IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON, Plaintiff, vs. THEMBA HASAAN KELLEY	CASE NO 16CR46168 Motion to notify the court to the state's history of egregious misconduct, and foreseeable egregious misconduct and prejudicial harm, that he will likely attempt to inflict upon the defendant in ALL upcoming proceedings, irregardless of whatever case No. those proceedings may be under/ *Chitwood,* 370 Ore. 305, (2022)

Because of DDA Brian Davidson's egregious conduct towards the defendant in past proceedings, the defendant is compelled to inform the court of Mr. Davidson's easily discernible and previously unchecked prosecutorial misconduct; particularly, but not limited to rebuttal closing arguments. *See Chitwood,* 370 Ore. 305. Why is this important? It's important because, if a similar pattern of prosecutorial conduct arises in upcoming proceedings regarding this case, it will not be hard for the court to identify such improper conduct - if and when it occurs .[1] *See Chitwood,* 370 Ore. 305

Relevantly, according to ORS 9.460, an attorney shall:

(1) Support the Constitution and laws of the United States and of this state: (2) Employ, for the purposes of maintaining the causes confined to the attorney, such means only as are consistent with Truth and never seek to mislead the court or Jury by artifice or false statement of fact....

Just as important: "THE OATH OF OFFICE FOR ADMISSION TO THE PRACTICE OF LAW IN OREGON" requires that every attorney in the State of Oregon swear the following:

[1] Mr. Davidson and Mr. Dundan will undoubtedly pretend as if they are obvious to anything noted in this sacred document.

> "I will faithfully and honestly conduct myself in the office of an attorney in the courts of the State of Oregon; that I will observe and abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Oregon and that I will support the Constitution and laws of the United States and of the State of Oregon. **To the court, opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications."**

That said, **PROSECUTOR BRIAN SCOTT DAVIDSON'S,** willful and intentional misconduct towards the defendant **(AS CARRIED OUT AND DEFENDED BY DDA ANTHONY DUNDAN)** has been blatant, apparent, nefarious, devious and unapologetic as follows:

1. In order to wrongfully convict the defendant in case No. 19CR53657, the prosecutor intentionally, knowingly, deceptively and willfully lied to the jury on rebuttal closing argument as follows:

> "Themba Kelley violated Wendy Parris for hours already...and she wasn't able to provide for him over hours of sexual assault. **That's why he wanted another bitch and he got one, in his mind, Ms. Ordenes, another target, another object to potentially satisfy his object, his sexual objective [of rape]."**

2. According to Websters, the word "target" and "victim" are synonyms. Target also means, "a person or thing that is an object of abuse."
3. Thus, when Davidson told the jury that Ordenes was "another target," he strongly implied that Themba Kelley wanted to rape Olivia Ordenes after he "violated Wendy Parris for hours."
4. That said, the prosecutors above comment was an intentional misrepresentation of his own witness's testimony.
5. That is, on April 4th, 2023, only two weeks before trial, Ordenes clearly told the state;

"...the sexual contact that occurred between she and Mr. Kelley was consensual. She did not feel he forced himself on her and felt she could leave anytime she wanted..."

6. Ordenes even told Davidson a week before trial at grand jury, that she was turned on "a little."

7. She further told Davidson, that the consensual sex was limited his interest in her feet and when she asked him to stop, he stopped and we started to look at Facebook.

8. At a 104 hearing, a week later out the presence of the jury at trial, Ordenes once again told Davidson that she was not victimized as follows:

   Davidson: **"...did he want you to do anything sexual to him?"**

   Ordenes: **"No." ....**

   Davidson: **"Would you describe his interest in your feet - - was it aggressive? "**

   Ordenes: **"No."**

9. Thus, Prosecutor Davidson intentionally misrepresented the truth. That is, he knew that Ms. Ordenes was not targeted as Themba Kelley's "next "sexual objective." In fact, even though Ordenes clearly told Davidson on two separate occasions and even at a 104 hearing at trial, that she was not victimized by Themba Kelley, Mr. Davidson still chose to willfully and maliciously tell the jury that Ordenes was Themba Kelley's next sexual target, rape-victim and bitch![2] That is, after he allegedly - *"violated Wendy Parris for hours."* Thus, there is absolutely no reason for the defendant (or anyone else for that matter) to believe that the prosecutor will not conduct himself in a similar fashion in upcoming proceedings.

10. But it's even worse because, before Mr. Davidson did it, the court ordered him not to as follows: "

[2] It is not an easy task to un-ring a bell. *See Chitwood, 370 Ore. 305, (2022)*

> **...this is inadmissible propensity evidence..I find it's prejudicial impact would outweigh it's probative value, so it would not be admissible under 403...It has very limited relevance and has a great risk of distracting the jury from the central task of the case. So this evidence about the sexual interactions between the defendant and Ms. Ordenes is not admissible."** Pages 1574-75.

11. Though the order could not have been any clearer, the prosecutor nonetheless, asked the court the following disingenuous question:

> " So Judge, just so I'm clear on the scope of your ruling...**I'm just asking because I don't want to step in it accidentally**...it was my understanding of her testimony, that he was sexually interested in her...Are you telling me that I can't broach that..?" Pages 1574-75.

THE COURT: **"I don't see the relevance...So I think that's all out."** Pages 1574-75.

12. Above do we see fraud upon the court.[3] That is, the prosecutor pretended as if he really didn't want to "step in it accidentally," when that was exactly what he intended to do, as evidenced by the disturbing fact that he did it anyway.

13. The prosecutors egregious conduc[4]t in previous proceedings, combined with his unapologetic disobeying of the court's order, as well as his committing of fraud upon the court, proves, that Mr.

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[3]See ORCP 71 (C).

[4] It was DDA Anthony Dundan who supported DDA Davidson's egregious misconduct by filing a motion to defend it. He also defended it again in his deceptive arguments to the trial court. Thus, the defendant is also putting the court on notice, regarding the strong possibility, that DDA Dundan may also try to pursue similar conduct in any and all proceedings involving Themba Hasaan Kelley.

Davidson is defiant and moreover, that the defendant is justified in putting the court on notice, that this conduct is highly probable to occur again. [5]

14. Foreseeing that the prosecutor will likely say that, the defendant is just disgruntled because he was convicted on the above case, the defendant will now disclose the following historical facts about case No. 19CR53657.

- Case No. 19CR53657, began as a 12 Count indictment and is now down to only 3. That is, seven counts were dismissed before trial and two counts were won at trial. Thus, the defendant is not disgruntled. On the contrary, our attitude, mentality and spiritual disposition is inoculated with victory.
- Still, because of Mr. Davidson's egregious misconduct outlined above and other misconduct issues related, the three counts that remain under Case No. 19CR53657, are currently being analyzed by the court of appeals. Mr. Davidson is not above the undefeatable Law God. Nor is he above the Law of God, as it is actualized by and through man.
- To that regard, defense counsel, Barry Engle has declared under penalty of perjury, that Brian Scott Davidson does not **"value truth and veracity over getting convictions."**

- Defense counsel, also stated the following on the record during pretrial: **"The false accusations in this case are being brought forth in a way you don't see happening in this county."**
- Supporting the defendant's position even more, defense counsel, Westbrook Johnson, filed the following historic declaration before she passed away.

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[5] The above issue was argued in post trial hearing for prosecutorial misconduct. However, though the judge wrote a three page ruling on the hearing in favor of the State, he peculiarly did not address the most potent misconduct issue that the defendant raised. That is, the egregious "sexual target," that the court itself ordered the prosecutor not to make. Thus, because a new trial wasn't appropriately granted by the trial court, the defendant has been forced to spend thousands of dollars on an appeal's attorney, so the issue can raised with the higher court.

" I have likely represented over 1,000 clients...Never have I seen the Multnomah County District Attorney's Office prosecute a case so flawed, a criminal investigation so inept and a witness whose statements and testimony are so probably false. Since the complaining witness's first interaction with law enforcement, beginning with the call to BOEC, her statements have contradicted themselves, objective facts and even reality...The Multnomah County District Attorney's Office is fully cognizant of the issues...with the complaining witness and the allegations of prosecutorial misconduct through several hearings, filed pleadings, and reports. Even after Judge von Ter Stegge stated on the record, "...it does not appear to be a strong case for the State..." the government continues their efforts to convict Themba Kelley. I don't say this lightly, but the District Attorney's Office is aware, and has been, that their sole witness is not credible and yet has continued to defend her in a way that is unprecedented...even more bizarre...Themba Kelley...has repeatedly been the target of baseless prosecutions as far back as 2013. "

Regarding the same case and his presentation to the court of Appeals, Ryan Scott's wrote the following regarding Brian Davidson's conduct at Themba Kelley's trial: **"It's impossible to overstate how egregious the prosecutors argument was...the Due Process Clause does not countenance this degree of gamesmanship."**

As the court must now, it is extremely rare for a criminal defendant to have 3 defense attorney's, all place their reputations on the line, by declaring and agreeing with such confidence and boldness that prosecutorial misconduct has indeed occured. Thus and again, the defendant is absolutely justified, with putting ALL courts on notice, regarding the strong possibility, that Mr. Davidson, Mr. Dundan **and any other prosecutor appointed by the state,** will likely attempt to commit such willful acts in any and - *all* - upcoming proceedings involving defendant Themba Hasaan Kelley.

CONCLUSION

A PROSECUTOR "...is a representative...whose obligation...is not that it shall win a case, but that justice shall be done...while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." Berger v. United States, 295 U.S. 78, 88

Sincerely, Themba Hasaan Kelley