This is not the car.

Investigator Valentine: Are you sure that's not the car?

Jean Pratt: Positive, sir. I was shown this before and this is not it.

Ex. 3 at 36:9-13.

THE COLD CASE

From 1990 to 2013, PBSO tasked four sets of detectives with investigating the death of Marlene Warren. Detective Williams led the investigation from 1990 to 1993. Detective Wayne Robinson investigated the case in 2000. Detective Patrick Wright investigated the case from 2003 to 2004. Finally, on May 13, 2013, Detective Paige McCann took over the investigation. Up until Detective McCann's involvement in the case, the State did not have probable cause to charge Sheila Keen-Warren with the murder of Marlene Warren.

Detective McCann spent four years investigating the case before the State presented it to the grand jury on August 31, 2017. During the four years she spent reviewing evidence, interviewing witnesses, and attempting to track down new leads, Detective McCann did not uncover any new evidence aside from microscopic hair and DNA analysis performed by the FBI:

Defense: Other than getting information from the FBI, was there any other new evidence uncovered during your investigation suggesting that Sheila Keen Warren committed this murder?

Detective McCann: It would be the additional hair analysis done and (unintelligible). That would be the majority of the additional information.

Defense: Would that be all of the new information?

Detective McCann: I can't remember any additional witnesses that were recovered or discovered.

Defense: Okay. So, it sounds like once the case was picked up, the only additional new information that leads to Sheila Keen's arrest comes from the FBI reports and their analysis. Would that be correct?

Detective McCann: Comes from things that were tested from our agency and then processed, submitted and tested by the FBI.

Exhibit 11, McCann Dep. at 158:10-159:1.

THE MICROSCOPIC HAIR AND FIBER ANALYSIS AND THE DNA ANALYSIS

On September 2, 2014, Detective McCann sent the trace (hair and fiber) evidence to the FBI for additional testing. On March 10, 2016, the FBI laboratory conducted microscopic analysis on the trace evidence recovered from the white Lebaron, and then on June 17, 2016, the lab conducted both nuclear and mitochondrial DNA testing on the trace evidence.

In a recent pleading, the State alleged that “[m]icroscopic analysis on the orange/yellow acrylic hairs located in the white Chrysler Lebaron, on the shoes located in the Keen’s home, on the ribbon from the balloons at the crime scene and orange/yellow acrylic hairs from the wig purchased at the Spotlight costumers [sic] concluded that they were identical in composition.”

State's Mot. in Limine at 5-6 (Nov. 6, 2020). The State made similar allegations about burgundy fibers. *Id.* at 6.

These claims are highly misleading. The FBI analyzed “*yellow* modacrylic wig type fibers” found in several locations and determined that the fibers are “consistent with,” not identical to, one another. FBI Trace Evidence Report, 3 (Mar. 10, 2016) (emphasis added). The FBI stated in no uncertain terms that a “fiber association is not a means of positive identification and the numbers of possible sources for a specific fiber is unknown.” *Id.* at 4. The State referenced “orange/yellow” acrylic hairs, yet the FBI’s report makes no mention of a “orange/yellow” fiber. This is significant because three of the four eyewitnesses said the clown was wearing a wig—two said it was red and one said it was orange. No one said the wig was yellow.

The State also alleged that “[m]icroscopic hair analysis on the human hair located in the Lebaron concluded that the hair was identical to a sample of hair from the Defendant.” State’s Mot. in Limine at 6. This is false. The FBI concluded that two of the hairs in the car are consistent with Ms. Keen-Warren’s hair, but that “[t]he comparison of the microscopic characteristics in hairs does not constitute a basis for personal identification.” FBI Trace Evidence Report at 2. The FBI also concluded that a third hair “exhibits both similarities and differences to the head hair sample from Sheila Keen.” *Id.*

The State’s interpretation of the FBI’s DNA analysis is equally misleading. The FBI DNA report identifies two items that purportedly link Ms. Keen-Warren to the stolen Lebaron: a hair from a floor mat and a hair from vacuum sweepings from the right rear of the vehicle. The FBI analyzed the shaft and the root of the hair from the floor mat and the shaft of the hair from the vacuum sweepings.

Regarding the hair from the floor mat, the State incorrectly asserts that the “DNA analysis on the skin portion of the hair root concluded that the Defendant is the source of the skin on the hair located in the Chrysler Lebaron.” *Id.* To the contrary, the FBI located both male and female DNA on the root portion of the hair, from which the lab concluded that Ms. Keen-Warren cannot be excluded as the source of one of the contributors of the DNA. FBI DNA Report, 2 (June 17, 2016). The FBI’s raw data indicates that a male is the major contributor of the DNA. In other words, most of the DNA found on the hair root belongs to a male, not Ms. Keen-Warren. Not surprisingly, this is the same hair that the FBI’s microscopic hair analyst claims to exhibit “both similarities and differences” to Ms. Keen-Warren’s hair sample. FBI Trace Evidence Report, 2.

The FBI also obtained a *partial* mitochondrial DNA sequence from a hair recovered from the right rear of the vehicle. The FBI analyst concluded that Ms. Keen-Warren cannot be excluded as being the source of this item. Notably, the FBI found that four percent of US Caucasians have the same mitochondrial DNA sequence. In other words, in addition to Ms. Keen-Warren, 1 out of every 25 US Caucasians cannot be excluded as the source of this hair.

ARGUMENT

Pursuant to Article I, section 14 of the Florida Constitution, “[u]nless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime . . . shall be entitled to pretrial release on reasonable conditions.” *See also* Fla. R. Crim. P. 3.131(a). Thus, a defendant has a constitutional right to pretrial release unless he is charged with a capital offense or an offense punishable by life **and** the proof of guilt is evident or the presumption is great. This section “embodies the principle that the presumption of innocence abides in the accused for all purposes while awaiting trial.” *State v. Arthur*, 390 So. 2d 717, 719 (Fla. 1980).

“[T]he burden of proof of this standard falls to the state. Indeed, the state is held to a degree of proof greater than that required to establish guilt beyond a reasonable doubt.” *Elderbroom v. Knowles*, 621 So. 2d 518, 520 (Fla. 4th DCA 1993). “Simply to present the indictment or information is not sufficient. . . . The state can probably carry this burden by presenting the evidence relied upon by the grand jury or the state attorney in charging the crime. The evidence must be presented in the form of transcripts or affidavits.” *Arthur*, 390 So. 2d at 720. Rule 3.140(g) requires that the affidavits relied on by the state to charge a crime be from a material witness. Furthermore, the court must consider an accused’s defense to the charge in determining whether the state has met this extremely high burden. *See Seymour v. State*, 132 So. 3d 300, 303-05 (Fla. 4th DCA 2014); *see also State ex rel. Freeman v. Kelly*, 86 So. 2d 166, 166 (Fla. 1956) (“[D]efendant’s version of the homicide cannot be ignored where there is absence of other evidence legally sufficient to contradict his explanation.”).

Even if the court finds that the state has met the burden of proof required to hold a defendant without bail pretrial, the court still has the discretion to grant a defendant a bond if the purposes of bail can be satisfied by means other than pretrial detention. *See Arthur*, 390 So. 2d at 717, 720. Section 903.046(1), Florida Statutes, states “[t]he purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger” According to the Florida Constitution, the “unreasonable danger” referred to by this statute is the “risk of physical harm to persons.” Art. I, § 14, Fla. Const.

The purpose of a bail is not to punish the accused or to detain the accused in custody prior to disposition of the case. *State ex rel. Crabb v. Carson*, 189 So. 2d 376, 377 (Fla. 1st DCA 1966). To the contrary, there is a presumption in favor of pretrial release on nonmonetary conditions, and

the court shall impose the least restrictive conditions that are necessary to ensure a defendant's presence at subsequent court proceedings and to protect the community. Fla. R. Crim. P. 3.131(b).

The legislature has set forth several factors for the court to consider when imposing the least restrictive condition necessary to ensure the defendant's presence and to protect the community. These conditions include, but are not limited to, (a) the nature and circumstances of the offense charged; (b) the weight of the evidence; (c) the defendant's family ties, length of residence in the community, employment history, financial resources, need for substance abuse treatment, and mental condition; (d) the defendant's previous criminal convictions and any failures to appear; (e) any danger the defendant may pose to the community; (f) the sources of funds used to post bail; (g) whether the defendant is already on release pending resolution of another criminal proceeding or is on probation or parole; (h) the street value of any drug of controlled substance connected to the criminal charge; (i) the nature and probability of danger to victims; (j) whether there is probable cause to believe that the defendant committed a new crime while on pretrial release; (k) any other relevant factors; (l) whether the crime charged is subject to enhanced punishment under the "Criminal Gang Prevention Act"; and (m) whether the defendant is required to register as a sexual offender. § 903.046(2), Fla. Stat.; *see also* Fla. R. Crim. P. 3.131(b)(3).

I. THE PROOF IS NOT EVIDENT AND THE PRESUMPTION IS NOT GREAT.

There is no reliable physical or testimonial evidence that implicates Ms. Keen-Warren in this crime. To the contrary, the evidence indicates that Ms. Keen-Warren did not shoot Marlene Warren. The State arrested Ms. Keen-Warren based on assumptions and inferences drawn from purely circumstantial and inconclusive evidence, yet the State has no direct evidence linking Ms. Keen-Warren to the actual murder.

The State avers that Sheila Keen-Warren was having a romantic relationship with Michael Warren, so she must have been the person who killed Marlene Warren. The State has spent the last 30 years trying to force the evidence to match this loose motive, but the pieces don't fit the puzzle. Forcing the pieces into the wrong puzzle is futile and dangerous. This is precisely how you convict an innocent person.

It is undisputed that on May 26, 1990, a person dressed in a clown costume drove a white Chrysler Lebaron to 15470 Takeoff Place. It is also undisputed that this person exited the vehicle, shot Marlene Warren, and fled the area. There is absolutely no evidence, albeit physical or testimonial, that Sheila Keen-Warren dressed as a clown and shot Marlene Warren. In fact, there is no evidence that Ms. Keen-Warren ever possessed the clown costume, the firearm, or the vehicle used to commit the crime.

At the time of the shooting, Ms. Warren was inside her house with Jean Pratt, Wendell Pratt, Mindy Perez, and Joseph Ahrens. After the shooting, three of the four witnesses identified the shooter as a male, and the fourth could not identify the shooter as a male or female. Significantly, all four witnesses described the shooter as being anywhere from six feet to six feet and two inches tall. Ms. Keen-Warren is five feet and seven inches.

The detectives' interviews of the employees from Publix and Spotlight Cappezzio are equally troubling. The two Publix employees did not identify Ms. Keen-Warren as the person who bought the floral arrangement and balloons.

Moreover, the employees from the costume shop provided inconsistent and suggestive identifications that involved three separate interviews. They also described a costume—yellow orange on one side and a candy pink color on the other side—that does not match the costume identified by any of the four eyewitnesses:

- Wendel Pratt: white with red hearts or diamonds;
- Mindy Perez: “multiple colors” with “some blue with dots on it;”
- Joseph Aherns: “a grey color;” and
- Jean Pratt: “bright colors.”

The police seized and processed three white Chrysler Lebarons in the four days following the shooting. On May 30, 1990, the police recovered an abandoned white Chrysler Lebaron convertible at a Winn Dixie shopping plaza. The investigation links *this* vehicle to a grand theft committed by Michael Warren. Notably, the vehicle did not have a license plate or any other distinguishing characteristics to link *this* white Lebaron to the white Lebaron involved in the shooting. And one of the eyewitnesses to the shooting, Jean Pratt, stated on more than one occasion that the white Lebaron recovered from the Winn Dixie parking lot is not the white Lebaron she saw flee from Marlene Warren’s house.

From 1990 to 2013, PBSO tasked four sets of detectives with investigating the death of Marlene Warren. Up until Detective McCann’s involvement in the case, the State did not have probable cause to charge Sheila Keen-Warren with the murder of Marlene Warren. During the four years she spent reviewing evidence, interviewing witnesses, and attempting to track down new leads, Detective McCann did not uncover any new evidence aside from microscopic hair and DNA analysis performed by the FBI.

Assuming, arguendo, the FBI accurately analyzed the samples and reported its findings, the evidence would suggest that two hair samples that may belong to Sheila Keen-Warren were found in a vehicle that may be the vehicle involved in the murder of Marlene Warren. Even if the two hair samples belong to Ms. Keen-Warren and the vehicle is the vehicle involved in the murder, these new findings do not suggest when or how these two hair samples ended up in the vehicle.

Ms. Keen-Warren could have been in the car any number of times in the 30 days leading up to the murder. On the other hand, in the absence of reliable DNA evidence, the State is left with no evidence tying Ms. Keen-Warren to the crime. Thus, after a 27-year-investigation that turned up no credible evidence linking Sheila Keen-Warren to the murder of Marlene Warren, the State determined that it had sufficient evidence to prosecute her based on flimsy circumstantial evidence stacked on flimsy circumstantial evidence.

In sum, the State does not meet its burden: the proof of guilt is not evident, and the presumption is not great. There is no testimonial evidence from any witnesses and there is no credible physical evidence that Ms. Keen-Warren is the “very tall man” dressed as a clown who killed Marlene Warren. The severity of the crime does not justify the incarceration of an innocent person. The Constitution requires pretrial release under these circumstances.

II. PRETRIAL DETENTION IS NOT NECESSARY TO ENSURE MS. KEEN-WARREN’S PRESENCE IN COURT OR TO PROTECT THE COMMUNITY.

Even if the Court finds that the State has met the burden of proof required to hold Ms. Keen-Warren without bail pretrial, the Court should still exercise its discretion to grant her a bond because the purposes of bail can be satisfied by means other than pretrial detention.

A. Nature and Circumstances of the Offense Charge and Weight of the Evidence

The nature and circumstances of the offense charged are of no consequence when dealing with an innocent person. *See* § 903.046(2)(a)-(b), Fla. Stat. As outlined above, not only is there no reliable evidence implicating Ms. Keen-Warren in this murder, but the evidence suggests that someone else committed this crime. *See supra* Part I.

B. Family Ties and Length of Residence in the Community

Ms. Keen-Warren moved out of state, but she maintains significant ties to the community. Her son, Charles Keen, lives in Palm Beach County. Her brother lives and works in Martin

County, along with several of her aunts and cousins. If released, Ms. Keen-Warren would live with her son and remain in Palm Beach County. She is also prepared to surrender her passport. Her ties to the community and her willingness to turn over her passport and remain in Palm Beach County suggest that she is not a flight risk. *See* § 903.046(2)(c).

C. Previous Criminal History and Potential Danger to the Community

Ms. Keen-Warren does not pose a danger to the community or to any of the witnesses in this case, as evidenced by her lack of criminal history. *See* § 903.046(2)(d), (e) and (i). She has never been convicted of a crime nor failed to appear for a court proceeding. Moreover, Ms. Keen-Warren has not been involved with the criminal justice system in the 27 years that passed between this crime and her arrest.

D. The COVID-19 Pandemic

Finally, this Court should consider the COVID-19 pandemic. *See* § 903.046(2)(k). Conditions of confinement create the ideal environment for the transmission of contagious disease. Joseph A. Bick, *Infection Control in Jails and Prisons*, 45(8) INFECTION CONTROL IN JAILS AND PRISONS 1047 (Oct. 15, 2007). Decreasing the size of a jail population during a pandemic outbreak can do more than protect the people who live in the jail; it can also reduce the risk of the jail becoming a site of cluster infection, thereby protecting the community. Amanda Klonsky, *An Epicenter of the Pandemic Will be Jails and Prisons, if Inaction Continues*, N.Y. Times (Mar. 16, 2020), <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>. Significantly, incarcerated people have poorer health than the general population, and even at the best of times, medical care is limited in state and federal jails and prisons. U.S. Dep't of Justice, Bureau of Justice Statistics, NCJ 248941, *Special Report on Medical Problems of State and Federal Prisoners and Jail Inmates*, 2011-12 (2015).

As of December 1, 2020, “at least 200,000 inmates have already been infected with Covid-19, and at least 1,450 inmates and correctional officers have died from the virus Those numbers most likely underestimate the magnitude of the problem, because reporting requirements vary from state to state” Roni Caryn Rabin, *Prisons Are Covid-19 Hotbeds. When Should Inmates Get the Vaccine?*, N.Y. Times (Nov. 30, 2020), <https://www.nytimes.com/2020/11/30/health/coronavirus-vaccine-prisons.html>.

People in prisons and jails are uniquely vulnerable to this disease, and the Palm Beach County Jails cannot and has not ensured their safety. There have already been COVID-19 outbreaks in the jails. The detention centers do not have the resources to prevent the spread of COVID-19 into the jail, throughout the jail, or from the jail to outside populations. Ms. Keen-Warren’s continued detention creates a substantial risk to her health and the health of other inmates, medical staff, corrections officers, and society as a whole.

CONCLUSION

The state and federal constitutional right to release before trial is based on fundamental values guarding the presumption of innocence. “This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction.” *Stack v. Boyle*, 324 U.S. 1, 4 (U.S. 1951) (citing *Hudson v. Parker*, 156 U.S. 277, 285 (U.S. 1895)). Ms. Keen-Warren is presumed to be innocent and is entitled to pretrial release on reasonable conditions. If the true purpose of a bail determination is to ensure her appearance at court and to protect the community, then this Court should fashion some remedy that does not involve punitive pretrial measures.

In this case, the proof is not evident, and the presumption is not great. Ms. Keen-Warren is therefore entitled to a bond. There are clearly conditions of release that would assure both the

safety of the community and Ms. Keen-Warren's presence in court. She is neither a danger to the community nor a flight risk. Sheila Keen-Warren is an innocent woman. Considering her ties to the community, her lack of criminal history, and the lack of any reliable evidence implicating her in this offense, this Court should release Ms. Keen-Warren on a reasonable monetary bond. In the alternative, the Court should place Ms. Keen-Warren on PBSO in-house arrest.

WHEREFORE, for the foregoing reasons and for any other reasons that may appear to this Court, Ms. Keen-Warren respectfully requests that this Honorable Court set bond at \$50,000.00. In the alternative, if this Court finds that more restrictive conditions are necessary, Ms. Keen-Warren respectfully requests that she be placed on PBSO in-house arrest.

Respectfully submitted,

/s/ Greg Rosenfeld

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CERTIFICATE OF GOOD FAITH

I HEREBY CERTIFY that counsel has made a good faith effort to resolve the issues without a hearing but has been unable to do so.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-service to the Office of the State Attorney, Division “MCU,” at FELMCU@sa15.org; Reid Scott, Assistant State Attorney, at RScott@sa15.org; Kristen Grimes, Assistant State Attorney, at KGrimes@sa15.org; Richard G. Lubin, Esq., Attorney for the Defendant, at Rich@lubinlaw.com and Debi@lubinlaw.com; and Amy Morse, Esq., Attorney for the Defendant, at Amy@morselegal.com, on this 4th day of January, 2021.

/s/ Greg Rosenfeld
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