

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. 6
IN SUPPORT OF DEFENDANT’S MOTION
TO DISMISS FOR PROSECUTORIAL
MISCONDUCT:

The State Knew the Entire 911 Call was False
at Grand Jury

When the state presented the prejudicially damaging 911 call evidence to a trusting grand jury, it was known by the state that that material – evidence was absolutely false. The state unquestionably knew before the defendant was indicted that the “entire” 911 call was permeated with untrue allegations. That is, it is undeniable that the state knew the case was founded on well-known and easily discernible lies. This can be easily proven.

For this reason, have *Pro se* defendant, Themba Hasaan Kelley, and Legal Advisor, Westbrook Johnson, devoted a comprehensive brief to this material issue 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 9th Circuit Court backed by the Supreme Court, beautifully states: “There is nothing in *Napue*, its predecessors, or its progeny, to suggest that the Constitution protects defendants only against the knowing use of perjured testimony. Due process protects defendants against the knowing use of any false evidence by the State, whether it be by document, testimony, or any other form of admissible evidence.” *Hayes v. Brown*, 399 F.3d 972, 981 (9th Cir. 2005); *See*

1 *Phillips v. Woodford*, 267 F.3d 966, 984-85 (9th Cir. 2001) (“It is well settled that the
2 presentation of false evidence violates due process.”) (citing *Napue v. Illinois*, 360 U.S. 264, 269
3 (1959)). That of course would include a 911 report that was known to be *entirely* false.

4 *

5 “The false accusations in this case are being
6 brought forth by this government in a way
7 that you don’t see happening a lot in this county.”

8 - *Former Counsel, Barry Engle*

9 *

10 MATERIAL FALSITY #1

11 At grand jury, Detective Anthony Cobb testified as follows:

12 Cobb: This is not the exact time of overlap. It’s to give you a reference of what’s going
13 on. It’s an approximate estimation, okay? And this occurs about 3:49 a.m. at the 7-
14 Eleven.

15 (Audio recording played in open court, 10:17 a.m., as follows)

16 911 Dispatcher: 911, what’s your emergency?

17 Dawn Johnson: **Yes, sir. (indiscernible) at Motel 6 with a guy and he has gotten her**
18 **in a car and he’s not letting her go.** And - - she cannot call out. She said - - she texted
19 me just to call the cops and they just left the Motel 6 on Stark. And they are at 7-Eleven
20 right now on 162nd and Stark. And - -

21 The above call from Dawn Johnson to 911 dispatch is demonstrably false. Not that Dawn
22 Johnson *knowingly* lied to 911 dispatch; but that Wendy Parris lied to Dawn Johnson; and Dawn
23 Johnson “unknowingly” transferred that material-lie to 911 dispatch. Moreover, the allegation,
24 **“He has gotten her in a car and he’s not letting her go.”** was *undeniably* proved to be false
25 only moments prior at grand jury; and directly in front of the SDDA, Det. Cobb and any other
26 state representative who was at that hearing. No more than 5-minutes earlier, Det. Cobb testified
27 the following:

1 Cobb: Parties leave room 208, enter the male's vehicle and it leaves the parking lot, get
2 into Mr. Kelley's vehicle. And this actual time is 3:37 a.m.. And I'm playing this, a little
3 bit longer version so you get a clear understanding at this point on what's going on. This
4 is just prior to going to 7-Eleven.

5 (Pause in proceedings while video plays 10:14 a.m. -10:16 a.m.)

6 Cobb continues: Obviously, I wanted to play this whole video, so you had a good
7 understanding of what was going on. And she comes out with the cat.

8 (Pause in proceedings while video plays 10:16 a.m. -10:17 a.m.)

9 Cobb continues: Now, I stopped it there only because there's another three to four
10 minutes before they actually pull out. So, to be clear, they're at the vehicle milling
11 around. Another three to four minutes goes by past this video when they actually do pull
12 out at that point in time, just so we're clear about that.

13 Pages 67-68 grand jury transcripts.

14 The following excerpt from a relevant motion written by former defense counsel Barry
15 Engle, will provide an even more detailed description of what Det. Cobb and SDDA Hermann
16 both saw at grand jury. Counsel Engle wrote:

17 In that same video clip, Wendy Parris shows no attempt to flee or otherwise avoid the
18 alleged kidnapping. In fact, Themba Hasaan Kelley walks ahead to the car and Wendy
19 Parris can be seen falling behind (at a 25 to 30 feet distance) and then walking quickly to
20 catch-up. Themba Hassan Kelley can be seen making no attempts to intimidate or even
21 watch his alleged captive. He can be seen waiting for her to get ready while he steps
22 outside. When she does appear, he walks ahead and directly to the car, leaving her
23 behind. He's not even looking at her. His back is even turned to her. From the point she
leaves out of the motel room and finally scurries up to the car, not once does he look in
her direction at all. She has free access to anywhere she wants to go. She chooses to hurry
after him to the car. (See video evidence)

24 *Counsel Barry Engle.*

25 The above description of the video evidence was "exactly" what SDDA Hermann saw at
26 grand jury directly before Wendy Parris alleged that lie. In other words, when Wendy Parris had
27 Dawn Johnson tell 911 dispatch, **"He has gotten her in a car and he's not letting her go,"** and
28 that recording was played at grand jury; SDDA Hermann "undeniably" knew that the "first"

1 allegation that came out of Wendy Parris' mouth was a lie. That is, the foundation of the
2 case/indictment is built on a material lie and the SDDA has been aware of that material fact for
3 over three years now.

4 The Supreme Court Supremely states, "The prosecutor has an affirmative Constitutional
5 duty to correct what he [or she] knows to be false and elicit the truth." *Napue v. Illinois*, 360 U.S.
6 264 (1959). There is more undeniable proof

7 SDDA Hermann: And where - - did you then leave the motel room?

8 Wendy Parris: Yeah. **And so, I knew that this is my only chance to get away.**

9 Because of the above grand jury testimonial solicitation, "did you then leave the motel
10 room?" And the testimony that followed, "I knew that this was my only chance to get away."

11 When SDDA Hermann saw the video of Parris leaving "the motel room;" and also "scurrying up
12 to the car," the SDDA undeniably knew that Parris absolutely did not want to "get away." The
13 SDDA further knew that Parris was lying when she had Dawn Johnson report to 911 dispatch,
14 "He's not letting her go."

15 Four days earlier Wendy Parris told the following to Det. Friderich:

16 And, oh so he got dressed and I convinced him - I was really taking a chance here cause I
17 thought he was gonna shoot my cat, but I told him that I needed to take my cat because
18 my cat would freak out because my - - goal was, I was gonna get the fuck away from this
guy. I - - LIKE, IF I HAD TO JUMP OUT OF THE FUCKING CAR I'm getting away
from him.

19 Page 186 Det. Friderich interview.

20 The following is what Wendy Parris told Det. Friderich she was thinking, once she got
21 into the car:

22 I'm like, fuck. What am I gonna do? (indiscernible) jump out. I'm like, okay, okay. Yes,
23 I'm just GONNA JUMP OUT because if I can just get away from him, he's gonna be
thinking about my cat. And I can get away. Like - - I mean, my minds spinning - -

1 Page 189 Det. Friderich Interview.

2
3 The video evidence that SDDA Hermann saw at grand jury, proves that Wendy Parris
4 could have simply walked away, “with the cat,” yet she erroneously claims that she was
5 considering “jumping out of a moving car.” This is the person the state claims they trust to testify
6 honestly at a trial?

7 **MATERIAL FALSITY #2**

8 911 Dispatcher: Okay. And did she mention anything about weapons or anything like
9 that?

10 Dawn Johnson: Yeah. She - - she said (indiscernible) he’s got a gun.

11 911 Dispatcher: Did she text you that, too?

12 Dawn Johnson: Yes, she did.

13 Page 71 grand jury transcripts.

14 Wendy Christine Parris told an entire police department that Themba Hasaan Kelley was
15 in room 208 armed with a black semi-automatic handgun. That allegation was proved to be false
16 on the same day of the arrest. On August 14, 2019, at 11:09 p.m. SDDA Hermann received a
17 conclusive email from Det. Cobb which stated, “We did not locate a gun during any of the
18 searches.” With the above said: At grand jury, when SDDA Hermann heard Dawn Johnson tell
19 911 dispatch, “She said he’s got a gun.” The SDDA undeniably knew that that was a material lie.
20 Still, the SDDA looked away, and went forward to indict.

21 **MATERIAL FALSITY #3**

22 At grand jury Det. Cobb testified:

23 Cobb: all right. So, the second call at 3:54 a.m. to 911 also by Dawn Johnson. Again, this
is just an approximate time matched up with the video, not (indiscernible) perfect. We’re
back at the Motel 6, actual time 3:54 a.m.

1 (Audio recording played in open court, 10:21 a.m., as follows:)

2 Dawn Johnson: Yes, sir. I just called about the - - I - - somebody on the 911. My
3 girlfriend, her name is Wendy. **She's being held hostage at - - at her will. And this guy**
4 **broke her arm and she JUST said - - this buy broke her arm and they're heading**
5 **back to the motel.**

6 911 Dispatcher: Where did you - -

7 Dawn Johnson: And - -

8 911 Dispatcher: Where did you - - where did you - - what address did you give before or
9 location?

10 Dawn Johnson: (Indiscernible) Because there was no address to give at that point, but she
11 just said, "Did you call? Call them now, please. We're headed back to the motel. **Please**
12 **call them and tell them to wait at Motel 6 on 181st and Stark. And he broke my arm.**
13 **Did you call?**

14 911 Dispatcher: Okay.

15 Dawn Johnson: That's what she texted me.

16 911 Dispatcher: The Motel 6 on 181st and Stark. Okay.

17 Dawn Johnson: Yes, sir.

18 911 Dispatcher: All right.

19 Dawn Johnson: Yes, sir. It's room 208, please

20 911 Dispatcher: Okay.

21 Dawn Johnson: **Hurry. And he has a gun. She told me that he has a gun.**

22 The rapid evolution of Wendy Parris' material lying is apparent. Initially, she's allegedly
23 being held hostage and *forced into a car*. Next, she alleges, "He's got a gun." After that, Parris'
24 material-lying-metamorphosis, makes another change and she says; "He broke my arm. Did you
25 call?" By the time the police arrived on the scene, the gun, the broken arm and the "he forced me
26 into the car" metamorphosized even further; and she next alleged rape.

27 What's preposterous about it all, is not Parris' material lying. What's Constitutionally
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1 insulting about that 911 call being played at grand jury is simple: multiple oath-bound
2 government officials were just sitting back listening to the 911 call as if they really believed it. In
3 fact, only mere minutes before Cobb played that 911 recording, he testified:

4 “And she (Wendy Parris) comes out with the cat.”

5 As Cobb testified to the above, he was narrating video footage that is extremely relevant
6 to the broken arm allegation. That very pertinent video was played only mere minutes before
7 Dawn Johnson’s 911 report, “This guy broke her arm.” On that video, Wendy Parris exits the
8 motel room, using the arm perfectly normal. She uses the arm to close the door. She swings the
9 arm back and forth. She also uses the arm to carry the huge cat. During this entire time, her face
10 does not express the slightest look of discomfort. In short, at the same time SDDA Hermann was
11 listening to the 911 accusation, “He just broke my arm,” the SDDA unequivocally knew; that
12 during the exact time Parris was making that demonstrably false accusation; she was using the
13 arm perfectly normal.

14 In a fair and just world of *prosecutorial integrity*; that video should have “easily
15 absolved” Themba Hasaan Kelley. But it didn’t. At grand jury, as that video was playing; SDDA
16 Hermann pretended as if she was oblivious to the vindicating evidence. In legal terms, that’s
17 known as fraud – upon – the – court. But the same principle of course applies Constitutionally to
18 grand jury proceedings.

19 The Ninth Circuit Court so beautifully states:

20 “Today, the grand jury relies upon the prosecutor to initiate and prepare criminal cases
21 and investigate which come before it. The prosecutor is present while the grand jury
22 hears testimony; he [or she] calls and questions the witnesses and draws the indictment.
23 With that great power and authority there is a correlative duty, and that is not to permit a
person to stand trial when he [or she] knows that perjury (or any false evidence)
permeates the indictment.”

United States v. Basurto, 497 F.2d 781 (1974).

1 There are no other allegations on that 911 recording. The call continues for a few more
2 minutes and only repeats the above three lies. For example:

3 Dawn Johnson: - - She says he won't let - - let her go. She said, "Please call the cops."
4 She's begging me. (Indiscernible) broke her arm and he's got a gun and, "can you call the
5 cops, please?" (Indiscernible) at 7-Eleven and then left (indiscernible) other officer
(indiscernible) well, they're on their way back to the Motel 6 on (indiscernible).

6 The above 911 call from Dawn Johnson proves that Wendy Parris was still alleging that
7 Themba Hasaan Kelley was in possession of a gun while they were "on their way back to the
8 Motel 6." That is, at grand jury; SDDA Nicole M. Hermann knew "undeniably" that Wendy
9 Parris continued to allege that Themba Hasaan Kelley was in possession of a gun even as they
10 "left 7-Eleven" and drove back to the motel. Not that he "may have" disposed of it by "possibly"
11 having sold it to the broke homeless dude at the 7-Eleven bus stop. Brief on the Merits #1.

12 The following is the rest of the 911 call as it was played at grand jury:

13 Dawn Johnson: (Indiscernible) I am speaking into the phone. She has left. She has
14 (indiscernible).

15 911 Dispatcher: Well, what - -

16 Dawn Johnson: Like, what?

17 911 Dispatcher: She just left where?

18 Dawn Johnson: (Indiscernible)

19 911 Dispatcher: I know, but he committed a crime by - - by forcing her in the car with a
20 gun, so even though she's fine - -

21 At this point Wendy Parris has not only "conned" Dawn Johnson; Parris has also
22 "conned" the entire Gresham's Police Department. They're on their way to Motel 6 with a fully
23 armed S.W.A.T. team. They've been told that a "White Woman" has been forced into a car with
24 a deadly weapon and has also had her arm broken by a "Black Man". The call continues:

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1 Dawn Johnson: Well - -
2 911 Dispatcher: - - this man has committed - -
3 Dawn Johnson: (Indiscernible)
4 911 Dispatcher: Uh-huh.
5 Dawn Johnson: Room 208
6 911 Dispatcher: Uh-huh. Okay. So - -
7 Dawn Johnson: (indiscernible).
8 911 Dispatcher: AND HOW DID SHE GET - - HOW DID SHE GET AWAY FROM
9 HIM?
10 Dawn Johnson: I DON'T KNOW, SIR.
11 911 Dispatcher: Does your friend have a car?
12 Dawn Johnson: Yes, sir. And I don't know (indiscernible). Yeah.
13 911 Dispatcher: Yeah, but, supposedly - -
14 Dawn Johnson: (Indiscernible)
15 911 Dispatcher: - - he broke her arm. I'm concerned about your friend who has a broken
16 arm. You told me your friend has a broken arm, so we don't just walk away from stuff
17 like this.
18 Dawn Johnson: Yeah, (indiscernible) - -
19 911 Dispatcher: Can you - - can you find out where Dawn¹ is? Can you - - can you find
20 out where Dawn is please? Your friend has a broken arm possibly - -
21 Dawn Johnson: (Indiscernible)
22 911 Dispatcher: Your friend who was kidnapped and have a - - has a broken arm,
23 somebody needs to check on her.

¹ The dispatcher obviously meant, "can you find out where Wendy is."


1 Dawn Johnson: (Indiscernible) Wendy. Oh God. (Indiscernible)

2 The above "Oh God" from Dawn Johnson concludes the 911 call; as well as the 911
3 presentation at grand jury. Moreover, it's fairly apparent that Dawn Johnson was just as
4 befuddled as the 911 dispatcher how a woman with a freshly acquired broken arm, being held at
5 gunpoint; was able to get "away from him so easily." This case is absurd. This case embodies
6 misconduct. This case is Constitutionally insulting and must be immediately terminated
7 eternally with prejudice.

8
9 Ameena (It is).

10
11 Dated this 7 August 2022

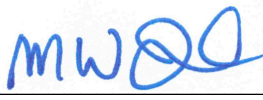
12
13
14 
15 _____
16 Themba Hasaan Kelley
17 *Pro se* defendant

18 
19 _____
20 Westbrook Johnson, OSB# 076967
21 Legal advisor to defendant
22 westbrook@lawofficeofwestbrookjohnson.com

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 Dated this 7 August 2022

8
9
10 By: 
11 _____
12 Westbrook Johnson