

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

STATE OF OREGON,  
Plaintiff,

vs.

THEMBA HASAAN KELLEY,  
Defendant

Case No.: 19CR53657

BRIEF ON THE MERITS No. 3  
IN SUPPORT OF DEFENDANT’S MOTION  
TO DISMISS FOR PROSECUTORIAL  
MISCONDUCT

More Bad Faith Proven – Another Video  
Comes Up Missing

At the alleged scene of the crime and on the day the Defendant was arrested, former Defense Counsel Barry Engle made an urgent request to the State’s Lead Investigator Anthony Cobb. That request was for the State to obtain video evidence from Fred Meyer that the Defense needed to impeach the Complaining Witness’s testimony. A few days after the arrest, at Grand Jury, the State gave the deceptive impression that the discovery of the video-evidence was imminent.

For the above reasons, the Defense of course made the reasonable assumption that in good faith, the State would recover the impeaching Fred Meyer video evidence. Disturbingly, that was not the case. Though the SDDA had a Constitutional duty under *Kyles v. Whitley*, 514 U.S. 419 (1995) to “...disclose evidence favorable to the Defense...” and though the Supreme Court affirmatively holds “...that the Prosecutor remains responsible for gauging...” *Id.* evidence favorable to the Defense “...regardless of any failure by the police to bring favorable evidence to the prosecutor’s attention,” *Id.* similar to the State’s explanation for why the 7-Eleven video evidence was not discovered; once again, the State provided weak and inexcusable excuses for why the Fred Meyer video-evidence was not obtained.

1           Because there are so many layers of misconduct which pertain to this material issue, *pro*  
2 *se* Defendant, Themba Hasaan Kelley, and with the support of Legal Advisor, Westbrook  
3 Johnson, have devoted a comprehensive brief to the Fred Meyer video-evidence alone. With  
4 confidence in the truth-seeking function of the tribunal, and also with great expectation that our  
5 truthful position will be embraced; in excellent faith do with beseech the Court to dismiss this  
6 case eternally.

8           In a MOTION TO COMPEL DISCOVERY under case No. 19CR53657, Barry Engle,  
9 former Defense Counsel to Themba Hasaan Kelley, wrote:

11           Defendant hereby moves to compel the video that has been lost due to the BAD FAITH  
12 actions of the police.

13           In an informal discovery demand, Defendant demanded production of the video from  
14 Fred Meyer. The history of this request is as follows: On the day of the alleged incident, August  
15 14, 2019, and in the days that followed, Defense Counsel met personally with and then was in  
16 communication with the lead police investigator Det. Tony Cobb, who was frankly very  
17 responsive. In those first interactions at the scene, Cobb and Defense Counsel discussed the  
18 importance of certain pieces of video and the urgency in obtaining them. The importance of the  
19 Fred Meyer video was discussed at that time.

21           From reports it is apparent the task of obtaining the video was assigned to Gresham  
22 Police Detective Aaron Turnage who reported:

23           “I drove to (Fred Meyer) and spoke to an unidentified member of management. I  
24 explained I wanted to determine if any video was available for the evening of August 13,  
25 2019, and I provided the information from the receipt that was provided by the  
26 complaining witness.

27           “I was told that a member of loss prevention would contact me if video was available. I  
28 was told loss prevention was not currently working and the members of management did  
not have access to the CCTV system. I did not receive a call back from management or

1 loss prevention. I called the store on several different occasions, and I was never able to  
2 contact anyone who could provide information. The business was not overly helpful or  
3 accommodating to my request. No video was recovered from this location.”

4 Turnage’s report regarding his efforts was not discovered until the end of November. Up  
5 until then, the Defense believed, based on Cobb’s testimony at grand jury, August 21, 2019, that  
6 the discovery of the recording was imminent. At grand jury Cobb testified to the following:

7 The Fred Meyer video, which was a stop that was recorded that they went to that night,  
8 **we are still in the process of getting video surveillance**. So, at the moment, we do not  
9 have that to show you for grand jury.

10 Following receipt of Turnage’s report, Defense Investigator Frederick Gove easily  
11 contacted loss-prevention at Fred Meyer, Hawthorne on December 17, 2019. He learned that  
12 Fred Meyer has a state-of-the-art system, that the video would have been available probably  
13 through October and that Fred Meyer, as a policy, is eager to cooperate with police. Notably, if  
14 Turnage had just gone to the store (or gone back to the store a second or third time if he needed  
15 to), they would have provided him footage.

16  
17 **The video was important to this case because Parris testified at grand jury that she**  
18 **and Kelley were in no way romantically involved on August 13, 2019. This video would**  
19 **have demonstrated the falseness of this statement.**

20 --Former Defense Counsel, Barry Engle

21 Strangely so, both videos (7-Eleven and Fred Meyer) that were *specifically* requested by  
22 Themba Hasaan Kelley’s Defense, “just-happened” to not be discoverable. That is a serious  
23 problem. This is not a shop-lifting case about which we are talking. This is a case where the  
24 state is alleging that a Black Male has raped a White Female at gunpoint. This video discovery  
25 charade is utterly ridiculous.  
26

27 Instead of the state turning over the impeaching video evidence; they chose to offer weak  
28

1 and inexcusable excuses as follows:

- 2 1. Turnage described the person he spoke to at Fred Meyer as, “an unidentified member.” Why  
3 didn't Turnage get the person's name, email address, cell phone number, etc.? Turnage also  
4 did not document the name of the person at 7-Eleven that he seized the video from. BAD  
5 FAITH PROVEN. Turnage also did not document the date and the time of the investigations  
6 of either one of the above locations. **A quick glance at Det. Turnage's November follow**  
7 **up report; and it will be easily discovered that Turnage documented the names of the**  
8 **people he spoke to at all the other video locations. BAD FAITH PROVEN AGAIN.**

9  
10 The Merriam Webster dictionary defines DETECTIVE as: a person employed or engaged in  
11 detecting lawbreakers or *getting information that is not readily accessible.*

12  
13 The Fred Meyer footage was not only “readily-accessible,” it was also *easily* –  
14 *accessible.* **Even worse, the Defense urgently requested it on the same damn day, the**  
15 **state took Themba Hasaan Kelley into custody. BAD FAITH PROVEN AGAIN.**

- 16  
17 2. Turnage wrote: He “was told that a member of loss prevention would contact” him. Why  
18 would “Detective” Turnage have waited for that? No competent, concerned, and impartial  
19 “Investigator” would wait for a call when such fundamental obligation of law enforcement is  
20 to seek the truth. Defense Counsel Engle was clear with Lead Detective Cobb, that that video  
21 – evidence was gravely important. With that said: Why didn't Turnage just return to Fred  
22 Meyer a second, third and even fourth time, if he needed to? That is, if he is telling the truth  
23 about not recovering the video. **Or why did he not write a subpoena if it was that hard to**  
24 **get the store to cooperate? Why did not SDDA Nicole Hermann subpoena the video to**  
25 **grand jury. BAD FAITH PROVEN AGAIN.**

26  
27 All Turnage would have had to say is, “Hey, this video is evidence for a rape case.”

1 Hearing that, any person working at Fred Meyer would have done all in their power to get  
2 that video immediately. **The State did not want the Defense to have that impeaching-**  
3 **video-evidence. That is obviously why Turnage provided those weak and insulting**  
4 **inexcusable excuses. BAD FAITH PROVEN AGAIN.**

5  
6 3. According to the Fred Meyer/Kroger Evidence Release Matrix Policy, if law enforcement  
7 **requests** any video that the store has, it is automatically acceptable to provide. (Defendant's  
8 Exhibit A). No approval needed. No subpoena required. Although as a detective, that is  
9 something that he is entirely capable of doing.

10  
11 4. Turnage reported: "I called the store on several occasions." Blah. Blah, Blah. And "The  
12 business was not overly helpful or accommodating to my request." Blah. Blah. Blah. Above  
13 Turnage attempts to shift the blame to the store. This only makes it even more apparent that  
14 Turnage is lying. BAD FAITH IS PROVEN AGAIN.

15 **Who is responsible? At the January 9<sup>th</sup>, 2020, Discovery Hearing, the SDDA admits**  
16 **the bad faith of the police, "I do not have access to the video. There is a police report that**  
17 **documents that. Certainly, I understand there may be issues as to HOW FAST THE**  
18 **POLICE ACTED. But currently, that video does not exist."**

19  
20 Above, the SDDA shifts the blame to the GPD and says, "I understand there may be  
21 issues as to how fast the police acted." Turnage also plays the Government misconduct "blame  
22 game" and says, "the business was not overly helpful or accommodating to my request."

23  
24 **Turnage blamed Fred Meyers and SDDA Hermann blamed the Gresham Police**  
25 **Department; and the State expects Themba Hasaan Kelley to just spin around on their**  
26 **not-so-merry-go-round-of mis-con-duct. That is absolutely not how this works.**

27 THE SUPREME COURT SUPREMELY STATES:  
28

BRIEF ON THE MERITS NO. 3 IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS FOR  
PROSECUTORIAL MISCONDUCT MORE BAD FAITH PROVEN – ANOTHER VIDEO COMES UP MISSING

1 “... to disclose evidence favorable to the defense, turns on the cumulative effect of all  
2 such evidence suppressed by the Government, and we hold that the **prosecutor remains**  
3 **responsible** for gauging that effect regardless of any failure by the police to bring  
4 favorable evidence to the prosecutor’s attention.”

4 *Kyles v. Whitley*, 514 U.S. 419 (1995) (Emphasis added).

5 THE SUPREME COURT SUPREMEY STATES:

6 “[I]n order to comply with *Brady*, **the individual prosecutor has a duty to learn of any**  
7 **favorable evidence** known to the others acting on the government’s behalf in th[e] case,  
8 including the police.”

9 *Strickler v. Greene*, 527 U.S. 263, 281 (1999) (Emphasis added).

10 The 9<sup>th</sup> circuit court with the backing of the supreme court, so beautifully states:

11 “... *DUNBAR* was the prosecution’s star witness and was known by police and  
12 prosecutors to be a career burglar and six-time felon, with a criminal record going back  
13 to adolescence. **When the State decides to rely on the testimony of such a witness it is**  
14 **the State’s obligation to turn over all information bearing on that witness’ credibility.**  
15 *See Giglio v. United States*, 405 U.S. 150,154 (1972); *United States v. Bernal-Obeso*, 989  
16 F.2d 331, 333-334 (1993). This must include the witness's criminal record, including  
17 prison records, and any information therein which bears on credibility. The state had an  
18 obligation, before putting Dunbar on the stand, to obtain and review Dunbar's corrections  
19 file, and to treat its contents in accordance with the requirements of *Brady* and *Giglio*.”

17 *Carriger v. Stewart*, 132 F3d 463, 480 (9th Cir 1997) (Emphasis added).

18 With that so beautifully said, in the case in question, Wendy Parris is the prosecution’s  
19 star-witness and complaining witness. She is also known by the police and the Multnomah  
20 County District Attorney’s office to be a Burglar, Identity thief, auto thief, mail thief, aggravated  
21 identity thief, has a conviction for child abuse and a criminal record dating back to the 1990s<sup>1</sup>. In  
22

23  
24  
25 <sup>1</sup> Wendy Parris’ criminal convictions:  
26 DCR9513638-D convicted 11/13/1995 – Theft II  
27 961047745-D convicted 11/22/1996 – Theft II  
28 CR0015123 convicted 7/27/2001 – Theft II  
040749096 convicted 6/1/2005 – Forgery II  
051237536 convicted 7/10/2006 – ID Theft

1 fact, she is currently serving out a 100-month prison sentence<sup>2</sup> for offenses all involving  
2 dishonesty, deceit, fraud, and thievery. **Just as the 9<sup>th</sup> Circuit in Carriger so appropriately**  
3 **says, because the State has decided to rely on the testimony of such a witness it is the**  
4 **State’s obligation to turn over all information bearing on Wendy Christine Parris’**  
5 **credibility.** See *Giglio*, 405 U.S. at 154.

7 The 9<sup>th</sup> Circuit Court in *Carriger* so beautifully states:

8 Persons such as Wendy Parris are by definition “... *cut from untrustworthy cloth, and*  
9 *must be managed and carefully watched by the Government and the courts to prevent*  
10 *them from falsely accusing the innocent, from manufacturing evidence against those*  
11 *under suspicion of a crime, and from lying under oath in the courtroom... Because the*  
12 *Government decides whether and when to use such witnesses... the Government stands*  
13 *uniquely positioned to guard against perfidy.” Id. at 479 (Citing to Bernal-Obeso, 989*  
14 *F.2d at 333-34) (emphasis added).*

13 In the case in question, the State obviously cared less about “guarding against any  
14 perfidy.” Wendy Parris was facing 2 years jail time<sup>3</sup> only a few hours before she had the police  
15 called on Themba Hasaan Kelley. What the Government did to secure the indictment was to  
16 willfully look away from Parris’ plethora of material falsities; which in turn, granted her  
17 “temporary-immunity” from going to jail on the same day she called the police on Themba.

19 The State absolutely knew Parris’ statements/testimony was untrustworthy, but it is very

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21  
22 CR1110597 convicted 4/12/2011 – Theft III  
23 14CR17849 convicted 11/21/2014 – Criminal Mistreatment (child abuse)  
24 16CR04843 convicted 6/7/2016 – Possession of a Forged Instrument  
25 16CR09765 – convicted 5/24/2019 – Id Theft x2  
26 23039V (Clark County, WA) – convicted 7/24/2019 – Theft II, Criminal Trespass I  
27 20CR05533 – convicted 3/18/2020 – Unlawful Use of a Vehicle, Aggravated ID Theft, Mail theft x3  
28 20CR17026 – convicted 3/18/2020 – Burglary I

<sup>2</sup> Clackamas County case nos. 20CR055333 and 20CR17026. Her current earliest Release Date:  
11/17/2026.

<sup>3</sup> *State of Washington, City of Vancouver v. Wendy Christine Parris*, case no. 23039V. Convicted July 24,  
2019.

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1 apparent; that they simply did not care. For this reason, the 9<sup>th</sup> Circuit Court so beautifully  
2 imposes a duty on “the government and the courts to prevent” state witness’ such as Wendy  
3 Parris, “from falsely accusing the innocent.” *Id.*

4  
5 Interestingly, on the same day of the arrest of Themba Hasaan Kelley; and, after Wendy  
6 Parris completed 3 hours of fraudulent testimony, she speedily requested the following:

7 Wendy Parris: Oh. I for forgot.

8 Detective Hibbs: What?

9 A: I needed some kind of written verification that I was really at the hospital and stuff  
10 because I was supposed to be - -

11 Q: Don’t you have your hospital paperwork or your discharge paperwork that they gave  
12 you?

13 A: Ah, yeah, but - -

14 Q: In your purse?

15 A: Yeah, but she - - they wanted a written verification ‘cause I was supposed to be at my  
16 intake for THE DRUG COURT THING AT 8:30 A.M. THIS MORNING.

17 Q: I will give you my business card with my cell phone number.

18 A: Okay.

19 Q: If they have any questions, they can call me.  
20

21 Detective Fredrich interview transcripts.  
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1 This case must be terminated eternally. Ameena.  
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3

4 Dated this 14<sup>th</sup> day of August 2022  
5  
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7

8 

9  
10 \_\_\_\_\_  
11 Themba Hasaan Kelley  
12 *Pro se* defendant


13 

14 \_\_\_\_\_  
15 Westbrook Johnson, OSB# 076967  
16 Legal Advisor to defendant  
17 [westbrook@lawofficeofwestbrookjohnson.com](mailto:westbrook@lawofficeofwestbrookjohnson.com)  
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1 PROOF OF SERVICE

2 The UNDERSIGNED CERTIFIES that an accurate and true copy of the attached  
3 document was served upon the Multnomah County District Attorney’s Office by email to  
4 SDDA Nicole Hermann’s email listed in the bar directory and/or via eFile and Serve (if service  
5 contacts were entered).  
6

7  
8 Dated this 14 August 2022  
9

10  
11 By:   
12 \_\_\_\_\_  
13 Westbrook Johnson  
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## Evidence Release Matrix - Fred Meyer Store Level

	Video	POS Transactions	Gift Card Transactions	MAX Reports	Customer Loyalty Data (4)	Pharmacy Records and Protected Health Information (PHI) (6)	Investigative Reports	Written Statements	Photographs	Financial Data	Maps/Drawings/Schematics
Company Attorney (1)	✓	✓	✓	✓	✓	Pharmacy Approval	✓	✓	✓	✓	✓
Internal Request (3)	✓	✓	✓	✓	NO		LP/Law Dept. Only		✓	✓	✓
Sedgwick	✓	✓	NO	✓	Approval from Law Dept		✓	✓	✓	NO	✓
Subpoenas (2)	✓	✓	✓	✓	✓	Subpoena	✓	✓	✓	✓	✓
For Submission to Law Enforcement - Company Initiated Investigation (3)	✓	✓	✓	✓	Suspect Info Only		✓	✓	✓	✓	✓
Law Enforcement Request - Company is Victim (1)	✓	✓	✓	✓	Suspect info Only		✓	✓	✓	✓	✓
Law Enforcement Request - Criminal Act on Company Property	✓	Subpoena						✓	Subpoena	✓	
Law Enforcement Request - Company is NOT Victim	✓	Subpoena									
Law Enforcement Request - AML - USA PATRIOT Act	Contact G.O. Loss Prevention prior to release					Pharmacy Approval	Contact G.O. Loss Prevention prior to release				
External Attorney Request	Subpoena										
External Business/Retailer Request											
Customer / External Victim Request											
Customer Request for Own Info. (5)	Subpoena	✓	✓	NO	✓	Pharmacy Approval	Subpoena		✓	Subpoena	
Suspect Request	Subpoena						Their Statement Only	Subpoena			
Labor Union Request	Released through Company Labor Relations					Pharmacy Approval	Released through Company Labor Relations				
All Others	Div. LP Mgr review for determination				Approval from Privacy Committee	Pharmacy Approval	Div. LP Mgr review for determination				

✓ = Acceptable to provide

- (1) Must verify person and need to know. Verify with your District Loss Prevention Manager.
- (2) Must still obtain your District Loss Prevention Managers approval.
- (3) Loss Prevention Investigations
- (4) In accordance with "Policy Regarding Use & Disclosure of Customer Personal Information", "Privacy Policy", "Pharmacy Privacy Policies & Procedures", and applicable federal, state, and local laws.
- (5) Must request in writing and must present proof of identity. Only readily available and easily obtainable info is provided. (Exception: Video requires Subpoena)
- (6) Must obtain approval for release and copy of records from Pharmacy Dept through your District Loss Prevention Manager. (HIPAA)

