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

4 STATE OF OREGON,

5 Plaintiff,

6 vs.

7
8 THEMBA HASAAN KELLEY
9

CASE NO. 16CR46168
MOTION TO DISMISS WITH PREJUDICE
REGARDING STATE SANCTIONED
RACIAL/ ETHNIC/ CULTURAL AND
RELIGIOUS BIAS AND BIAS PERIOD/
STATE V. FAROKHRANY, 259 ORE.
APP.132 (2013) & ARTICLE 1, SECTION
11, OF THE OREGON CONSTITUTION

10 The state's unapologetic, willingness to sanction and present testimony, from an expert witness who is
11 dismissive towards Black mental health professionals, culturally insensitive towards the generational and
12 present day traumas of the Black community and moreover, *"gives credence to a jail guard's report that*
13 *implies that Mr. Kelley is of bad character because he feels his probation officer doesn't like him because he is*
14 *Black,"* according to former defense counsel Barry Engle, indicates strongly that the state is racially bias
15 towards Themba Kelley. Indeed, whatever the state sanctions and presents to a Court, jury and public is an
16 extension, arm and expression of the state's own - *state of mind*.

17 Thus, the defendant with good reason and clear conscious hereby moves the Court to dismiss this case
18 with prejudice and in THE FURTHERANCE OF JUSTICE/ ORS 135. 755.

19 Relevant to the above:

20 "The premise underlying the constitutional right to "an impartial jury"
21 guaranteed in Article 1, section 11, of the Oregon Constitution is indifference
22 by jurors to matters of race...In the end regardless of the prosecutor's
23 motivation...this court cannot tolerate conduct, blatant or subtle, that even
24 borders on an attempt to introduce, at any stage of a trial, issues of racial,
25 ethnic or religious bias." *State v. Farokhrany*, 259 Ore. App. 132, 137. (2013)
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NATURE OF PROCEEDINGS

The racial, cultural, ethnic and religious bias found in Dr. Leeper's report is not subtle - *at all*. *State v. Farokhrany*, 259 Ore. App. 132, 137. On the contrary, the Dr. Leeper report is unapologetically bias. But what is even more disturbing, is the fact that the state has sanctioned the report and furthermore seeks to present it to the court and/or jury.

Examples of the bias report are as follows:

1. Dr. Leeper doesn't seem to know (or at least doesn't seem to care about) America's brutal history of black men falsely accused of sexually assaulting white woman, and how that has traumatically impacted the Black community, and more specifically, in this instance, how being wrongfully accused of raping a white woman, when he first arrived to homeless Portland, has profoundly and traumatically impacted Themba Hasaan Kelley. To that regard, on page 29, she wrote:

"...Mr. Kelley "indicated he didn't want anything to do with [law enforcement]" as he had been previously falsely accused by Sexual Assault Detail Detective Christensen."¹

¹ Themba Kelley's first contact with the state when he first arrived to homeless Portland was to be accused of raping a 19 yr. old White female. To that regard, Detective Christensen reported the following: "Kelley matched the description of the suspect who originally stole the car and reportedly kidnapped and sexually assaulted Vanessa Lowrie." Case No. 13-078. However, when "the DNA results" proved Mr. Kelley was innocent, the state had to admit they were wrong. Compelling evidence, that this first contact with the state traumatically impacted Mr. Kelley is found in a statement he gave (two years later) when he was arrested for burglarizing Ashley Sawyer's home as follows: "Christensen lied to me...manipulated me...but really...stereotyping me...Can you imagine being falsely accused...of raping somebody...Nobody ever apologizes...Do you understand the trauma...when I'm in a courtroom with White folks...the lynch mob...Nobody ask me how I was doing. None of y'all..." Dr. Leeper admittedly reviewed the above information, yet she ignored all of it.

- 1 2. In forming her opinion about the defendant, Dr. Leeper, unapologetically referenced the following
2 slanderous headline on page 14: **"Delusional sex offender knocks on stranger's door in Portland
3 and shouts that 12-year old girl is a sex-trafficking victim."**
- 4 3. There is simply know way, that Leeper didn't realize, the intense mental anguish, confusion, fear
5 and trauma that Mr. Kelley had to have experienced, after being publicized as being a "delusional
6 sex offender," to over 100,000 citizens.
- 7 4. Especially when she herself documented, on page 12, that when he was arrested on the charge
8 related to the above headline months earlier, "Once arrested, there was mention of him having
9 **"suicidal thoughts and breaking down."**
- 10 5. Keeping in mind, she knew he was homeless, Black and hundreds of miles away from any family
11 support, in a city documented as being the Whitest in America². Yet, she doesn't consider any of it.
- 12 6. She also quote's from the same slanderous article as follows: "...Mr. Kelley violated the terms of his
13 probation due to...**failing to register as a sexual offender...."**
- 14 7. On page 16, she uses the same "failed to register" narrative, to continue condemning the defendant
15 as follows: "In total, reasons for termination [from Central City Concern] included **deception
16 involving... being in police custody (for failing to register as a sex offender)...³**"
- 17 8. Dr. Leeper used a slanderous report to condemn Mr. Kelley to be a liar, even though the evidence,
18 that he was telling the truth is right in her own report on page 15 as follows:
- 19
20

21 ² Google it.

22 ³ The reason Central City Concern documented that Mr. Kelley was terminated for being "in police custody for failing to register
23 as a sex offender," is because the state induced the media to - falsely - report the following: "Repeat sex offender was unregistered
24 in lasted crime." Notably, he was not a "Repeat Sex Offender" as the headline above reports. Nor was he a sex-offender at all.
25 Thus, the only reason he was "unregistered" was because he wasn't required to be, per the ruling of the Oregon Court two years
26 prior. Still, the slander was impactful enough to make Central City Concern believe, that he had broken the law by not registering.

1 **"Mr. Kelley offered information about his criminal history...he "reported the**
2 **Oregon Circuit Court for Multnomah County ruled that he did not have to**
3 **report as a sex offender because under the statutes amended by SB 30, the**
4 **client's conviction for luring a minor is not a sex crime." Nonetheless, the**
5 **client reports that the case itself caused him great distress and trauma."**

6 9. Disturbingly, she again doesn't consider his apparent "distress and trauma." But she also blatantly
7 ignored his legal explanation of the truth, which once again confirms a bias prosecution.⁴

8 10. Even more, Dr. Leeper documents every charge, conviction or dismissal that Themba Kelley has had
9 in Oregon. **That is, except for his critically important victory at trial, regarding the Honorable**
10 **Kathleen Dailey's ruling that he was not a sex-offender and thereby was not required to**
11 **register.**

12 11. Thus, the bias is apparent again. That is, she intentionally chose to quote from an article, that
13 slanderosly labeled him a "delusional sex offender," but then in the same report, she omitted the
14 critically important ruling from the court, that he wasn't a "sex-offender," and thereby wasn't
15 required to register. **Importantly, the state also ignored your Honors ruling that Themba Kelley**
16 **wasn't required to register. Thus, proving again, an intentional-collaboration of bias between**
17 **Dr. Leeper and the state.**

18 12. On page 7, Dr. Leeper reports the following:

19 "When specifically questioned, he reported a history of head injury and loss of
20 consciousness after being pushed out of a window at age 16. When questioned
21 about fractures, he described an incident at Oregon Health and Science University
22 (OHSU) Hospital and having his arm broke by security...He also described having
23 a broken jaw, which required surgery. As alluded to above, he reported being shot

24
25 ⁴ As already noted above in footnote # 3, the state - also - ignored the truth that he didn't have to register. Thus, this proves an
26 intentional, collaboration (of bias) between Dr. Leeper and the state.

1 at age 15 in a gang related incident, which required hospitalization. Also
2 according to reviewed records, he reported slamming his head against the wall in
3 1986 and 1987. "

4
5 13. Yet, with the most disturbing dismissive-ness, she doesn't diagnosis the defendant as having PTSD.

6 On the contrary she outrageously only documents the following:

7 "Mr. Kelley does not present with a well-documented history of mental health
8 symptoms. Observations and Mr. Kelley's self-report related to both diagnoses
9 occurred while charged with crimes and detained in county custody, after being
10 arrested or being legally involved⁵ (i.e, Central City Concern,) after using various
11 substances, and after researching both diagnoses." Page 22.

12 14. Relevantly, on pages 35 & 36 Dr. Leeper wrote:

13 ...Nurse Practitioner Lee described Mr. Kelley's reported **symptoms**, which
14 includes feeling "horrible," "anxious and scared" due to being the "victim of a lot
15 of violence." He also reported "anxiety about loud noises and flinches when
16 people try to shake his hand." His reported traumas were being beat up by cops
17 and his step-father, both of which led to flashbacks and hypervigilance...More
18 specifically, "he believes 'certain officer's are out to get him. States, 'what has me
19 most paranoid' is 'how racist the criminal justice system is out here' and he thinks
20

21 ⁵ This point from Dr. Leeper is profoundly upsetting. That is, Black men are herded through the legal system in numbers that are
22 staggering. Thus, Dr. Leeper has excluded thousands of Black men from being diagnosed *at all*, based on her own words, that
23 Mr. Kelley, a Blackman, "does not present with a well-documented history of mental health symptoms," simply because his
24 diagnoses occurred "after being arrested or being legally involved." Keeping in mind that her report is not even true. That is, on
25 page 14 she also wrote: "Mr. Kelley enrolled in services with Central City Concern on 6/ 6/ 2016," and was diagnosed with
26 PTSD. Yet, she ignored the fact that he enrolled on his own, and ignored the clinic's diagnosis of PTSD - *anyway*.

1 'that because I'm black they are trying to get me.' He has been 'exploited' and
2 'falsely accused' of things, resulting in him being incarcerated."...

3 Since the time of the assessment, Mr. Kelley intermittently reported similar
4 symptoms (including those related to depression, anxiety, posttraumatic stress
5 disorder, paranoia seemingly related to racial discrimination, bipolar,
6 etc.)...Relatedly, Mr. Kelley completed many request forms with related
7 information including about racial discrimination, not trusting "the white racist
8 system and the conspiracy to oppress," "being tormented at night and cannot
9 sleep," being afraid of the officers who believes are targeting him...Mr. Kelley also
10 reported other perceived injustices around his past and present legal
11 involvement. For example, on 10/ 2/ 2016, it was reported that he "went on to
12 describe his perceived mistreatment which he attributes to retribution from the
13 Prosecutor due to 'beating his last charge of failure to register. Ct. reported being
14 falsely accused 3x, 'that is trauma.' He reported staying in his cell out of fear due
15 to the media coverage of his charges..."

16 15. Notably, Themba Kelley's "well documented mental health symptoms," regarding trauma, torment,
17 anxiety, depression and his report of being a "victim a violence" and of "fear due to the media
18 coverage" - *was still not enough for the state.*

19 16. Even more disturbing, is the fact that Dr. Leeper also dismissed the reports of Black Health
20 professional's who did indeed diagnosis Themba Kelley as having PTSD, specifically regarding his
21 trauma associated with racial discrimination.

22 17. Finally and most relevantly, Dr. Leeper documented the following on page 5 of her report:

23 **"He described his grandmother and his biological father as being active**
24 **in the civil rights movement, which documentation provided by Mr.**
25 **Kelley supports."**
26

1 18. Thus, there is no excuse for the state's representative, to have been so blatantly, dismissive to
2 THEMBA HASAAN KELLEY'S racial trauma. Particularly when, his family's Civil Rights background,
3 was confirmed through historic-family-documentation.⁶ In other words, it should not have been
4 rocket science, that this rich cultural background, would likely cause his experiences of racial-
5 discrimination, to be that much more impactful.

6 19. However, Dr. Leeper didn't even question him about it. She unconsciously or not, doesn't even
7 consider it. Thereby unequivocally proving, that she wasn't qualified to diagnose Themba Hasaan
8 Kelley, a proud descendant of Black people, the people, that every University student is taught gave
9 birth to the rest of humanity.

10 20. Importantly, the defendant only gathered the historic-family-documents in the first place, thinking
11 that it might help to awaken Dr. Leeper's cultural sensitivity towards his suffering. It didn't. In fact,
12 her culturally insensitive report caused his personal trauma and trust of White America to worsen.

- 13 • **Testimony is expected from former defense counsel, who put the state on notice about Dr.**
14 **Leeper's bias several years ago as follows:**

15 "...Dr. Leeper...writes for almost two pages about how jail guards don't like Mr.
16 Kelley. Even more troubling is that the jail guards appear to prejudiced against
17 Mr. Kelley because of his religion, race, and mental illness. For instance, on page
18 17, Dr. Leeper gives credence to a jail guard's report that implies that Mr. Kelley
19 is of bad character because he feels that his probation officer doesn't like him
20 because he is black. On page 18, a report is cited where the author feels that Mr.
21 Kelley's religion is a "schtick."⁷ Also on page 18, a jail guard's diagnosis that Kelley
22 is not mentally ill is given a quarter page of report space. Again, no responsible
23 psychologist is going to adopt the diagnosis of an unnamed jail guard who
24

25 ⁶ Documentation or not, the state has no excuse for this.

26 ⁷ Schtick: a usually comic or repetitious performance or routine. *The Merriam Webster Dictionary*

1 presumably is not a psychologist. Yet, Dr? Leeper does exactly that. Her opinion
2 is incompetent and should not be presented to the finder of fact. "

3 **In his footnote defense counsel wrote:** "This is offensive because she uses
4 his religious beliefs against him. It is also offensive because she suggests that
5 he is using religion to be manipulative ignoring several instances in the record
6 she reviewed indicating that religion is an important part of his coping with
7 his mood disorders. That is, using mediation, religious belief, and
8 contemplation of pacifism to counter mood swings is encouraged by no less
9 than six professional counselors in these same records. Those incidents are
10 ignored by Dr. Leeper and she instead focuses on a jail guard who labels his
11 spiritual practices as a "shtick.""⁸

12 **THE COURT HAS AUTHORITY TO DISMISS THE CASE DUE TO STATE SANCTIONED BIAS**

13 In interpreting the legislative intent of ORS 135. 755, regarding a trial court's authority to dismiss a
14 case in the "furtherance of justice," the Oregon Supreme Court states "the predecessor of ORS 135.755
15 contained the same operative wording as that today, and the section surrounding it in the 1864 sub-chapter
16 related only to pretrial matters, such as...bringing a defendant to trial. The grouping of ORS 135. 755 with
17 provisions that relate only to pretrial matters has remained. State ex el rel. Penn v. Norblad, 323 Or. 464, 468
18 (1996). Moreover, a "constitutional violation" must be present in order to "warrant dismissal." *State v. Stough*,
19 148 Or. App 353, 356 (1997).

20 **CONCLUSION**

21 "The premise underlying the constitutional right to "an impartial jury" guaranteed in Article 1, section
22 11, of the Oregon Constitution is indifference by jurors to matters of race..In the end regardless of the
23 prosecutor's motivation...this court cannot tolerate conduct, blatant or subtle, that even borders on an
24 attempt to introduce, at any stage of a trial, issues of racial, ethnic or religious bias." *State v. Farokhrany*, 259
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26 ⁸ This is unconstitutional to say the least.

Ore. App. 132, 137. (2013) Thus, in the furtherance of justice, the defendant humbly asked the court, to take the appropriate action and dismiss this case with prejudice

Sincerely, Themba Hasaan Kelley

A BIAS PROSECUTION:

- **Dr. Leeper report omits the fact that I won at trial on the registration issue in 2014**

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