

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 KEEN-WARREN,

Defendant.

STATE'S FIRST MOTION IN LIMINE TO ADMIT EVIDENCE AT TRIAL

COMES NOW, the Dave Aronberg for the State of Florida, by and through the undersigned Assistant State Attorney, Reid Scott, and files this State's Motion in Limine to Admit Evidence at Trial and asked this Honorable Court to admit particular pieces of evidence collected during the investigation of the above styled case and to permit the evidence to proceed before the jury as the evidence is properly authenticated both through direct and circumstantial evidence, as well as a business record, and such that the ultimate issue of authenticity should be for the trier of fact and any question as to chain of custody would go to the weight and not the admissibility of the evidence, and in support would state the following:

STATEMENT OF THE CASE

At 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 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 clown. 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 Chrysler LeBaron convertible parked in the driveway and drive away. Law enforcement and emergency medical professionals responded and found Marlene Warren 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 named “A Bargain Motors.” A repossession agent named Sheila Keen (“Defendant”) also worked for “A Bargain Motors.” At the time, Keen was a taller, thin, white female with long brown hair and was described to have masculine features. Several witnesses who were associates of the victim’s husband Michael Warren provided statements that he was having an extramarital affair with the

Defendant. Further, witnesses described seeing the two kiss, hug and possibly engage in oral sex. Warren and Keen married in 2002, and from 1993 to 2016 owned a restaurant in Tennessee named “The Purple Cow.”

Detectives interviewed several witnesses who were inside of the home at the time of the murder. All describe the shooter to be dressed in a clown costume, wearing a colorful wig, white face and having “man like” features. Witnesses who saw the clown stated that it was not wearing clown shoes but rather black lace up style shoes or boots. Inside of the home, detectives located a flower arrangement and two Mylar balloons. One of the balloons was heart shaped and read “You’re the Greatest” and the other displayed an image of Snow White and the Seven Dwarves. Detectives also located orange yellow acrylic hair fibers on the balloon ribbons. The fibers appeared to be consistent with a clown wig.

Detectives also interviewed several witnesses from “A Bargain Motors” regarding observations they made of Warren and the Defendant in the months leading up to the homicide. Numerous witnesses recall an incident occurring approximately 45-days prior to the murder where a married couple (Mr .and Mrs. Restivo) called “A Bargain Motors,” believing it to be “Payless Car Rental”, trying to return a white Chrysler LeBaron they had rented. The witnesses recalled Michael Warren telling the couple to just leave the keys in the visor and that the car would be picked up. Mr. Claude Poitres, an employee of “A Bargain Motors” told

investigators that shortly after the phone call, he drove Michael Warren and the Defendant to Payless Car Rentals and observed them get into a white Chrysler LeBaron and drive away. Poitres stated that Warren told him not to say anything to anyone about the LeBaron.

The detectives interviewed two employees from a Publix at 2948 North Military Trail in West Palm Beach, who recalled a female purchasing the exact flower and balloon ensemble found at the scene less than two hours before the murder. Both of the employees described the person who purchased the items as a white female with long brown hair tied in a ponytail and having male mannerisms. The Publix was located approximately one mile from the apartment of Defendant. The Defendant was interviewed and denied shopping at that Publix that morning. The Defendant also denied romantic involvement with Michael Warren and stated she had never been in a Chrysler LeBaron.

Items were collected from the Defendant's home, including two pair of black lace up style shoes consistent with the observations made by the witnesses inside the home. CSIs processed the shoes and recovered various hair fibers from the bottoms of the shoes, specifically, orange yellow acrylic fibers and burgundy fibers.

Two employees at the Spotlight Costume shop located at 5612 South Dixie Highway in West Palm Beach told the detectives that a tall thin white female with long brown hair came into the shop two days prior to the murder and purchased a

clown costume. The person stated that they needed enough white makeup to cover the entire face and that the costume would be for a female. The person did not purchase any clown shoes with the costume. Based on the receipts from the store, detectives purchased an identical wig as the one purchased just days earlier by the clown from the Spotlight. The wig was identical in composition and material. Both witnesses were able to positively identify the Defendant from photo lineups and a newspaper article as the person they recall buying the clown costume.

During the investigation, the detectives located a white Chrysler LeBaron abandoned in a Winn Dixie Parking lot on Okeechobee Blvd, in West Palm Beach. The LeBaron was confirmed to be the car belonging to Payless Car Rentals. This is also the vehicle witness Claude Poitres observed Michael Warren and the Defendant steal approximately forty-five days before the murder. It was also consistent with the description of the vehicle witnesses observed the clown get into after shooting Marlene Warren. Sergeant Michael Free and Det. Jay Mullins of the Palm Beach County Sheriff's Office processed the inside of the vehicle and collected various hair fibers from the floor carpet of the LeBaron. Specifically, the officers collected orange yellow acrylic hair fibers, as well as what appeared to be human hairs.

Microscopic analysis on the orange/yellow acrylic hairs located in the white Chrysler LeBaron, on the shoes located in 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 concluded that they were identical in composition. Microscopic analysis of the burgundy hairs located on the boots of Sheila Keen and the burgundy fibers from the carpet of the LeBaron located in the Winn Dixie parking lot concluded that they were identical in composition.

Microscopic hair analysis on the human hair located in the LeBaron concluded that the hair was identical to a sample of hair from the Defendant. DNA analysis on the hair concluded that Keen could not be excluded at the source of the hair. Further, 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.

LEGAL AUTHORITY AND ANALYSIS

A. The evidence offered by the State of Florida is properly authenticated through both direct and circumstantial evidence.

“The standard of review for admissibility of evidence is abuse of discretion.” Clark v. State, 268 So. 3d 751, 753 (Fla. 4th DCA 2019) (citing Nardone v. State, 798 So. 2d 870, 874 (Fla. 4th DCA 2001). Authentication or identification of evidence is required as a condition precedent to its admissibility. The requirements of this sections are satisfied by evidence sufficient to support a finding that the matter in question is what the proponent claims. § 90.901 Fla. Stat. (2020); See State v. Love, 691 So. 2d 620, 621 (Fla. 5th DCA 1997). Authentication requires only a prima facie case to support admission, and the proponent may provide both direct

and circumstantial evidence to satisfy that burden. Lopez v. State, 97 So. 3d 301 (Fla. 4th DCA 2001) (citing Love at 621). The threshold for authentication is a “relatively low” burden. Mullens v. State, 197 So. 3d 16, 25 (Fla. 2016); See Thompson v. State, 253 So. 3d 684 (Fla. 1st DCA 2018). In determining whether the evidence is sufficient for the purpose of authentication, “the trial judge must evaluate each instance on its own merits, there being no specific list of requirements for such a determination.” Symonette v. State, 100 So. 3d 180, 183 (Fla. 4th DCA 2012); See Allen v. State, 492 So. 2d 802, 803 (Fla. 1st DCA 1986) (quoting Justus v. State, 438 So. 2d 358, 365 (Fla. 1983). Evidence may be authenticated by examination of its appearance, contents, substances, internal patterns, or other distinctive characteristics in conjunction with the circumstances. Gosciminski v. State, 132 So. 3d 678, 700 (Fla. 2013) (citing Coday v. State, 946 So. 2d 988, 1000 (Fla. 2006)). Once a prima facie showing of authenticity is made, the evidence comes before the jury, and the ultimate question of authenticity is one for the jury. Id. (citing Charles W. Ehrhardt, Florida Evidence § 901.1, at 1092-93 (2020 ed.).

In Clark v. State, the State charged the defendant Rodney Clark thirty years after he committed the murder and sexual battery of his victim Dana Fader. Clark, 268 So. 2d at 752. Fader left her apartment in the early morning hours and was abducted by Clark in the parking lot. Clark subsequently sexually battered and

murdered Fader in her vehicle and left her naked in the back seat. Detectives located the vehicle with Fader's body inside the following day.

During the investigation, Officer Robert Cook lifted latent prints from the back passenger's side window of Fader's vehicle. Sergeant Michael Waites with the Palm Beach County Sheriff's Office recalled seeing the area on the window with a possible latent print, but did **not** lift the print and was **not** present when Cook lifted the print. Cook died prior to the case being charged. At trial, Waites testified that he recalled seeing a "smudge" in the area on the window that Cook lifted and that he recognized Cook's initials on the latent lift card. The card also contained unique identifying information including, the name of the case, the name of the victim, the case number, Cook's initials, the date the lift was taken and diagram of the lift. All the information on the back of the card was consistent with the type of information that was routine at that time. The trial court admitted the evidence and the Defendant was convicted and sentenced to life in prison. The Defendant appealed, claiming the Court admitted the latent lift card (as well as other items collected by Cook) in error. The Defendant claimed the admission of the items was improper due to a lack of chain of custody, lack of foundation, and violation of the Confrontation Clause.

The Fourth District upheld the conviction finding that the State laid a sufficient predicate through the testimony of Waites and other officers for the

admission of the latent lift cards.¹ The Court further stated that there was no evidence of tampering established by the defendant, and there was no abuse of discretion by the court. See Fencher v. State, 931 So. 2d 184 (Fla. 5th DCA 2006) (No error in admitting of a rape kit without the testimony of the nurse who took the kit where other witnesses testified to the manner in which the kits were used and packaged and the packaging itself contained circumstantial evidence of authenticity); Thompson v. State, 253 So. 3d 684 (Fla. 1st DCA 2018) (No error in admission of a blood stained wallet and shoes of a defendant taken during booking without the person who took the items where there was other extrinsic circumstantial evidence that provided a prima facie showing that the items were what the proponent claimed them to be); U.S. v. Farrad, 895 F. 3d 859 (Cir. Ct. 6th, 2018) (Distinctive characteristic of an item or item captured in a photograph can authenticate a piece of evidence.)

1. Mr. Jay Mullins can properly authenticate the hairs and fibers taken from the white Chrysler LeBaron.

State's witness Mr. Jay Mullins has the knowledge and will testify and properly authenticate the items of evidence collected by himself as well as deceased witness Michael Free. On May 30th, 1990, Sergeant Free proceeded to process the

¹ The Court cited to Mack v. State, 106 So. 3d 1011, 1012 (Fla. 3rd DCA 2013) (no error where the State authenticated the latent fingerprint card though witnesses and circumstances, even when the person who lifted the print did not testify.)

white Chrysler LeBaron located in the Winn Dixie parking lot. Free notes in his report that he collected both synthetic colored fibers from inside the vehicle as well as human hair like fibers. On that same day, he contacted Mullins to assist him with the collection of fibers and hairs from the vehicle. Mullins notes in his report that he responded to the garage to process the white LeBaron. Mullins likewise noted the VIN number of the LeBaron matched the VIN number noted in both Free's report and the vehicle found in the Winn Dixie parking lot. Mullins also notes that he responded and did assist Free with the collection of evidence that included orange fibers and human hair like fibers. This is the same evidence ultimately collected by Free. Mullins then turned the evidence over to Free for packaging.

Further, Mullins will testify that he had worked with Sergeant Free on multiple other cases as well as the present case. As such, he was familiar with both the way in which evidence was collected, packaged, labeled and stored and that the items in this case were collected and stored in compliance with the procedures in place at that time. Moreover, Mullins will testify that he was familiar with Free's initials and that he recognized them on the bags of items of evidence in this case.

2. The evidence collected contains extrinsic circumstantial evidence that authenticates items of evidence.

Even without any qualifying witness, the items themselves are self-authenticating in the same fashion as the evidence in Clark and Gosciminski. In Clark, the latent finger print lifts contained information sufficient for identification and authentication. The latent cards contained the date, case number, victim's name, location of the place where the lift was taken, and the initials of the person who took the lifted print. The evidence at issue contains the exact same information. Both the evidence bags and items of evidence contain the case number, location where the evidence was gathered (those all being relevant locations to this case), the name of the victim, the victim's address, the PBSO case number, the name of the person who collected the evidence, and the initials of the person who packaged the evidence

3. The property documentation provides additional indicators of authentication as well as chain of custody for the items of evidence.

Beyond the testimonial authentication and circumstantial evidence of authentication, the evidence in this case has assigned submission numbers with bar codes that correspond to property receipts. The property receipts serve to identify the pieces of evidence, where they have gone and whether or not they have been opened. These property receipts are standard protocol for the Palm Beach County Sheriff's Office to keep and maintain evidence with extreme integrity. Further, all

items that were sent to the FBI for testing also have corresponding FBI “A-sheets” which are the internal property receipts used by the FBI. The “A sheets” show every person that handled a piece of evidence while that evidence was in the custody of the FBI. The “A sheets” also show when a piece of evidence entered the facility and when it was sent back. Further, all the FBI “A sheets” mark pieces of evidence with unique identifiers that correspond to pieces of evidence identified by the PBSO lab. Such, the unique markings on the pieces of evidence correspond to the actual evidence as well as the documentation, making it clear where the evidence came from.

4. The evidence itself contains intrinsic evidence of authentication.

There are several pieces of evidence that contain intrinsic evidence of authentication based solely upon what they are. These items include the orange fibers and hair taken from the LeBaron which are visible in crime scene photographs taken during the processing of the vehicle. Also included are the Mylar balloons located at the scene of the murder, which are visible in the crime scene photographs.

B. The Defense cannot show a “probability” of tampering such to call into question the admissibility of the State’s evidence.

Relevant physical evidence is admissible unless there is an indication of probable tampering. Armstrong v. State, 73 So. 3d 155, 171 (Fla. 2011) (Citing Peek v. State, 395 So. 2d 492, 495 (Fla. 1990); See Overton v. State, 976 So. 2d 536 (Fla. 2007); Garcia v. State, 873 So. 2d 426 (Fla. 3d DCA 2004). In order to demonstrate probable tampering, the party attempting to bar the evidence must show there was a ***probability*** the evidence was tampered with—the mere possibility is insufficient. Id. (Citing Murray v. State, 838 So. 2d 1073, 1082-83 (Fla. 2002)) (Mere allegations and speculations do not rise to the level of a probability of tampering.)

The Defendant cannot meet his burden of proving a probability of tampering such to question any chain of custody of the evidence in this case. The Defendant can point to no specific circumstance regarding the evidence in this case that rises to the level of a probability. At best, the Defendant can put forth conjecture, speculation, assumptions and conspiracy theories, none of which rise to the level of a probability.

CONCLUSION

All of the evidence in this case can and will be authenticated in a plethora of ways including both direct and circumstantial evidence. There is no requirement

that evidence be authenticated in any one particular way. Further, the evidence contains indicia of reliability and self-authenticity, which in combination with the totality of the evidence will clearly demonstrate that the evidence is what the State purports it to be. Further, there is no evidence of a probability, of tampering.

WHEREFORE, the State prays this Honorable Court to enter an order in Limine Granting the State's Motion and ruling that the evidence offered by the State in this case has been properly authenticated for the purposes of admission.

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT a true and correct copy of the foregoing Motion has been furnished by E-SERVICE to RICHARD G. LUBIN ESQ at DEFENSE@LUBINLAW.COM, this the __6th__ day of November, 2020.

Respectfully submitted,

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/s/



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