IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON, Plaintiff, vs. THEMBA HASAAN KELLEY, Defendant.	Case No.: 19CR53657 BRIEF ON THE MERITS No. 4 IN SUPPORT OF THE DEFENDANT'S MOTION TO DISMISS FOR PROSECUTORIAL MISCONDUCT The Arm Lie Was Known By The State Before And During Grand Jury.

The entire arm perjury was suborned by the SDDA. SDDA Nicole M. Hermann undeniably knew on the day that the defendant was arrested, the week leading up to grand jury, and also at grand jury; that the state's entire case (including the sworn-warrant-affidavit) was founded on known material lies. *Napue v. Illinois*, 360 U.S. 66 (1959). The sworn affidavit of probable cause ordained by the SDDA a day after the arrest, included those known lies and further was maliciously used by the SDDA to unjustifiably keep the defendant detained. *In re Complaint of Leonhardt*, 324 Or 498 (1997); *United States v. Ortiz-Hernandez*, 427 F.3d 567, 573 (9th Cir. 2005). It further cannot be contested that the SDDA intentionally, knowingly, willfully, unlawfully and with reckless disregard for the truth, suborned the entire grand jury testimony regarding the well-known government-endorsed arm-lie.

Because there are so many layers of misconduct which pertain to this one material issue, *Pro se* Defendant, Themba Hasaan Kelley, and Legal Advisor, Westbrook Johnson, have devoted a very extensive and comprehension brief to the arm – lie alone. With confidence in the

truth – seeking function of the tribunal, and also with great expectation that our truthful position will be embraced; in excellent faith do we beseech the court to dismiss this case eternally.

THE TRUTH

The 9th Circuit Court beautifully states: "Nowhere in the Constitution or in the Declaration of Independence, nor for that matter in the Federalist or in any other writing of the Founding Fathers, can one find a single utterance that could justify a decision by any oath-beholden servant of the law to look the other way when confronted by the real possibility of being complicit in the wrongful use of false evidence to secure a conviction in court. When the Preamble of the Constitution consecrates the mission of our Republic in part to the pursuit of Justice, it does not contemplate that the power of the state thereby created could be used improperly to abuse its citizens, whether or not they appear factually guilty of offenses against the public welfare. It is for these reasons that Justice George Sutherland correctly said in [U.S. v.] *Berger*[, 205 U.S. 78, 88 (1935)] that the prosecution is not the representative of an ordinary party to a lawsuit, but of a sovereign with a responsibility not just to win, but to see that justice be done. Hard blows, yes, foul blows no. The wise observation of Justice Louis Brandeis bears repeating in this context:

> In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example ….If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself."

Olmstead v. United States, 277 U.S. 438, 485 (1928) *cited in Northern Mariana Islands v. Bowie*, 243 F3d 1109, 1124 (9th Cir 2001).

"It is for this reason that the law places the duty to manage this difficult business with the utmost care upon those in the best position and with the power to ensure that it does not go

awry. Although the public has an interest in effective law enforcement, and although we expect law enforcement officers and prosecutors to be tough on crime and criminals, we do not expect them to be tough on the Constitution." *Id.* at 1125. "As justice Clark remarked in *Mapp v. Ohio*, 367 U.S. 643, 659 (1961),

> "**Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence**."

Id. (Emphasis Added).

"These duties imposed on police and prosecutors by the requirements of due process are hardly novel or burdensome. Investigating and verifying the credibility of witnesses and the believability of testimony and evidence is a task which they undertake every day in the regular discharge of their ordinary responsibilities, and we cannot conceive of any fair-minded prosecutor chaffing under these mandates. **All due process demands here is that a prosecutor guard against the corruption of the system caused by fraud on the court by taking whatever action is reasonably appropriate given the circumstances of each case**." *Id.* (Emphasis added).

With the above so elegantly said – on the morning of August 14, 2019 – Dawn Johnson, at the behest of Wendy Parris, told 911 dispatch: "And this guy broke her arm." That call occurred at 3:54 A.M. Grand jury transcripts, pages 73-74. Minutes later, at or around 4:00 A.M., Det. Walden arrived on the scene. Later, on that day, he reported:

> "Parris was holding her arm close to her body, tending to a potential injury."

Det. Walden – GPD Report, page 10.

Interestingly, Walden did not call an ambulance, nor was there an officer assigned "at that time" to take Wendy Parris to the hospital so her arm could be "**tended to**". There were

several officers on the scene. In fact, those same police officers were actually speaking to Wendy Parris. According to Officer Michael Evan Crader:[1]

> "When I arrived, there were a few other officers at the scene already speaking to the (alleged) victim."

GPD report page 121.

It was at or around that same time, that Walden conducted an interview with Wendy Parris which covered the alleged event ***from start to finish***. In that interview, Wendy Parris does not mention the alleged arm-break, or any pain associated with it, *at all*. GPD Report pages 13-15. Moreover, it's virtually impossible for Walden not to have noticed that. After all, it was Walden that reported, "Parris was holding her arm tending to a ***potential*** injury."

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Two hours later, at approximately 5:45 A.M. Det. Cobb, the "Lead Investigator" arrives on the scene. Surprisingly, still **no ambulance** has been called for Wendy Parris. She is still there sending text messages to Dawn Johnson and apparently enthralled by the event. She texted, "He won't come out. They're calling more cops."

She also texted, "Are you coming back?"

She texted again, "Do you have a cigarette?"

Wendy Parris is **definitely not tending to any *potential* arm injury**. Nor does she seem to care about it. She is trying to "get a cigarette". But certainly not trying to *tend to her arm* or seeking medical care from the plethora of first responders surrounding her.

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[1] At this time Wendy Parris told the GPD that Themba Hasaan Kelley was in room 208 armed with a gun. Shortly after the GPD surrounded his motel room with high powered rifles.

Shortly after she sends the above text messages, she gives a brief interview to the Lead Investigator Det. Cobb. She speaks about the alleged incident from *start to finish*. Once again, she doesn't mention *when* her arm was broken. She doesn't mention **how** her arm was broken. She doesn't mention the arm *at all*. Det. Cobb, had to notice that. After all, he is the "Lead Investigator." After that interview is completed, Cobb reports:

> "While I was standing with Ms. Parris, she told me she had a broken arm I knew at that time it was more important to get Ms. Parris to a hospital to have her arm checked and a sexual assault kit completed on her. I then asked Sgt. Garrison if there was an officer who could take her to the hospital and begin the process."

GPD Report pages 31-32.

In short, it wasn't until over 2 hours after Dawn Johnson, at the behest of Wendy Parris, called and told the 911 Operator; "And this guy broke her arm," that the GPD *finally* took Wendy Parris to the hospital to "tend to her arm". But it is even more *materially inconsistent* than that.

Later that day, in an interview with Det. Friderich, only after being prompted; Wendy Parris alleged that her arm was broken within the first 20-30 minutes that she and Themba Hasaan Kelley were in room #208. Moreover, the video evidence has them in the motel room at least three hours. This means that Wendy Parris' arm would have "supposedly" been broken for at least 2½ hours inside room #208.

If you add that 2½ hours to the 2½ hours she remained at the alleged scene of the crime, that means that would have been 5 hours that Wendy Parris was on the motel 6 property supposedly in *excruciating* arm pain having "just" allegedly suffered an arm break. Yet, she still has the time, strength, stamina, and usage of the hand and arm to send several text messages, bum cigarettes, and give multiple interviews to the police. This obviously means, Wendy Parris

could *not* have suffered a recent break of her arm in room #208.

Moreover, any competent detective, would have, **at the least,** begun to speculate this reasonable probability. Interestingly, in that entire 2½ hour time-period, the state claims that they did not attain even one recorded interview from Wendy Parris. Yet, on the same page of the police report as all the above; Cobb reports: "I began a recorded interview with a witness, Olivia Ordenes." GPD report, pages 31-32.

The next obvious question is; why was a non-complaining witness, given a **recorded** interview as soon as she exited the motel room; yet, Wendy Parris, the complaining witness, wasn't even given at least one recorded interview; and this was even though she remained at the alleged scene of the crime for 2½ hours? Something isn't right.

Later that day, Wendy Parris was released from Legacy Mount Hood hospital and taken to Gresham's Police Department. She was interviewed for more than three hours. She speaks about the alleged event *from start to finish*. Once again, for the third time, in the same day, in front of the same police department, she doesn't mention the alleged arm break at all. Only after she is *prompted* by Det. Friderich, does the arm-testimony begin. Friderich Report, pages 201-202.

Q. So there are a few follow up questions. How did your arm get hurt?

A. **Ah, my arm ah I don't know**. Sometime during the struggle, I mean.

Q. **Was there something that happened violent to your arm that would have caused it? I overheard when we were at the hospital that you have a fracture of your forearm**.

Det. Friderich's above conversation with Wendy Parris is the undeniable proof that several state representatives were talking about the below exculpatory medical findings on the same day of the arrest.

On 8/14/2019 at 7:59 AM, on the same morning of the arrest, Dr. Steve Urman reported:

"**Lucency and CALLUS are seen involving the distal ulnar diaphysis**."

THE MEDICAL STAFF OBSERVED AN OLD BREAK.

The finding states:

> "The patient had sustained a fracture involving the distal diaphysis of the left ulna. **SIGNIFICANT CALLUS IS SEEN AROUND THE FRACTURE SITE**. However, there is lucency traversing the fracture. **This indicates either non-union of the original fracture (the old break) or acute fracture superimposed on a prior fracture (old-break) site**. The left radius is normal. Carpus is negative. Elbows grossly normal." (Emphasis added).

What is absolutely ***conclusive*** in the above medical report is that there was **SIGNIFICANT CALLUS** which indicated **AN OLD BREAK**. Furthermore, its apparent that Dr. Urman only entertained the possibility of a new break on an old break; because of the accusation itself. The emergency room was filled with *several police officers* who were alleging that Wendy Parris' arm break had just been broken and that she was also raped at **gunpoint**. Thus, the obvious reason for entertaining the **pre-imposed** theory.

Still, the *only thing absolutely conclusive* in the above medical report, and moreover, the only thing absolutely conclusive that the Legacy Mount Hood medical staff could have possibly reported to the GPD was an old break.

Further, the Gresham's Police Department was obviously aware and speaking about that material contradiction, on the same day of the arrest. In other words, on the same day; the government was well aware that Parris' story had severe holes in it.

Speaking of holes in Wendy Parris' story that were known by the state on the same day as the arrest:

Six minutes after Dr. Urman reported the above findings, Dr. Alex Kaplan reiterated the

above: 08:05 A.M. “Forearm two views showed a distal ulnar diaphysis with **SIGNIFICANT CALLUS** and traversing lucency. Normal radius. Imaging by me and read by radiology.” Two minutes later, at 08:07 A.M. “**DISCUSSED THE IMAGING FINDING WITH THE PATIENT WHO REPORTS THAT THE ARM WAS BROKEN IN A CAR CRASH THAT HAPPENED IN THE LAST YEAR**. We'll have the RN splint the arm and place in a sling.”

At 09:18 AM Dr. Kaplan reports again: “*patient reports continued severe pain in her left arm and worsened nausea. Planned for stronger analgesic and antiemetics*.”

-oxycontin 5m PO

-Zofran 4 mg PO

After observing the **callus** and an **old-break,** Dr. Kaplan discussed the *significant callus* with Wendy Parris and she reported that her arm was broken in a car crash that happened in the last year; ***not*** that it was broken again “in the exact same spot” in room #208 by Themba Hasaan Kelley. Moreover, the above **materially contradictory** medical finding is the *only thing* that Gresham Police Department overheard from the medical staff regarding the arm. Consequently, whatever they overheard, the SDDA obviously overheard as well. After all, their job was to report the evidence to the state; particularly with Grand Jury approaching.

SDDA Hermann spoke to ED doctor Kaplan who stated that he was not the appropriate witness to testify for the state. The only logical conclusion that could have been drawn was that Dr. Kaplan would have testified consistent with his findings in the medical records.

Furthermore, a quick read of pages 37 through 40 of Det. Friderich report will reveal Wendy Parris’ severe pain pill/heroin addiction. This explains her complaint of arm pain an hour after Dr. Kaplan’s findings. That complaint just as the medical report states; earned her an

immediate dose of Oxycontin (opioids), and also a prescription upon her release. Interestingly, the same medical report documents, "**patient was seen in 2018 by PCP for opiate withdrawal**."

Later, in her recorded interview with Detectives Friderich and Hibbs, she recounts her spiral into heroin addiction, "yeah, I was on pain pills for a long time 'cause I've had a lot of surgeries and I had spine surgery … And then they're like 'no more pain pills.' And so -- yeah (indiscernible) doing heroin." August 14, 2019, interview of Wendy Parris.

THE CAR ACCIDENT THAT HAPPENED IN THE LAST YEAR

> "I arrived on the scene and observed the defendant (Parris) placed on a backboard from the driver seat. The vehicle was stopped perpendicular with the roadway with the front of the vehicle against the concrete barrier. The vehicle had left in front end damage to the vehicle. I observed large scuff marks on the concrete barrier. The vehicle had to have left the roadway to the left to strike the concrete barrier."

Clark County Patrol Officer, Brian Forsberg, March 8, 2019, Case No. 9z0301643.

THE EVIDENCE IS INDISPUTABLE

Because of Wendy Parris' reckless lifestyle, (possibly nodding from use of heroin, oxycontin, etc. or speeding from the use of meth), she crashed into a concrete wall, and broke her left arm (as confirmed by the statement she gave to Dr. Kaplan and also by the significant callus). Because this accident was solely her doing, the Clark County Washington Patrol Unit charged her with "driving with wheels off road[2]" and gave her a driving infraction according to

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[2] Revised Code of Washing 46.61.670 - **Driving with wheels off roadway**.

It shall be unlawful to operate or drive any vehicle or combination of vehicles over or along any pavement or gravel or crushed rock surface on a public highway with one wheel or all of the wheels off the roadway thereof, except as permitted by RCW 46.61.428 or for the purpose of stopping off such roadway, or having stopped thereat, for proceeding back onto the pavement, gravel, or crushed rock surface thereof.

the police report. There is no mention of Wendy Parris being taken to the hospital in that report.

Further, according to SDDA Herman, “no other medical records regarding the arm exists other than that of Dr. Kaplan's report.”

SDDA Hermann’s discovery hearing, November 20, 2019.

Because Parris never got her arm “tended to” it makes total sense that Dr. Urman observed “non-union” of the original fracture site.

In fact, according to the Stedman’s Medical Dictionary, “non-union” is defined as such: (non-yunyun) failure of normal healing of fractured bone.

Instead of going to the hospital to tend to her injury, it appears that Wendy Parris chose instead to self-medicate and continue on her drug using spree. Fast forward five months to the morning of Themba Hasaan Kelley's arrest; which was also the same morning she was due at a **mandatory court intake for drug treatment.** She tells Det. Friderich that she missed the appointment the prior day and “judge not happy. All bad.” Facing two years in prison on a theft charge if she failed to appear and “freaking out” about “going to jail” according to the text message evidence. Parris used the remembrance of her *car crash induced broken arm* to initiate a *second* false report; thereby buying her time not to go to prison and continue shooting up heroin. The **first** false report of course being:

“**YEAH. SHE--SHE SAID HE'S GOT A GUN”.**

Below is a summary of the rest of Det. Friderich's interview regarding the arm. Parris is asked how her arm got fractured. She replies, “I don't know.” Despite having seemingly forgotten how her arm was injured, she begins to add layers of detail.

- “It was in the first few minutes of the incident .”
- “I remember a pop (sound)”

- "'cause 'it hurt and burned.'"

After speaking with certainty, she abruptly says, "Oh no, it was right before he got me in a chokehold".

This *new version* includes allegedly remembering experiencing arm pain when the defendant's arm was alleged to have been around her. Det. Friderich's Report, pages 201-206.

Apparently, when Parris was speaking about all the above; she appears to have lost track of all the below: The following testimony was given an hour or so before she was *prompted* by Friderich to speak about the arm.

A: (Parris) I start-- I mean, I start giving him a blow job.

Q: (Det. Friderich) OK. Were you using just your mouth, your hand?

A: Both.

Q: **Both hands? One hand? Two hands?**

A: **AH, IT-- IT SWITCHED BECAUSE I WAS KINDA TRYING TO HOLD MYSELF UP, SO, YOU-- YOU KNOW, I'D ALTERNATE HANDS.**

Q: OK. About how long did that occur?

A: **A, a long, long, long time**. I mean, that's where most of our time was spent, was in that bathroom, for **a really long time**.

Above, not only did Wendy Parris allege to use "both" of her hands to perform oral sex in the bathroom; she also claimed to use "both of her hands to hold herself up". In the above, **she does not mention any arm pain at all**. On the contrary, she reports being able to "alternate hands; for a really long time." But how could Wendy Parris have "alternated hands" and arms for a really long time; and held herself up for a really long time; and also used those same hands and arms to perform oral sex on Themba Hasaan Kelley, for a really long time; when she also told

Det. Friderich that directly before that occurred, that she had suffered a broken arm that *hurt, pained, and popped?*

This obviously means that Wendy Parris could not have suffered a broken arm in room #208. Furthermore, any competent detective, investigator, police officer, prosecuting attorney, public defender, defense counsel, law student, or any person seeking the truth, would have discerned all the above effortlessly. That is, provided they had wanted to.

THIS IS NOT ROCKET SCIENCE

On that exact day, Wendy Parris spoke to several officers who were employed by the same police department. Each time, she spoke about the alleged incident *from start to finish*. Each time, it was only after being questioned about the arm does she remember the pain. When she does finally speak about the arm, it's by the *prompting* of a few follow-up questions from Det. Friderich. To add insult to that **injury - inconsistency**, after being prompted, she gives *two different accounts of how and when* the break "allegedly" occurred.

ON TOP OF THAT

Wendy Parris hung out at the alleged scene with several police officers for 2½ hours. This was 2½ hours after she alleged the break. In fact, if you review pages 29 through 32 of the Friderich interview, you will see that Wendy Parris had an argumentative conversation with the police about where her cat was going to be kept. An entire S.W.A.T. team, and multiple detectives witnessed Wendy Parris being argumentative, sending text messages and smoking cigarettes for over 2½ hours. This was over 2 hours after the same police department's 911 dispatcher said:

> " **- - he broke her arm. I'm concerned about your friend who has a broken arm. You told me your friend has a broken arm, so we don't just walk away from stuff like this**".

Grand jury transcript, page 82.

In other words, each and every last one of those officers knew that Wendy Parris alleged to have a **brand-new arm break to 911.** This means each and every last one of them is a witness to the **material inconsistency**. They all saw Parris at the alleged event for 2 ½ hours *not* tending to her arm. This was the same police department that didn't locate a gun or any gun-evidence on that exact same day. **HOW MUCH DOES IT TAKE FOR A BLACK-MAN'S INNOCENCE TO BE PROVEN**?

Something else of *material significance* was staring the GPD in the face that day. The exculpatory/exonerating medical findings also emerged. Moreover, several GPD employees were talking about it. In fact, on August 14, 2019, Det. Nathan Hibbs, reported:

> "**Parris was in an ER room receiving treatment and I did not initially talk to her. I learned from Officer Hulbert that Parris had suffered a broken arm. I relieved Officer Hulbert and remained at the hospital until Parris' treatment and examination were done**."

GPD police report, page 11.

Det. Friderich, Det. Hibbs and Officer Hulbert were all at Legacy Mt. Hood hospital with Parris, "supposedly" investigating the alleged arm-break. That means they had to know about the *materially contradictory* medical findings. This further means; they *all* knew Wendy Parris was lying. The mere fact that *none of them* reported the contradiction *anywhere* in their reports; strongly suggests, the investigative bias and further a State-sanctioned frame-up.

In the case of ***The Commonwealth of the N. Mariana Islands v. Bowie***, multiple defendants facing kidnapping and murder charges, conspired to testify falsely against Joseph Bowie in order to be granted leniency in return for their testimony. 243 F.3d 1109 (9th Cir. 2001). Fairly early in the case, Sergeant Nicholas recovered a letter that appeared to disclose the plans

of the defendants to frame Joseph Bowie. *Id.*

The letter was immediately given to a Sergeant Aldan. *Id.* Aldan immediately informed assistant attorney general Hammett about the content of the letter. *Id.* Hammett was the prosecuting attorney handling the case. *Id.* At trial, Sergeant Aldan testified that he believed Mr. Bowie was being wrongfully accused and that the other defendants were conspiring to frame him. *Id.* When asked what assistant attorney general Hammett advised him to do with the letter Aldan testified that "he basically told me not to do anything with the letter, just to keep it until we need it." *Id.* Aldan's declaration of truth was not enough. *Id.* Bowie was still convicted. Upon examination, the Ninth Circuit Court was neither satisfied with Sergeant Aldan's testimony, nor did they condone the assistant attorney general's malicious conduct in not doing anything with the letter. *Id.* The 9th Circuit Court ruled in favor of Bowie and thereby reversed the conviction. *Id.*

The above case and this case have striking similarities. The exculpatory letter was revealed to law enforcement directly involved in the *Bowie* case. The exculpatory medical findings regarding the arm were revealed to *several officers* employed by the Gresham Police Department in this case. The letter was known about fairly early in *Bowie's* case. The *arm break falsity* (as well as the gun allegation falsity) was known by the State and the State's lead investigators on the same day Themba Kelley was arrested. The law enforcement in *Bowie's* case did not interrogate the defendants about the exculpating letter. Law enforcement in this case, never confronted Wendy Parris, "Hey Parris, was your arm already broken, yes or no?" Instead, Det. Friderich simply asked "was there something violent that happened to your arm that caused it?" **Meanwhile, during that video recorded interview with Parris, Ms. Parris can be seen carrying her obese cat into the interview room, untangling her cat's leash on and under the**

table, grabbing her McDonalds bag, frantically scrolling through her phone and texting others. This all occurs while Detectives Friderich and Hibbs are in the tiny room with her. Only after Det. Friderich acknowledges the "cast" on her arm does Parris stop using her "broken" arm. In short, state representatives had a demonstrable amount of evidence to easily discern that Parris had lied about the arm, and yet it is apparent that they looked the other way.

The persons attempting to frame-up Bowie were trying to get a sentence reduction by their false testimony. Wendy Parris had a court mandated appointment that morning. The same morning, she had the police called on Themba Hasaan Kelley. According to the Court records, she was already in trouble for missing the same appointment the previous day. Regarding her concern for "going to jail," again, the text message evidence proves she was "freaking out." This makes sense due to the fact that the court had a two-year suspended sentence hanging over her head if she failed to appear. Through her false allegations/testimony etc., she set up the best alibi for missing that mandatory appointment again. Of course, she did not go to jail that morning. Also, the text message evidence also strongly suggests that she was hoping to land a sweet housing deal through those same false allegations. Text message exchange between Parris and Det. Friderich. The officer in Bowie's case informed the assistant attorney general about the letter. It's no doubt that the GPD informed SDDA Hermann and the Multnomah County District Attorney's Office about the exculpatory arm findings. Finally, the prosecutor in *Bowie*, willfully ignored the evidence and maliciously forged forward to trial. The prosecutor, in this case, willfully ignored the evidence and *maliciously forged forward to grand jury*. It absolutely was not "just" the Multnomah County District Attorney Office that maliciously forged forward. The

Gresham Police Department, headed by Det. Cobb, undeniably did as well. Moreover[3],

> **"The constitutional duty to intervene to correct false testimony by a government witness is not limited to the *prosecutor* in a given case. *Napue*, 360 U.S. at 269. (attributing the duty to Representatives of the state.); *Pyle v. Kansas*, 317 U.S. 213, 216 (1942) (attributing the duty to State authorities); *Mooney v. Holohan*, 294 U.S. 103, 112 (1935); *See also Limone v. U.S.*, 497 F.2d. 143 (1st Cir. 2007).**

Further, Gresham Police Department Policy 801.4.5 DISPOSITION OF CASES: states the following:

> **"If the investigator has reason to believe the case is without merit, the case may be classified as "unfounded" only upon review and approval of the Investigation Division Sergeant. Classification of a rape case as unfounded requires the facts have significant irregularities with reported information and that the incident could not have happened as it was reported."**

GPD Policy Manual, Page 304.

Further, Gresham Police Department Policy 801.4. states the following:

> **If the responding officer has reason to believe the incident may be without merit, he/she should document the evidence and inconsistencies.**

GPD Policy Manual, Page 362.

With that said: Det. Cobb's sworn warrant affidavit reports the following:

> "On August 14, 2019, at approximately 10:00 A.M., I received a phone call from the Gresham Police Department Det. Hibbs. **DET. HIBBS TOLD ME WHILE AT THE HOSPITAL WITH [PARRIS] HE LEARNED FROM MEDICAL STAFF THAT SHE DID RECEIVE A BROKEN ARM *DURING* THE INCIDENT**."

The above ***perjured testimony*** from the Gresham Police Department was extracted from the sworn warrant affidavit *verbatim*. Moreover,"… Few things are more repugnant to the Constitutional expectations of our criminal justice system then covert perjury, and especially

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[3] The mere fact that not one state representative, detective, investigator, etc. reported the material contradictory arm break findings to the grand jury or in the sworn warrant affidavit. This proves a corrupt investigation and intentional misrepresentation to the people meant to protect a citizen from the overreach of the Executive Branch.

perjury that flowed from a concerted effort … to frame a defendant. The ultimate mission of the system upon which we rely to protect the liberty of the accused as well as the welfare of society is the assertion the factual truth and to do so in a manner that comports with due process of law as defined by our constitution. **This important mission is utterly derailed by unchecked lying witnesses, and by any law enforcement officer or prosecutor who finds it tactically advantageous to turn a blind eye to the manifest potential for malevolent disinformation**. *Bowie*, 243 F.3d at 1114. (Emphasis added); *See United States v Wallach*, 935 F.2d 445 (2nd Cir.1991) (indeed, if it is established that the government knowingly permitted the introduction of false testimony reversal is virtually automatic.) *Citing Franks v. Delaware*, 438 U.S. 154 (1978).

The 9th Circuit Court with Constitutional conviction continues,

> "**It would be an unthinkable imposition upon the authority of a Magistrate Judge if a warrant affidavit, revealed after the fact contained a deliberately or recklessly false statement were to stand beyond impeachment.**"

Id.

The above "sworn-warrant-probable-cause" – testimony, "**[Det. Hibbs] learned from medical staff that she did receive a broken arm during the incident**" is reckless, malicious and an unlawful display of unprofessional behavior.

Furthermore, the above **police perjury** images perfectly with what the 9th Circuit Court, citing the United States Supreme Court meant, when it announced its *grave concern* of an "unthinkable act" of the government imposed upon the authority of a "Magistrate Judge". In this case it was a Multnomah County Circuit Court Judge, specifically **THE HONORABLE JUDITH MATARAZZO.**

An extremely relevant 9th Circuit case ruling regarding a case in Portland, Oregon,

appropriately applies uncompromising 4th amendment principles to when "police discover additional facts that dissipate their earlier probable cause." *United States v. Ortiz-Hernandez*, 427 F.3d 567 (9th Cir. 2005).

The 9th Circuit, with the backing of our beloved constitution, beautifully states the following:

> "If probable cause is established at any early stage of the investigation, it may be dissipated if the investigating officer later learns additional information that decreases the likelihood that the defendant has engaged, or is engaging, in criminal activity. **A person may not be arrested, or MUST BE RELEASED FROM ARREST, if previously established probable cause has dissipated.** As a corollary… of the rule that the police may rely on the totality of facts available to them in establishing probable cause, THEY ALSO MAY NOT DISREGARD FACTS TENDING TO DISSIPATE PROBABLE CAUSE." *Bigford* v. *Taylor*, 834F.2d 1213, 1218 (5th Cir. 1988); *Bevier* v. *Hucal*, 806 F.2d 123, 128 (7th Cir. 1986) (citations omitted) ("**The continuation of even a lawful arrest violates the 4th amendment when the police discover additional facts dissipating their earlier probable cause**.")

Ortiz-Hernandez, 427 F.3d at 573.

There is absolutely *nothing* in the medical report to justify, at all, the pre-grand jury government-induced perjured testimony we see above. Indeed, the Legacy Mount Hood medical staff reported the exact opposite.

On August 14th, 2019, the same day the affidavit was ordained; the Mount Hood medical staff detected "heavy callus" after reviewing Wendy Parris' arm X ray, Radiologist Steve Urman was *conclusive* that an old break was present. Dr. Kaplan concluded the same thing.

That was the one thing about that arm that the medical staff was conclusive about regarding the arm. Everything else besides an "old-break" was inconclusive. The medical staff further reported that Wendy Parris herself admitted that the arm was broken in a car crash that happened earlier in that year. Even more damaging than that: on that same day and/or week leading up to Grand jury, the State viewed and recovered exculpatory video evidence that clearly

displayed Wendy Parris using the arm perfectly normal within mere minutes that she alleged to 911 dispatch that the arm had "just" been broken. In other words, that affidavit is fraudulent, polluted, and corrupted with official mis-con-duct. (See ORS 162.415) AND FURTHERMORE, THE ENTIRE INVESTIGATION HAS BEEN DIS-CREDITED.

AND JUST AS THE *NINTH CIRCUIT* has stated:

> The defendant "must be released." "Additional facts" have dissipated "their earlier probable cause." **The gun and the arm were both known to be lies on the same day of the arrest**. They "may not disregard facts tending to dissipate probable cause." The entire investigation is polluted with police perjury. That material perjured testimony has been sanctioned by the state. **That same pollution of justice intentionally found its way to grand jury**. The State seeks for it also to be unjustifiably recycled into a trial. In excellent faith, the court cannot allow this to happen. The defendant must be released. "A seizure conducted pursuant to a warrant obtained by judicial deception violates the 4th Amendment." *Butter v. Lelle*, 281 F.3d 1014 (9th. Cir).

This case must be terminated.

Four days later, the above *cancer of justice* was indeed transmitted to the grand jury. Moreover, once again Wendy Parris doesn't mention the arm during the so-called *struggle testimony*. And similar to when she was interviewed by Det. Friderich, she doesn't speak about it until she was *prompted* by the SDDA as follows:

Q. **Anything else that LATER, you were able to GO BACK AND SEE as an injury you got during that part of the allegation?**

A. **My arm**.

At grand jury, Wendy Parris **once again;** for the fourth time; in the same week; speaking to the same State; says nothing about the arm, or any pain associated with it, during the so-called "struggle' testimony. She doesn't mention that immediate "pain" she spoke about to Det. Friderich at all. She doesn't mention,

"And right here and it - - **THAT POP. AND THAT - - PAUSING FOR A SECOND**. I

think he heard it too."

Det. Friderich's Interview, pages 201-204.

She doesn't mention,

"**And THE BURNING"**

Det. Friderich's Interview, pages 201-204.

And last, she does not mention,

"**I just remember that that was when he got his arm around me because I was in pain**."

Det. Friderich Interview, pages 201-204.

When Parris testified at Grand Jury, she implied that she was stronger than Themba Hasaan Kelley. Even holding onto a door jam, she mentions no arm pain *at all*. She testifies, that she only let go of the door jam, not because of arm pain; but because she wasn't going to let him shoot the cat. She doesn't mention the arm pain she described to Det. Friderich- *at all.* Moreover, any competent prosecutor would have noticed all the above- effortlessly if they had wanted to.

REGARDING THE CAT THREAT ALLEGATION

Wendy Parris testified, "so when he pointed the gun at my cat, he pulled the trigger, he was going to shoot my fucking cat right in front of me". Parris also testified, "I knew he'd shoot my cat." As Wendy Parris is giving the above maliciously false testimony, she apparently failed to consider the Motel 6 video footage. The video evidence clearly has the cat **on the motel walkway** at the same time Wendy Parris claims "he was going to shoot my fucking cat."

Consequently, because the cat was not in the room, Themba Hasaan Kelley could not have "pointed" a gun at "the cat". Themba Hasaan Kelley did not threaten to shoot the cat. The cat was not in the room.

The SDDA knew that no gun ever existed. The SDDA knew that Wendy Parris' gun lie almost cost Themba Hasaan Kelley His life.

Consequently, she had to know there was **no** cat threats. Even so, knowing how much Americans (particularly in Portland) love cats; in order to bring the uttermost prejudice to Themba Hasaan Kelley; the SDDA supports the sick "cat threat" narrative and with an *inflammatory*[4] remark speedily replies, "**YOU HEARD THE CLICK**?"

Grand jury transcripts, page 22 – 23.

THE PROSECUTORIAL BIAS IS EVIDENT

Moments after the above *testimonial catastrophe*, the SDDA *smoothly transitioned* into her arm in her presentation. The SDDA does this by leading with,

"**Anything else that later, you were able to go back and see**?"

The SDDA's prompting effectively invites Parris' answer, "My arm." The "struggle" testimony which didn't include the arm or any pain associated with it, now appears plausible. The grand-jury likely reasoned; Wendy Parris' testimony didn't include any arm-pain because she didn't *realize* her arm was broken until – *later*.

Wendy Parris was seated in front of the grand jurors with a fully casted arm. They were obviously wondering *how* and *when* her arm was broken? Now they likely believed the SDDA was finally getting to the bottom of things. Nonetheless, that was false, un-true, erroneous, in-correct, a con and even further, Prosecutorial Mis-con-duct.

The SDDA was well aware that Wendy Parris had already told Det. Friderich that the arm "hurt, burned, and popped" *during the incident*; not after it occurred. There was nothing "later"

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[4] Inflammatory (in-flam-a-tor-ee), adj. (18c) Tending to cause strong feelings of anger, indignation, or other type of upset, tending to stir the passions. (Black's Law Dictionary, Sixth Pocket Edition)

about it. Moreover, the SDDA was also well aware, that it was *during* the alleged event, not *after* it occurred, that Dawn Johnson at the behest of Wendy Parris told the 911 dispatch operator:

> "**And this guy broke her arm and she JUST said she - - this guy broke her arm and they're heading back to the motel**."

That 911 call occurred at 3:54 A.M. Grand jury transcripts, pages 73-74. That 911 call undeniably happened *during* the alleged event; not *after it*. There was nothing *later* about it. The *go back and see* narrative solicited by the SDDA was reckless, false, and intentional. The SDDA knew the grand jury would see Det. Cobb's key point video presentation at the following grand jury; and that video would display Parris leaving the motel using the arm normally. Thus, the reason for the *later* narrative, which would enable the jurors to likely reason that Wendy Parris didn't exhibit any pain because she didn't realize her was broken – until later.

According to GPD Detectives Friderich, Hibbs and Cobb, (who were all in communications with SDDA Hermann on the week leading up to the grand jury), the conversation regarding the so-called fracture began at the hospital on the exact same morning of the arrest. That means the exculpatory/exonerating arm findings were known by the State and its representatives on that morning and/or day.

We know that SDDA Nicole Hermann had reviewed the reports written by law enforcement. In her August 15, 2019, Affidavit of Probable Cause to Support Continued Detention of Defendant, SDDA Hermann wrote:

> "I, Nicole M. Hermann, swear that I am a Deputy District Attorney for Multnomah County and that I have reviewed the police reports which have been filed in this case by police officers[.]"

That police report includes several material lies that had to be known by the SDDA before she called grand jury. For example: That police report clearly documents no gun and no

gun evidence.(Pages 71,72). It further documents, that the person who was with Parris and the Defendant as the alleged incident ended "said she never saw a gun with Themba" and "she didn't see any weapons that night at all." (Page 34) That police report the SDDA "swore" she reviewed, further clearly documents that Wendy Parris told an entire S.W.A.T team that the defendant was inside room 208, "armed with a gun." (Page 21) As mentioned above, "there was no gun and no evidence there was one." (Pages 71,72) In short, that was a blatant material -_lie known by the state on the same day the defendant was arrested. (See Brief on the Merits No:1) Still, the SDDA recklessly disregarded all of it and repeatedly and relentlessly solicited a non-existent gun 49 times anyway. Other material lies in that police report that had to be known by the SDDA, before and during grand jury include:

- Parris said she leaped out of a window "about half of her body" was hanging out that window. The state viewed video-footage before grand jury, that proved Parris's window jumping allegation to be false. The SDDA knew it was a lie, before and during grand jury.
- Parris said she was lured, tricked, and deceived into coming to motel. This was contradicted (in the same paragraph) in the police report which clearly states that Parris of her own free will was transacting a drug deal on their way to the motel. The SDDA understood Parris's "hood" was right down the street from the motel. The SDDA had to know before and during grand jury, that the "lured to the motel" accusation was another lie.
- Most importantly, on page 14, Parris said, "she was planning on opening the door and escaping from Themba." On the week leading up to grand jury, the state viewed the motel 6 video-footage that proved this to be absolutely and demonstrably false. The

SDDA unequivocally knew this was lie before and during grand jury.

Every person directly involved with the case, starting with the Multnomah County's District Attorney's office was well informed that Wendy Parris told several material lies, on the exact morning of the arrest. Yet even though the arm-lie had to have been known, the SDDA unjustifiably ordered the "continued detention" of the defendant anyway.

Below, the SDDA doesn't hesitate to intentionally utilize the *visual effect* of Wendy Parris' fully casted arm to inflict *more prejudicial damage* onto Themba Hasaan Kelley.

> Q: **OK. And it looks like, since we're audio recording that, today, your left arm is in a sling and is in a cast, a full arm cast from your knuckles to your elbow, is that right**?
>
> A: Yeah.
>
> Q: **And so, I'm jumping ahead, I know, but what is wrong with your arm?**
>
> A: **It's broke. It - - I MEAN, IT'S SHATTERED - -**
>
> Q: Okay.
>
> A: - - **from, like, wrist to here**.
>
> Q: Okay. To - -
>
> A: Yeah.
>
> Q: - - **close to your elbow or middle of your arm**?
>
> A: Yeah, they - - **I have to have surgery. For them to repair it, they got to put a - - pins or a rod - -I don't know**.
>
> Q: Okay.
>
> A: Yeah.

Grand jury transcripts, page 24.

In order to amplify the **prejudicial effect** of the arm presentation, above, the SDDA leads

with the sling, the cast, the full arm cast, "from your knuckles to your elbow," etc.. The SDDA's *visual effect strategy*, more than likely won the grand jurors undivided attention. Now, with their discernment faculties unconsciously thwarted by the SDDA's inexcusable and inflammatory remarks quoted above; it appears the SDDA believed she could get away with anything.

The SDDA presents:

"**So, I'm jumping ahead, I know but what is wrong with your arm**?"

The SDDA's usage of "I'm jumping ahead, I know," makes it fairly obvious that Wendy Parris was coached prior to the grand jury. According to Black's Law Dictionary, Sixth Pocket Edition, page 135: "Coaching becomes illegal tampering if it involves intimidation, the encouragement to lie, or the prompting of false answers."

Obviously, the SDDA's presentation was an encouragement, prompting, an invitation for Wendy Parris to lie. In fact, in only a matter of seconds, the broken arm allegation was upgraded when Wendy Parris speedily replies:

"**It's broke. It - - I mean, it's SHATTERED.**"

Wendy Parris makes this **up-graded** declaration with a calm confidence, as if she knows every lie she tells will be expediently endorsed by the State. That's exactly what occurs. The SDDA agreeably replies:

"Okay."

Wendy Parris continues:

"From wrist to here."

The SDDA *literally* agrees with the erroneously false "shattered narrative[5]" and

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[5] The hospital records were subpoenaed to the grand jury as indicated by the "affidavit of custodian of medical records" dated the day before the first grand jury proceeding. The DDA had to have known that the arm was not

supportively responds:

"**<u>To your midline or elbow</u>**."

This seemingly insignificant support affectively *brightens* the narrative, and also deceitfully substantiates Wendy Parris' witness credibility; which little do the grand jurors know; is the only thing in the room that was really *shattered*.

Through the above testimonial collaboration, con and mis-con-duct; an even more ruthless image of Themba Hasaan Kelley was instantaneously and prejudicially fabricated. Now, according to the State, not only does Themba Hasaan Kelley have the ability to break arms with the same *impact and strength* as a "car crash" (see medical report) he also has the *innate* "Black male" ability to *shatter them*.

THE PROSECUTORIAL RACISM IS EVIDENT

In violation of ABA Model Rules of Professional Conduct, Rule 3.3, Rule 3.4, Rule 4.1, and Rule 8.4, as well as Oregon RPC 8.4,8.3 3.3, 3.4, 3.8; the SDDA's presentation continues.

> Q: "**<u>And as far as you know</u>**, is - - did that broken arm happen during this altercation where you're trying to get away?"
>
> A: "Yes."
>
> Q: "Okay. **<u>AND WAS IT BROKEN OR INJURED BEFORE YOU GOT INTO THE MOTEL ROOM</u>**?"
>
> A: "**<u>NO</u>**."

The SDDA's above leading question: "And as far as you know," wreaks with the odor of malfeasance. The mere fact that the SDDA asked the question implies uncertainty, doubt,

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"shattered", because the hospital records clearly demonstrate this. Even the "old break", was a simple fracture; yet the DDA unapologetically agrees with the "shattered" narrative. This is another example of an obvious, known, material lie made by a witness at a grand jury proceeding that is completely uncorrected by a prosecutor during the proceeding.

unreliability, etc. And further that there's *another* version of the story out-there. This is clearly "prosecutorial privilege" gone wild at the grand jury. Further, the SDDA's leading question:

> "**AND IT WASN'T BROKEN OR INJURED BEFORE YOU GOT INTO THAT MOTEL ROOM?"**

Should have never been asked in the first place. The SDDA already knew Wendy Parris' arm "had been broken or injured before she got into that motel room." After all, the SDDA admittedly had the below medical records "opened" at grand jury. The SDDA's question essentially says the same thing as the Dr. Kaplan report which states, that the patient reported that the "arm was broken in a car crash that happened in the last year." The fact that the SDDA asked the question proves she knew and knows now, that Parris's fleeting moment of honesty with Dr. Kaplan was a serious problem for the state's case. That is, it is uncontested that the SDDA knowingly solicited, presented, and further suborned perjury at grand jury. Any explanation she gives to justify her performance at grand jury, will simply be another lie told to cover up the plethora of known lies that the SDDA knows were told at grand jury. We do not expect in the least bit, that the government will own up to its misconduct and neither should the tribunal or anyone else for that matter.

In the 9th Circuit case *United States v. Kojayan*, the issue at hand was "the government's willfulness in committing the misconduct and its willingness to own up to it." 8 F.3d 1315 (1993). The government refused to disclose that it made a cooperation agreement with a critically important witness involved in the case. *Id.* This was even after the defense requested the above information repeatedly. *Id.* Evidence of the cooperation agreement "would have strengthened defense counsels' argument to the jury." *Id.* The Defense had suspected that the government was lying. During closing argument at trial, the government provided weak

excuses for why the witness was unavailable to testify. *Id.* Those excuses were also lies. "The AUSA…was not telling the truth." *Id.* The witness had actually entered into a cooperation agreement with the government, promising to "truthfully testify…at any trial or other court proceeding with respect to any matters about which [the government] may request his testimony." *Id.* The AUSA's misconduct caused the defendants being tried to be convicted. *Id.*

On appeal, "[t]he court vacated defendants' convictions because government withheld material evidence and committed prosecutorial misconduct" by making a statement to the jury and the court that was materially untrue. *Id.* The court was even further "dismayed by the governments repeated failure to acknowledge its error and by the lack of supervision over the Assistant United States Attorney who prosecuted the case. *Id.* The court remanded the district court to determine whether to retry defendants or dismiss the indictment with prejudice as a sanction for the government's misbehavior." *Id.*

The 9th Circuit was also dismayed. It stated that the matter became "more serious" once the defense attorney "raised the issue of prosecutorial misconduct quoting extensively from the relevant portion of the transcript." *Id.* Though the 9th Circuit was profoundly troubled by the prosecutor's conduct, the court was even "more troubled…by the lack of supervision and control exercised by those above him…How can it be, [the 9th Circuit stated], that a serious claim of prosecutorial misconduct remains unresolved- even unaddressed-until oral argument in the court of appeals? *Id.* Surely when such a claim is raised we can expect that someone in the United States Attorney's office will take an independent, objective look at the issue. *Id.* The claim here turned entirely on verifiable facts: A dispassionate comparison between the transcripts of the AUSA's statement to the jury and [the witness's] plea agreement would have disclosed that the defense was right and the government was wrong." *Id.*

The above case and this case are strikingly similar regarding SDDA Hermann's willful behavior and the Multnomah County DA office's decision to condone that behavior. At that Jan. 9th, 2020, Discovery hearing (nearly 3 years ago), Attorney Barry Engle's over 25 years of experience as a defense counsel, presented a most excellent argument for prosecutorial misconduct. At that historical hearing, Counsel Engle stated following:

"…that just strikes me as being hanging there in a way that really needed to be corrected and wasn't … 'Okay. And it wasn't broken or injured before she got into the motel room and that it was calcified over and it was from a car accident and its – **it was all right there in a situation where it seems implausible that that wasn't well known to everybody involved in the case.**" Pages 12-13 Discovery hearing Jan. 9th, 2020, transcripts.

Moments later, Counsel Engle continues with the following:

"…the motion that we're making under Napue v. Illinois. And specifically in regard to what was known and not known by the government at the time Ms. Parris made these demonstrably false statements. As I say, that was just one example, but it was one that was just so – it hung out there, you know, obviously. 'And it wasn't broken and injured before you got into the motel room?' Answer: 'No.' When it – you know, it seems **everybody knew that wasn't the case** …"

Pages 14-15, January 29, 2020, transcripts.

Counsel Engle's argument was so clear, that the court uttered the following:

"… are you making a motion for prosecutorial misconduct?"

With absolutely no basis of truth to substantiate her fraudulent claim, the SDDA willfully responds to the above with the following: "**obviously, Mr. Engle and I have very different opinions about whether or not the witness is truthful in her testimony and how and why**

that can be based on the facts of the case. We obviously have very different opinions about the facts of the case. That has been made clear.

Page 33, Discovery hearings Jan 29, 2020, transcripts.

Above the SDDA's willfulness has gone so wild, that she blatantly disagrees with conclusive medical evidence, and also the government witness's own words, regarding the conclusive medical evidence. It is undeniable that the medical records document "significant callous." It is further undeniable that when Dr. Kaplan discussed the significant callous with the government witness she reported "that the arm was broken in a car crash that happened earlier that year." It is even further undeniable that three months before the SDDA imperiously went on court record and said, "Obviously, Mr. Engle and I have very different opinions about whether or not the witness is truthful in her testimony," the SDDA said the following at another hearing dated November 20, 2019:

"**I have no objection to the records for the broken arm. I can tell you that in the medical records that we do have, she (Wendy Parris) says that the car accident happened in the last year … it is from a note from a Dr. Kaplan that says he asked her about the imaging findings once he saw the calcification. And she reported the arm was broken in a car crash that happened in the last year.**"

November 20, 2019, Discovery Hearing transcripts.

At that Nov. 2019 discovery hearing, the SDDA recited the exact same medical record that Barry Engle quoted from "verbatim." In fact, the SDDA's recitation is even clearer than Barry Engle's. The SDDA can't come into a hearing three months later (or any further hearings for that matter) and imperiously disagree with her "own words," now that she realizes the issue of prosecutorial misconduct ORS 9.460, is on the table. Again, that's prosecutor willfulness gone

wild. Willfulness. (13c) 1. The quality, state, or condition of acting purposefully or by design; deliberateness; intention; willful blindness. (1927). Deliberate avoidance of the knowledge of a crime, esp. by failing to make a reasonable inquiry about suspected wrongdoing despite the fact that it is highly probable. Blacks Law. ORS 9.527(4) specifically prohibits members of the bar from engaging in "willful deceit or misconduct in the legal profession." Deceit, n. (14c) 1. The act of intentionally leading someone to believe something that is not true; an act designed to deceive or trick. 2. A false statement of fact made by a person knowingly or recklessly (i.e., not caring whether it is true or false) with the intent that someone else will act on it. Blacks Law. RPC 8.4 provides … that … It is professional misconduct for a lawyer to … (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's condition to practice law … and … (4) engage in conduct that is prejudicial to the administration of justice … and finally … ORS 9.490(1) provides that the rules of professional conduct "shall be binding upon all members of the bar." "There is no question either that the accused (SDDA Hermann) made the misstatement or that it was false… we find by clear and convincing evidence that the statement was made with the deliberate intention to deceive the court and counsel … We further find that the accused, SDDA Hermann, temporarily succeeded, in that the court did not dismiss the Indictment at that time. The accused knew that she had acted improperly in … obtaining an Indictment …" *In re Complaint of Leonhardt*, 324 Or 498, 930 P. 2d 844 … by intentionally suborning perjury at grand jury. "The statement to the court was part of a purposeful effort to conceal her illegal and unethical behavior …" *Id.* SDDA Hermann will of course admit to "… making the statement." *Id.* But that "she never intended to deceive" *Id.* the court or the defense. *In re Complaint of Leonhardt*, 324 Or 498, 930 P.2d 844.

Nonetheless, it is evident that the SDDA "abused the grand jury process by" intentionally

suborning perjury "based on facts already recited, we find by clear and convincing evidence that the allegations" we are presenting in this sacred document "are true." We further find, the Oregon supreme court's usage of the ABA standards found in *In re Complaint of Leonhardt*, to be supremely appropriate to apply to this case as follows:

[13]DP 7-102(A)(1) provides:

"In the lawyer's representation of a client or in representing the lawyer's interests, a lawyer shall not:

"(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of the lawyer's client when the lawyer knows or when it's obvious that such action would serve merely to harass or maliciously injury another."

[14]"***

(2) Knowingly advance a claim or defense that is unwarranted under existing law except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law."

[15]DR 7-103(A) provides

"A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when the lawyer knows or it is obvious that the charges are not supported by probable cause."

In re Leonhardt

As counsel Engle stated in that historical Jan 9, 2020, Discovery hearing, the arm-contradiction had to be "well known to everybody involved in the case." Like the court in *United States v. Kojayan*, 8 F.3d 3d 1315 (9th Cir. 1993), the Defendant is understandably dismayed "by the governments repeated failure to acknowledge its error…" *Id.* We are unequivocally certain,

that absolutely anyone with common-sense who chooses to take an "independent, objective look at the issue," *Id.* will easily come to know, that Barry Engle's claim (which is backed by nearly 30 years of experience) "turned entirely on verifiable facts." *Id.* and "a dispassionate comparison between the [grand jury] transcripts," *Id.* the prosecutor's intentional solicitation of Wendy Parris' false testimony easily found in that transcript, the police reports the SDDA admittedly referenced at grand jury, video footage reviewed by the state before and during grand jury that shows Wendy Parris using the arm normally; and finally – the exculpating/exonerating medical report itself, that SDDA Nicole M. Hermann admittedly had "opened" at grand jury. Indeed, absolutely anyone who reviews the evidentiary facts contained in our compelling presentation, will unquestionably see, "the defense was right … and the government was wrong." *U.S. v. Kojayan*, 8 F.3d 1315 (9th Cir. 1993).

Detectives Friderich and Hibbs, Officer Hulbert, and DA Advocate Emily Augustine were all at the hospital and well informed of the above medical findings on the same exact morning Themba Hasaan Kelley was arrested. In short, medical record "opened" at grand-jury or not, SDDA Hermann was well aware that Wendy Parris was lying. Moreover, of course she lied. Of course, she answered; "no" her arm "had not" been broken before she got into that motel room.

Of course, *she's caught on video using the arm perfectly normal,* only, mere minutes before she had Dawn Johnson report an arm-brake to 911. In this video, **she uses her left arm normally and is not exhibiting any pain. She uses the arm to close the motel room door behind her. She uses the arm to help support her enormous cat that she is carrying from the motel room. She appears to have her phone in her left hand. In short, she exhibits no pain whatsoever in this video. She is using the arm normally.**

The video continues at 3:47 am, the car can be seen pulling back into the parking lot. This was under 5 minutes after she had Dawn Johnson tell 911, "he broke my arm." Wendy Parris is again seen using the arm normally, supporting her cat, opening, and closing her car door, and driving away with both hands on the wheel. In short, she exhibits no pain whatsoever in this video. She is using the arm normally.

Of course, she materially contradicted all of the above later on that day and told Det. Friderich that she knew the arm was broken inside the motel room because it "hurt, pained and popped." This, of course, means that she should not have been *using the arm painlessly and normally*. Of course, she had the audacity to remain at the alleged crime scene for 2½ hours sending text messages and smoking cigarettes. Of course, when she *finally* was taken to the hospital by *the police*, her false report to the police, attained her a bottle of "oxys" (opioids) upon her release. Of course, Wendy Parris sent the below text message to Dawn Johnson only a couple of hours before her and Themba Hasaan Kelley arrived at the motel:

> "**Some guy picked me up at the park and is kind of stalking me LOL.**
> **I'm letting him follow me because I think he has money.**
> **AND I'M TRYING TO GET SOME. LOL**"

Of course, she was hoping the false accusations would land her a sweet housing deal. The below text message exchange occurred a day after the arrest:

> **Det. Friderich:** I asked him to get you housing. Call him and find out how he can help you. Give him a chance.
>
> **Parris:** I did. I left him a message. I don't think we're talking the same thing. He said get me into a shelter and I'm thinking housing. I'm thinking real housing. Where I can unpack my bags and not have to leave every morning. Maybe he misunderstood what you meant. **Permanent housing for someone like me is nearly impossible to come by. I've totally fucked up every possible way of being able to get and maintain permanent housing on my own**. 42 years of consistently being unhappy, unstable, lost, alone. Happiness, love, (unconditional – no matter what kind of love) and a place to call home, of my own, just isn't in the cards for me.

STATE OF OREGON,

THIS IS NOT ROCKET SCIENCE

Of course, Wendy Parris *was facing two years jail time* in the State of Washington, *only a few hours before she called the police on Themba Hasaan Kelley*. Of course, "Mama Karma" caught up to Wendy Parris only two months after the accusations, and she herself is now serving 100-month prison sentence in the state of Oregon. Of Course, she lied about the gun, the broken arm, the rape, the sodomy, the kidnap, the money, etc. Wendy Parris lived to lie. In her soul sick, mentally ill mind; her very existence was dependent on how well she pulled off the con. That's not an excuse. It's a reality. Of course, she did it all. But here we see *oath-bound public officials, cheerleading the con and a prosecutor acting as it's ringleader by willfully and intentionally spreading the cancer of justice*. ORS 9.460; ORS 162.415; *United States v. Basurto*, 497 F. 2d 781 (9th Cir. 1974).

Below the SDDA's Arm-Presentation Concludes:

> Q: OK. All right. And so, your arm - - could you feel it at this point or is it - - **Do you not feel that until LATER**?
>
> A: No, I wasn't really - - yeah. I mean, now that - - not yet.
>
> Q: Okay.
>
> A: I mean, yeah.
>
> Q: All right. And so, you get into the bathroom. And does he - - when you get into the bathroom, **DOES HE STILL HAVE THE GUN**?

Above, the SDDA's strategy is evident. She opened the arm perjury presentation with "anything else – later;" she concluded the arm perjury presentation with: "Do you not feel that until – later?" However, the SDDA knew that Wendy Parris claimed to "feel that" in the first 20-

30 minutes of the alleged incident. That's when she said the arm "hurt, pained and popped." There was nothing "until later" about it. The SDDA also knew that Wendy Parris alleged to 911 that the arm had "just" been broken. The SDDA unequivocally knew that allegation was made as the alleged incident was still occurring. Again, there was nothing "until later" about it. The intentional usage of the adverb "later" at the opening and closing of the presentation makes it obvious that the mis-con-duct was pre-meditated. The deceptive strategy was simple; make the grand jurors believe that Wendy Parris didn't testify to any arm pain during the "struggle testimony;" and she didn't display any arm pain when she exited room #208 on the video footage, because she didn't "feel that until later." There is absolutely no place in the police report, medical reports, police interviews, or anywhere else that Wendy Parris says that she did not feel any arm pain – "until later." The later narrative was an intentional – material – lie, fabricated, and presented by no one else but the SDDA. In fact, a quick read of Wendy Parris' arm break testimony; and one will easily see that the entire testimony was suborned by the SDDA.

> Suborn /səˈbôrn/, vb. [Latin, subonare, from sub "secretly + ornare "to furnish; equip] (16c) 1. To induce (a person) to commit an unlawful or wrongful act, esp. in a secret or underhanded manner. 2. To induce (a person) to commit perjury; specif., to persuade (someone) to lie under oath, esp in court. 3. To obtain (perjured testimony) from another.

> SDDA: SUBORNATION #1
> "**Anything else later**, you were able to go back and see as an injury you got during that part of the altercation?"

Grand jury transcript, pages 24, 1-3.

> SDDA: SUBORNATION #2
> "Okay. And it looks like, since we're audio recording, that, today, your left arm is in a sling and in a cast, a full-arm cast from your knuckles to your elbow; is that right?"

Grand jury transcript, pages 24, 5-8.

SDDA: SUBORNATION #3
"And so, I'm jumping ahead, I know, but what - - what is wrong with your arm?"

Grand jury transcript, pages 24, 10-11.

SDDA: SUBORNATION #4
"Okay. Okay. To - - close to your elbow or midline of your arm?"

Grand jury transcript, pages 24, 14-19.

SDDA: SUBORNATION #5
"And, as far as you know, is - - did that broken arm happen during this altercation where you're trying to get away?"

Grand jury transcript, pages 24, line 25 – page 25 line 1-2.

SDDA: SUBORNATION #6
"Okay, And it wasn't broken or injured before you got into that motel room?"

Grand jury transcript, pages 25, 4-5.

SDDA: SUBORNATION #7
"Okay. All right. And so, your arm - - can you feel it at this point or is it - - **do you not feel that until later**?"

Grand jury transcript, pages 25, 7-9.

SDDA: SUBORNATION #8
"Alright. And so, you get into the bathroom. And does he - - when you get into the bathroom, does he **STILL HAVE THE GUN**?"

Grand jury transcript, pages 25, 14-16.

At grand jury, the SDDA concluded her arm-perjury presentation and then **very smoothly, subtly, and intentionally transitioned into THE GUN PERJURY**. Wendy Parris didn't do that. That was clearly *SUBORNED* by Deputy District Attorney Nicole M. Hermann.

THE SUPREME COURT OF OREGON SUPREMELY STATES:

*We have seen that the District Attorney owes as great a duty to protect the innocent as to prosecute the guilty. **It is hard to conceive of a greater wrong than that of knowingly,***

> ***<u>falsely, and maliciously accusing an innocent man of the commission of a crime</u>***. *A good name, good repute as a citizen, is reckoned as a thing of priceless value. The right to liberty and happiness is rated high. The law of criminal procedure is not a public invitation for a district attorney or anyone else to attack the reputation of citizens at the expense of the taxpayer. NO OFFICIAL IS ABOVE THE LAW. Thou shall not bear false witness is a command of the Decalogue, and that forbidden act is denounced by statute as a felony. It is almost inconceivable that any District Attorney should commit the offense of SUBORNATION OF PERJURY.*

Watts v. Gerking, 111 Or 641, 669-70 (1924)).

Moreover,

> "<u>Instigation, incitement, solicitation, and persuasion are points along the continuum in which the *suborner* is deemed more and more responsible for the ultimate act of perjury, and the perjury is less and less a product of the witness' independent act</u>."

Limone v. United States of America, 497 F.Supp.2d 143 (2007).

> **Subornation of Perjury** (16c) The crime of persuading another to commit perjury, the act of procuring a witness to testify falsely. – Sometimes shortened to subornation.

SDDA: SUBORNATION #9
Q: "**<u>And at the hospital, did you get treatment for your arm</u>**?"
A: "<u>Yes</u>."
Q: "**<u>And is - - is it - - was it the hospital then that put it in a cast</u>**?"
A: "**Yes**."
Q: "Okay. And did you get any other kind of medical treatment for any injuries at that point? Do you remember if you had any other significant injuries?
A: "**<u>No. I mean, they just did an x-ray and you know – yeah</u>**."

Disturbingly, as revealed above, the arm perjury presentation concludes with testimony regarding the infamous arm x-ray.

CONCLUSION

The Multnomah County District Attorney's Office stooped to the level of using the desperation of a mentally ill, drug addicted, con artist to maliciously secure an indictment, and then shortly thereafter, kicked Wendy Parris to the curb. A few days after she testified at Grand jury, she went on an all or nothing, crime spree.

No more than three months passed, and Wendy Parris was arrested, booked, and finally convicted of several crimes all involving dishonesty, deception, and fraud. Per the State of Oregon, she is now serving 100 months Coffee Creek Correctional Facility. Wendy Parris was only as good to the SDDA as her false testimony could be used to infringe on the constitutional guarantees of an innocent – black life. In fact, this time it is clear; the "state victim" and "the defendant," were *victimized* by the state.

This case must be terminated eternally.

Ameena.

Dated this 7 August 2022.

Themba Hasaan Kelley
Pro se Defendant

Westbrook Johnson, OSB# 076967
Legal Advisor to Defendant

PROOF OF SERVICE

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

Dated this 7 August 2022

By: 
Westbrook Johnson