

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

STATE OF OREGON,

Plaintiff,

vs.

THEMBA HASSAN KELLEY,

Defendant.

CASE NO. 16CR46168

**Motion to dismiss with prejudice
regarding nine years of speedy trial
delay (amended)**

ORAL ARGUMENT REQUESTED

The defendant by and through the Divine Mind of God, moves the court for an order dismissing the above referenced case with prejudice, based upon violations regarding the Oregon Constitution, Article I, section 10 and United States Constitution, Amendment 6 that require speedy trial. This motion is based on *State v. Harberts*, 331 Or 72 (2000).

NATURE OF PROCEEDINGS

Since the inception of this case on July 26, 2016, the state has intentionally induced and/ or caused the defendant an extreme and unusual amount of personal anxiety, personal trauma and personal prejudice. Moreover, this personal anxiety, personal trauma and personal prejudice intentionally¹ induced

¹ It is not required that speedy trial violations regarding personal anxiety, trauma and prejudice to have been intentionally induced by the state. Nonetheless, we intend to prove that it has been in certain instances, thereby making the harm to the defendant caused by speedy trial delay, that much more impactful.

1 and/ or caused by the state, has spanned over the entire nine year long excessive
2 speedy trial delay.

3 *State v. Harberts*, 331 Or. 72, (2002)

4 **MEMORANDUM OF THE LAW**

5
6 Relevantly, the Supreme Court in *Moore* states, "prejudice to a defendant
7 caused by delay in bringing him to trial is not confined to the possible prejudice
8 to his defense in those proceedings. Inordinate delay, 'wholly aside from possible
9 prejudice to a defense on the merits, may 'seriously interfere with the defendant's
10 liberty, whether he is free or not, and ... may disrupt his employment, drain his
11 financial resources, curtail his associations, subject him to public obloquy, and
12 create anxiety in him, his family and his friends.'" *Moore v. Arizona*, 414 U.S. 25,
13 citing *United States v. Marion*, 404 U.S. 307, 320

14
15 Similarly, the Supreme Court in *Barker* states, that "even if the accused is not
16 incarcerated prior to trial, he is still disadvantaged by restraints on his liberty and
17 by living under a cloud of anxiety, suspicion, and often hostility." *Barker v. Wingo*,
18 407 U.S 514 ((1972).

19
20 Supporting the above even further, the Supreme Court in *Klopfer* states, " The
21 petition is not relieved of the limitations placed upon his liberty by...prosecution
22 merely because it's suspension permits him to go 'whithersoever he will.' The
23 pendency of the indictment may subject him to public scorn and deprive him of
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1 employment, and almost certainly will force curtailment of his speech,
2 associations and participation in unpopular causes. By indefinitely prolonging
3 this oppression, as well as the anxiety and concern accompanying public
4 accusation." *Klopper v. North Carolina*, 386 U.S. 222, 223

6 The Supreme Court in *Strunk* states, "The speedy trial guarantee recognizes
7 that a prolonged delay may subject the accused to emotional stress." *Strunk v.*
8 *United States*, 412 U.S. 439 (1973).

10 Regarding speedy trial delay, and what is known as the "major evils," the
11 Supreme Court in *Marion* appropriately states the following: "...the major evils
12 protected against by the speedy trial guarantee exist quite apart from actual or
13 possible prejudice to an accused's defense...Arrest is a public act that may
14 seriously interfere with the defendant's liberty, whether he is free or on bail or
15 not, and that may disrupt his employment, drain his financial resources, curtail
16 his associations, subject him to public obloquy [condemnation], and create
17 anxiety in him, his family and his friends." *U.S v. Marion*, 404 U.S. 307 (1971).

21 The Supreme Court of Oregon in *Harberts* states, "**...the longer the defendant**
22 **must endure...anxiety and other forms of personal prejudice, the more the**
23 **'prejudice to the defendant' factors weighs in the defendants favor."** *State v.*
24 *Harberts*, 331 Or. 72, (2002), quoting, *Mende*, 304 Or. at 24, 741 P.2d 496

1 That said, "...the requirement that a defendant be brought to trial "without
2 delay" ... is a mandatory directive to the state. See Clark, 86 Or. at 471. Accordingly,
3 "...the burden to proceed promptly is on the state." *State v. Harberts*, 331 Or. 72
4 (2000) citing Vawter, 236 Or. at 87, 386 P.2d 915. "...even neutral reasons for delay
5 must be weighed against the government, because "the ultimate responsibility for
6 such circumstances must rest with the government rather than with the
7 defendant."" *Harberts* citing *Barker*, 407 U.S. at 531 (2000). Just as important,
8 "even incarceration for unrelated offenses does not relieve state of speedy trial
9 obligations." *Vawter*, 236 Or. at 91, 386 P.2d 915
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15 The state has repeatedly and zealously tried to use "Count 3" as a means to
16 prejudice the defendant. However, they have not taken that same zealous
17 approach, in fulfilling their obligation to move the case forward to trial without
18 delay. *Clark*, 86 Or. at 471.
19

20
21 **For example:**

- 22 1. In a conference with Your Honor Cheryl Albrecht in 2017, they were quick
23 to deny the defendant mental health court, but not quick to try the case
24 without delay. *Clark*, 86 Or. at 471
25
26

- 1 2. Several months later, and directly before trial was scheduled to begin on
2 January 8, 2018, they were quick to agree with and receive compliment
3 from the court for being a place *"...where prosecutors are willing to look at*
4 *and think seriously about the implications of mental health. And look at*
5 *defendant's who are charged with very serious crimes as individual human*
6 *beings who may be acting because of illness rather than out of some evil*
7 *within them²."*
8
9
10 3. At that same hearing, they were further quick to demand that the
11 defendant, *"engage in a dual diagnosis treatment program,"* upon his
12 release.
13
14 4. Not only was the state quick to release the defendant on that same day trial
15 was scheduled, they were also quick to agree that the case would be
16 dismissed after 18 months of compliance.
17
18 5. To that regard, the court stated: *"...if your probation [for the burglary*
19 *conviction on the same indictment as the attempted sex abuse count] has*
20 *not been revoked by [July 8th, 2019], that Count 3 will be dismissed and no*
21 *conviction shall be entered...."*
22
23
24

25 ² It seems unethical and even corrupt, that the state could agree with no "criminal intent," but then forged forward holding that
26 same case over the defendants head for so many years.

1 6. Importantly, the state was quick to agree with all the above, but not that
2 quick to try the case without delay. *Clark*, 86 Or. at 471.

3 7. Importantly, it was the state and not the defendant who made the call and
4 suggested a deal a couple of days before the trial date. This was the same
5 deal offer, that the defendant had presented to the state several months
6 prior. However, at that particular time the state chose not to agree, only to
7 turn around and agree with the mental health issue several months later
8 on the day of trial.
9

10 8. Thus, because the state did not agree with the defendant's offer several
11 months before the trial was scheduled, the case was of course prolonged.
12

13 To that regard, former defense counsel Barry Engle wrote the following:
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15 The case was prepared to go to trial. The defense mental
16 health expert was ready to testify. The plea occurred on
17 the scheduled trial date. The plea negotiations were for a
18 "no contest" plea followed by dismissal after 18 months.
19

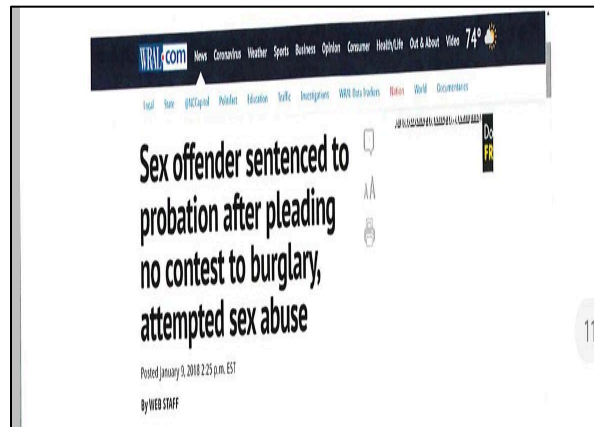
20 The condition of the release pending the sentencing were
21 that Themba Kelley engage in mental health treatment.
22

23 Both parties were clear at the plea that this was a mental
24 health issue and not a criminal issue. He was released to
25 the community on that day. If the state believed that they
26

1 could prove that Themba Kelley intended to sexually
2 abuse Ashley Sawyer the case would not have resolved
3 that way.

4 *See Defendant's Objection To Plaintiff's Motion To*
5 *Consolidate/ Pg's 8-9*

- 6
7
8 9. As soon as the defendant was released on January 8th, 2018, he was
9 immediately and forcibly subjected to several traumatizing headlines
10 associated with the delay. An example of the traumatic headlines is below:



- 21 10. Because the defendant was falsely publicized as a "sex-offender" to over
22 100,000 Oregonians as soon as he was released from jail, this of course
23 disrupted "...his employment, drained his financial resources, [curtailed]
24 his associations, [subjected] him to obloquy, and [created] anxiety in him,

1 his family and his friends." ³*Moore*, 414 U.S. 25, citing *United States v.*
2 *Marion*, 404 U.S. 307, 320

3 11. The prejudicially false media coverage, also caused the defendant to live
4 "...under a cloud of [extreme] anxiety, suspicion and often hostility."
5 *Barker*, citing, *Marion*, 404 U.S. 307, 320.
6

7 12. The copious evidence, regarding the defendant being forced to live under
8 a cloud of extreme anxiety, suspicion and hostility is apparent as follows:
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24 ³ Notably, because the court room was filled with the media at that release hearing, per the request of the defendant, defense
25 counsel went on record and reiterated to the media, that Themba Kelley was not a "sex offender," per the ruling of the court.
26 Still, they began their headlines, by calling him a "sex-offender."



FOX 12 Oregon

January 8, 2018

...

Themba Kelley has a criminal record dating back to 1989 in four states. In court Monday, he said he is taking steps to address his mental health issues.



KPTV.COM

Sex offender sentenced to probation after pleading no contest to burglary, attempted sex abuse

123

110 Comments, 10 Shares



Baba Tmba H

Like Reply 3y



Barry Bishop
Cut off his little willie

Like Reply 4y



Ric Zittenfield
Ladies, if this guy doesn't convince you to get gun safety training, a CHL and a carry piece, you are on your own. When seconds count, cops are minutes away.

Like Reply 4y



Samantha Williams
Wtfits?

Like Reply 4y



John Washington
shows up at my place he won't need a trial... can you say ventilated...lol

Like Reply 4y



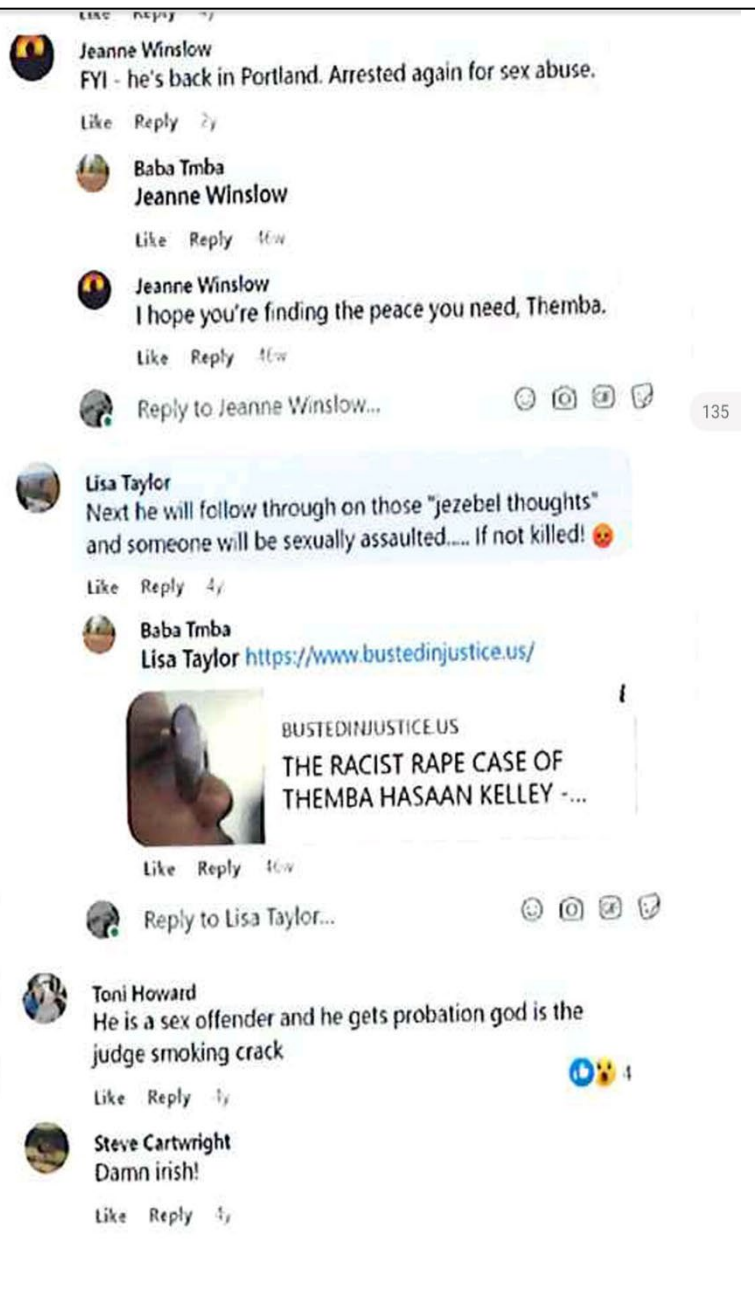
Lisa A Clayton
Orng where's he live? I'm going to go throw some jezebel magic his way and see what the outcome is.

Like Reply 4y



Top fan
Todd Skidmore
Blah blah blah...he deserves a free skydiving expedition with no parachute.

Like Reply 4y



Like Reply 4y



Top fan

Patrick Gunderson

Technically he got a year in jail too. Still not enough though.

Like Reply 4y



Corinne Rice

Patrick Gunderson he still has a sentencing for the assault later this year or next year I don't recall. But he's not done with the system.

Like Reply 4y



Reply to Nick Ritzer...

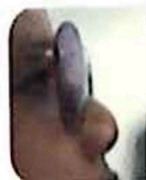


135



Baba Tmba

<https://www.bustedinjustice.us/>



BUSTEDINJUSTICE.US

THE RACIST RAPE CASE OF THEMBA
HASAAN KELLEY - BUSTED in...

Like Reply 45w



Baba Tmba

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Like Reply 3y



Baba Tmba

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Like Reply 3y



Baba Tmba

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Like Reply 3y



John Hancock

product of his environment

Like Reply 4y Edited



Yuleima R Malone

Sol Calderon WTF

Like Reply 4y 🤔



Jerry Chandler

John

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Katie Schilperoort
It should be way too late now

Like Reply 4y  2




Sandy Kennedy
Lock him up and throw away the key!! Forget probation.
This guy is sick and disgusting!! Keep him off the streets..

 Like Reply 4y  5



Sandy Kennedy
Lock him up and throw away the key!! Forget probation.
This guy is sick and disgusting!! Keep him off the streets..

 Like Reply 4y  5




Sandy Kennedy
Wait until somebody you love is abused by a sexual
predator and we will see how much compassion
you have!

Like Reply 4y  7



Keith Garrett
Get out of here with that empathy bullshit.

Like Reply 4y  3



Katie Schilperoort
Are you a re offender Shawn Sloan? Because
nobody in they're right mind has compassion for a
child molester accept another child molester. You
are the reason my children and I stay out of church.

Like Reply 4y   3



BUSTEDINJUSTICE.US
THE RACIST RAPE CASE OF
THEMBA HASAAN KELLEY -...

Like Reply 46w



Baba Tmba
Katie Schilperoort <https://www.bustedinjustice.us/>



BUSTEDINJUSTICE.US
THE RACIST RAPE CASE OF
THEMBA HASAAN KELLEY -...

Like Reply 46w



Baba Tmba
Katie Schilperoort <https://www.bustedinjustice.us/>



BUSTEDINJUSTICE.US
THE RACIST RAPE CASE OF
THEMBA HASAAN KELLEY -...

Like Reply 46w



Keith Garrett
I fucking give up. Animals like this get probation!!
Really?? What a disgusting atrocity.

Like Reply 4y

↳ 1 Reply



Katie Schilperoort
It says "if" he fully complies 🐻🐻🐻🐻
sooooooooooooo how many victims do they need before
he doesn't just get probation. So again Oregon has
another convicted sex offender with multiple times of re
offending to hang out in the community. 🐻🐻🐻🐻

Like Reply 4y



Katie Schilperoort
It should be way too late now

Like Reply 4y



Sandy Kennedy
Lock him up and throw away the key!! Forget probation.
This guy is sick and disgusting!! Keep him off the streets...

Like Reply 4y



Carl Wood

Pray for this lost soul....

Like Reply 4y



Keith Garrett

For a one way ticket to hell, sure.



Like Reply 4y



Katie Schilperoort

I will pray only if I can watch them be tortured

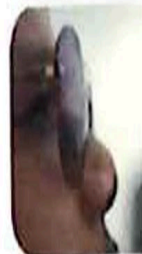


Like Reply 4y



Baba Tmba

Carl Wood <https://www.bustedinjustice.us/>



BUSTEDINIJUSTICE.US

THE RACIST RAPE CASE OF
THEMBA HASAAN KELLEY -...

Like Reply 15m



Baba Tmba

Apollyon Aaron Armstrong

<https://www.bustedinjustice.us/>

Mike L Fulbright
with in the year he will be right back in court with the same crime but worst and how many will he get away with in the middle

Like Reply 4y



Daxin Totten
I've dealt with that nutcase before. He should be locked up for every one's safety—including his own.

Like Reply 4y



Zorka Rybak
That 16 year old won't be the same. Shame on the justice system... city of Portland and Multnomah county for not protecting the law abiding citizens but caters all criminals. Sickening..hope nothing like this happens to all who defended and sentenced this animal

Like Reply 4y



Top fan
Patrick Gunderson
This headline is very misleading, he got a year in jail, but the year he spent waiting for trial covered that. That being said, it's pretty clear from the pattern of his crimes that the next step is him raping someone.

Top fan

Patrick Gunderson

This headline is very misleading, he got a year in jail, but the year he spent waiting for trial covered that. That being said, it's pretty clear from the pattern of his crimes that the next step is him raping someone.



Like Reply 4y



Ashlee Jacobson
So, how many times do people have to re-offend, before they stop getting a slap on the wrist and see some actual consequences? Where is the justice for the victims?

Like Reply 4y



Carrie Timmen
Multnomah County, Failing it's citizens one career criminal at a time... 🤔🤔🤔



Like Reply 4y





Carl Wood

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Like Reply 4y

 Tim Shuey
probation, well the judge can explain that decision to the family of his next victim.  2


Like Reply 4y

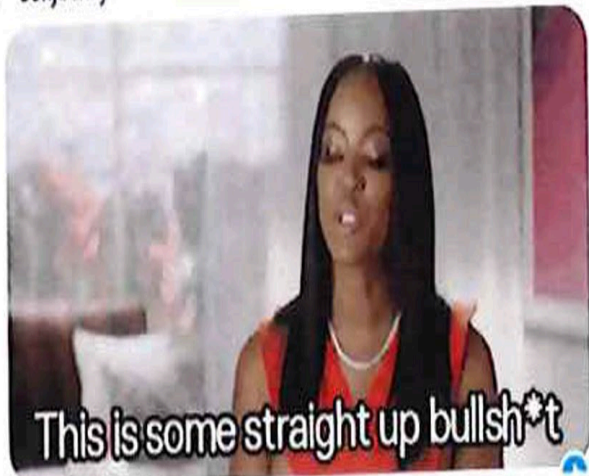

 Mark Booth
Wow! He must be a registered Democrat! 

Like Reply 4y

 Paul Kuhlman
Just When You Thought No State Can Get Sorrier Then California ! Meet Oregon State That let's Illegals Murder And Rapist Out For a Vote !   3

Like Reply 4y

 Sonja May


This is some straight up bullsh*t 



Jim Lee

WHEN? After he got caught...again...? How many times has he "taken steps"? once again Portland pats its criminals on the back and puts them back on the street. It is no wonder that while the token police chief occupies her busy, busy day diversifying the police force the crime war rages on from NE to SE Portland, Downtown, from Gresham to Clackamas on Oregon City, Tualatin, Beaverton, Hillsboro, Keiser, and on to Salem and Eugene and Roseburg. Every day these locations are in the news because of some robbery, shooting, rape, stabbing, etc. It is WAY worse than it used to be and nothing is being done to protect the citizens...in fact if Brown has her evil, naive, snowflake way the people won't be able to protect themselves either, making them even more at risk. Drive her out. Drive out the California-wannabes. Take back your state and clean up the trash. Please.

Like Reply 4y Edited



Jeffrey Howell

Life in Prison with NO Porole.

Like Reply 4y



Linda Standiford-marshall

Oregon Judge showing their Liberal Bias again !!

This State

Is loosing it's liberal mind !!!

Like Reply 4y



3



Top fan

Dwayne Morehead

Wow! Way to go! Hope the DA files for adjustment of his sentence! Burglary 1 is a class A felony in Oregon! Coupled with his already violent tendencies and previous convictions he should be there for a decade!

Like Reply 4y



Jerry Chandler

why would a district attorney adjust the same deal the drew up?

Like Reply 4y



Top fan

Dwayne Morehead

It doesn't say it was a plea deal.

Like Reply 4y



Tim Shuey

boy.. they can't b rehabed.....once a pedophile always a pedophile.

Like Reply 4



Dale Sattergren

Is this judge voted in or appointed? If voted in, time to vote them out.



Joel Timpany

Wtf Oregon? These are the kind of judges you want on the bench? This is the 3rd time this creep has done something like this and he gets time served with probation? Good job keeping your kids safe.

Like Reply 1



3



Jerry Chandler

district attorney's not judges... DISTRICT ATTORNEY'S draw up the plea deals NOT JUDGES

Like Reply 4



Joel Timpany

DA makes a recommendation for sentencing, it is ultimately the judge's decision.

Like Reply 4

Have you started modelling your criminal justice system on the UK 🇬🇧? Our senile old crustacean judges do this all the time... They just don't get that pond feeders like this one tell lies.. They actually believe the drivel that comes out of their mouths..

Like Reply 4y



David Agullar
Fire the judge and prosecutors for not asking for more time

Like Reply 4y



Stoney L Weidner
WTF Really?

Like Reply 4y



Mindy Cobb
He is a Repeat Offender!! Why let him out? Sure hope he doesn't do it again! How do some of these judges even sleep at night?

Like Reply 4y



Jonell Kellogg
Ridiculous. And the feds making legalizing weed the issue. 🤔🤔



Mengesha Shiferaw
So failed system! His next crime will cost the State \$ for sending this idiot back to the community

Like Reply 4y



Teri Shanley
This is ridiculous!!! He belongs in prison with all the other sex offenders

Like Reply 4y



Dennis M Snook
Accept the fact in Portland victims have no rights.

Like Reply 4y



Ina Neubarth
Know someone who was victim when he was 4...offender was given probation...offender is now doing life w no parole as a few years later he raped and killed a little boy.. they can't b rehabed....once a pedophile always a pedophile.

131



John Fredrick

Our liberal court system is broken... liberals protest sexual harassment, the very harassment many themselves are guilty of, yet won't hold this criminal accountable? It is all about feelings at any given time depending on who it is and what is in it for them.

Like Reply 4y Edited



Mark Boyce

Oh good, the guy with a defective brain is going to now take steps to treat himself. That should go well. Or maybe that's just what he was told to say in front of the judge.



Christi Henson

I would hope that the judge who let him off is going to be responsible for any and all crimes he commits while he is on probation.

Like Reply 4y



Bryan Atlee

Breaking news: Judge who let offender off the hook gets house broken into by the very same criminal.

Like Reply 4y



Reply to Christi Henson...



Nikki Maxwell

Probably because he's black, the judge didn't want to be called, "racist."

Like Reply 4y



Nikki Maxwell

Oh and... weird, that Brock Turner guy served 6 months because of white privilege though...?

They both should be put to death.

Like Reply 4y



130

Kick him to mental institution for rest of his life

Like Reply 4y



Jim Book

Why no prison time, and if this miscreant re-offends will the judge take any responsibility for giving him "probation" instead of a prison sentence...

Like Reply 4y



Kerri Fiero

come on a slap on the hand really that's why there is so much crime no consequences. terrible.

Like Reply 4y



Cindi Caldwell Scott

Yes, it is bullshit!!!

Like Reply 4y



Deb Hagner

So embarrassed to be an Oregonian now...

Like Reply 4y



Britanny Whicky

To the mother of his next child rape victim .. Multnomah county judges, lawyers and Oregon's elected officials are "real sorry" ... "oops we did it again" ... 🙄🙄🙄🙄

Just disgusting! How do these people sleep at night! Do none of them have children? Betting they wouldn't let their little girl hang out with such a STELLAR human!

Like Reply 4y Edited



Eric Bredleau

But at least he going to address the problem of his mental health. Because we all know that he knows best as to what he needs to address that issue..... SMH, and yes, this is the result of liberal judges appointed by liberal Governors.....

Like Reply 4y Edited



John Fredrick

Our liberal court system is broken... liberals protest sexual harassment, the very harassment many themselves are guilty of, yet won't hold this criminal accountable? It is all about feelings at any given time depending on who it is and what is in it for them.

Like Reply 4y Edited

130

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3 • For the last 7-9 years as proved above, Themba Kelley has had to live in a
4 community, in which it's citizens have openly expressed their hatred
5 towards him. "...the major evils protected against by the speedy trial
6 guarantee exist quite apart from actual or possible prejudice to an
7 accused's defense..." *U.S v. Marion*, 404 U.S. 307
8
9

10 • They even go as far as to say, that he should be tortured, shot, sent to hell,
11 put to death, thrown out of a plane with "no parachute" and even lynched⁴.
12 Thus, these "major evils" have indeed disrupted "his employment, drain his
13 financial resources, curtail his associations, subject him to public obloquy
14 [condemnation], and [have created] anxiety in him, his family and his
15 friends."
16
17

18 *U.S v. Marion*, 404 U.S. 307 (Emphasis added)

19 • Keeping in mind, that these headlines have been read by thousands of
20 people for the last nine years, including Themba Kelley's family members,
21 friends, associates, inmates, himself and the world. Thus, "...the longer the
22 defendant must endure...anxiety and other forms of personal prejudice, the
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1 more the 'prejudice to the defendant' factors weighs in the defendants
2 favor."

3 *State v. Harberts*, 331 Or. 72, (2002), quoting, *Mende*, 304 Or. at 24, 741 P.2d
4 496

- 5 • One person presumed that Ms. Sawyer "*won't be the same.*" That person
6 apparently didn't speak with Ms. Sawyer herself, who under penalty of
7 perjury has declared something very different as follows:
8
9

10 "The man never tried to touch me. He didn't even come
11 close enough to touch me. The closest he got was about
12 three feet away, before he turned and left the room. He
13 didn't say anything sexual at all, during the entire
14 encounter, which was very short - probably less than
15 forty - five seconds. I was more afraid of waking my
16 father than I was that the man was in my room. I was
17 terrified of what my father would do if he discovered this
18 man, because my father is prone to violent tendencies,
19 and I didn't want anyone to get hurt, including my little
20 brother. I continued to call the police, and then I went to
21 wake up my father, by which time the man had left the
22 house...I later learned that the police had found my
23
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26

1 father's phone and my brother's iPad with the man...I'm
2 mad at how this ended up, and I wish I could have been
3 more involved all along. It's a justice failure and mental
4 health failure. He needed help and did not get it....This
5 situation put me in a weird mental state, but it eventually
6 turned out to be good because I met my partner the next
7 day. We are still together, and I have a good life today."

8
9
10 *Declared on June 27, and filed on July 19, 2024, Case No.*
11 *16CR46168*
12

- 13 • The defendant is of course extremely sorry for contributing to Ashley
14 Sawyer's "weird mental state." Nevertheless, causing someone to be in a
15 weird mental state, is totally different than causing them to be terrified,
16 because they believe they are going to be sexually violated.
17
- 18 • Relevantly, Ashley Sawyer has never told anyone that she was in fear of
19 being sexually violated, abused, or anything of the sort. On the contrary,
20 she has only alleged that she believed that her home was being burglarized.
21
- 22 • In fact, she corroborated the above nine years later under penalty of
23 perjury as follows: "**The sound of the steps and noises was not consistent**
24
25
26

1 with any of my family members, so I started to become concerned that
2 we were being robbed."⁵

- 3 • To that regard, she also declared: "I later learned the police had found
4 my father's phone and my brother's iPad with the man they were
5 talking to."

- 7 • Corroberating the above even further: After a very lengthy interview with
8 Themba Kelley, which included a detailed dialogue regarding his sexual
9 aspirations for that evening, Detective Clevenger did not conclude that the
10 defendant intended to sexually abuse Ms. Sawyer.

- 12 • On the contrary, he only theorized the following: "I think you went into
13 the house to get something so you could go up and trade it for dope,
14 and ran into her...and she was scared, and you were kind of startled,
15 and she started dialing 911 and you jetted."

- 17 • The following relevant conversation occurred shortly before the above:
18 Mr. Kelley: "...I did kind of want to chill. I was looking forward to partying,
19 because I'm homeless, so not being on the streets...but...when [I saw her
20 dialing 911] it felt like rejection, and so ask her. I literally, [said] oh, I'm
21 dialing 911] it felt like rejection, and so ask her. I literally, [said] oh, I'm
22 dialing 911] it felt like rejection, and so ask her. I literally, [said] oh, I'm
23 dialing 911] it felt like rejection, and so ask her. I literally, [said] oh, I'm

24 ⁵ Every report regarding this case alleges a burglary only. It's also telling, that in nine years, the state has not produced one
25 recorded interview of Ashley Sawyer. Nor have they produced any documents relevant besides the original police report, which
26 again only alleges a burglary.

1 sorry. I'm out. I didn't give her no problems. There was nothing. There was
2 no - - no - - nothing - - - nothing."

3 Detective Clevenger quickly replied: " **Yeah. That's what she said.**"

- 4
- 5 • It's apparent, that the state over-zealously turned this into a "physically
6 helpless"⁶ sex case. Thus, it is the state who is responsible for inciting all
7 those above hostile comments.⁷
 - 8 • Even more, those same brutal comments and several other publications
9 similar have remained on the Internet for the last unconstitutional nine
10 years, which medical documentation confirms, contributed to why the
11 defendant jumped into a river and tried to commit suicide.⁸
 - 12 • Importantly, "...the longer the defendant must endure...anxiety and other
13 forms of personal prejudice, the more the 'prejudice to the defendant'
14 factors weighs in the defendants favor."
 - 15
 - 16
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18 *State v. Harberts*, 331 Or. 72, quoting, *Mende*, 304 Or. at 24.

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23 ⁶ Notably, there is zero evidence in this case to support "physical helplessness." Nor has there ever been.

24 ⁷ Even before charging Mr. Kelley with "attempted" sex abuse, the state had already wrongfully charge him with "failing to
25 register," which is what prompted the media to begin their false reporting.

26 ⁸ Expert testimony is expected

1 13. On August 23, 2018, they were quick to add a condition to the defendant's
2 probation, but not quick to move forward to trial without delay. *Clark*, 86
3 Or. at 471.

4
5 14. On July 22, 2019, they were quick to argue that the defendant should be
6 convicted on "Count 3," but not quick to move forward to trial without
7 delay. *Clark*, 86 Or. at 471.

8
9 15. On August 22, 2019, they were quick to seek revocation for probation, but
10 not quick to move forward with trial without delay. *Clark*, 86 Or. at 471.

11 16. On August 26, 2019, they were quick again in attempt to convict on "Count
12 3," but not quick to move forward to trial without delay. *Clark*, 86 Or. at 471

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14 17. On September 5, 2019, there was yet another relevant hearing, and once
15 again the state took no interest in moving forward to trial on Count 3. *Clark*,
16 86 Or. at 471

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18 18. On April 1, 2020, they were quick in attempt to use "Count 3" as a reason
19 the defendant's bail on another matter should remain 2.1 million dollars.
20 Nevertheless, once they lost on that issue and the defendant's bail was
21 lowered 94% anyway, they did not move forward with the same zeal to try
22 the case. *Clark*, 86 Or. at 471. Moreover and importantly, **"even**
23 **incarceration for unrelated offenses does not relieve state of speedy**
24 **trial obligations."** *Vawter*, 236 Or. at 91, 386 P.2d 915
25
26

1 19. On October 8th, 2020, they were quick in attempt to "join" Count 3 with an
2 unrelated case that was indicted several years later. To that regard, former
3 defense counsel wrote the following in motion:
4

5 Defendant objects and argues herein that this motion
6 is an attempt to consolidate cases with no legal
7 grounds or reason to do so. The state seems to do so
8 here for the improper purpose of heaping unfair
9 prejudice on Themba Kelley and to bolster weak
10 cases that the state feels will fail on their own."⁹
11

12 *See Defendant's Objection To Plaintiff's Motion To*
13 *Consolidate/ Pg 1*
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17 20. When their prejudicial "joinder" attempt failed, the state absolutely did not
18 move forward with the same zeal to take the much older Count 3 to trial.
19 *Clark, 86 Or. at 471*
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22 ⁹ Though the state failed to have two unrelated and weak cases, prejudicially heard by the same jury; Mr. Davidson found away
23 for that to essentially happen anyway. For more details please see, "**Motion to alert and notify the court to Brian Davidson's**
24 **history of willful and egregious misconduct, and the foreseeable prejudicial harm and egregious misconduct, specifically**
25 **towards the defendant in ALL upcoming proceedings, irregardless of whatever case No. those proceedings may be under."**
26

1 21. On the contrary, they went back to acting as if the Ashley Sawyer case did
2 not exist. That is, they forged ahead full steam with the much older case as
3 opposed to moving forward to try "Count 3" without delay. *Nonetheless,*
4 *"even incarceration for unrelated offenses does not relieve state of speedy*
5 *trial obligations."* *Vawter, 236 Or. at 91*

7 22. Several unconstitutional years later and the state attempted to delay the
8 trial again. **See Motion attached filed by former defense counsel Brian**
9 **Decker.**

11
12 **MORE PREJUDICE TO DEFENSE CAUSED BY SPEEDY TRIAL DELAY**

13 Former defense counsel, Barry Engle wrote the following:

14 Timothy Sawyer said that Themba Kelley "...smoked
15 marijuana from [his] bong....and had taken a tablet
16 computer. He was allegedly acting very strangely,
17 wearing a towel on his head and holding a shoe.
18 When Themba Kelley was arrested he was obviously
19 delusional."

22 *See Defendant's Objection To Motion To Consolidate/*
23 *11-18-2020.*

25 Importantly, Timothy Sawyer's testimony is critically important to the
26 defense as follows: 1.) His testimony will show that Themba Kelley was doing

1 things in the house, that clearly prove he was mentally impaired. That is, no one
2 enters a strangers home at 2:30 in the morning and smokes from a bong, unless
3 they are mentally impaired. 2.) His testimony will also prove that Themba Kelley
4 was doing things in the home, that confirm his delusional intent was to "...party...."
5 That is, coming into a home and smoking a bong, contradicts that he was there to
6 sexually abuse someone. 3.) Timothy Sawyer's testimony, that Themba Kelley
7 smoked his bong, further proves, that Themba Kelley did not go directly to Ashley
8 Sawyer's room.
9

11 That said, Timothy Sawyer's testimony is a critically important and also
12 irreplaceable element of support to Themba Kelley's defense. However, per P.I
13 Terra's conversation with Timothy Sawyer on February 27, 2024, Timothy Sawyer
14 has no recollection whatsoever about his original report to the police about
15 Themba Kelley smoking from the bong. Simply put, because of the unreasonably
16 long 9 year pre-trial-delay; "...the defense will be impaired...." *State v. Harberts*, 331
17 Or. 72
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1 The defense will also be impaired, because the state has lost Themba Kelley's
2 finger print evidence for the bong, the front door and the side window.¹⁰
3 *Harberts*, 331 Or. 72 That is, similar to Timothy Sawyer's testimony, the finger
4 print evidence is critical to support that Themba Kelley was under the delusion
5 that he was invited into the house to "party."
6

7 Relevantly, when Themba Kelley was interviewed by the police, he explicitly
8 stated the following: **"...you know, like, you watch that [a person masturbate].**
9 **And then, you know, just, you know, [you ask] you wanna smoke a bowl?"**
10

11 He literally told the police, that his next step after watching someone
12 masturbate was to invite them to "smoke a bowl." Not touch them or hurt them
13 in anyway. Nor take anything from them. Simply, "smoke a bowl, which is exactly
14 what he did when he entered the home. Thus, any evidence lost by the state in
15 regards to "you wanna smoke a bowl" is a huge impairment to the defense. *State*
16 *v. Harberts*, 331 Or. 72.
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19 But even more significant than the above is the nine years of "major evils,"
20 that the defendant has had to endure, as a result of being forcibly subjected to
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24 ¹⁰ The finger print evidence lost by the state is also critically important to prove that Themba Kelley did not push "open a window"
25 and climb into Ashley Sawyer's house as the state has previously argued.
26

1 public condemnation. *U.S v. Marion*, 404 U.S. 307 (1971). Thus, for all the reasons
2 outlined above, the defendant request that this case be dismissed with prejudice.

3
4 DATED: February 3, 2025.

5 /s/Themba Kelley
6 Themba Kelley
7 Pro Se Defendant
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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2025, I or a member of my office served a true and correct copy, certified by me as such, of the foregoing, MOTION TO DISMISS WITH PREJUDICE REGARDING NINE YEARS OF SPEEDY TRIAL DELAY, on:

Tony Dundon
Alex Hargrove
1200 S.W. 1st Avenue, Suite 5200
Portland, OR 97204

by the following indicated method or methods:

- ☐ Hand Delivery
- ☐ U.S. Mail:
- ☐ Fax:
- ☒ E-Service: alex.hargrove@mcdca.us; anthony.dundon@mcdca.us

/s/ Brian Decker

Brian Decker, Senior Deputy Defender
Legal Advisor to Themba Kelley
Oregon Public Defense Commission
Northwest Regional Trial Division

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