IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON, Plaintiff, vs. Defendant.	CASE NO. 16CR46168 DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE FOR STATE'S VINDICTIVE PROSECUTION BEGINNING FROM 2014 UNTIL NOW/ STATE V. HALING, 66 OR. APP. 180, 672 P.2D 1388.

The defendant by and through the Divine Mind of God, moves the Oregon Circuit Court to dismiss case No. 16CR46168 with prejudice, based upon a vindictive prosecution carried out by the Multnomah County District Attorney's Office, beginning from 2014 until now.

IMPORTANT HISTORY

After exercising his Constitutional Right to trial in 2014, and defeating the state on the charge "Failure to Report" as a sex offender, the state vindictively responded by issuing a warrant out for the defendants arrest for not registering, which eventually led to wrongfully charging him with "Failing to Report" as a sex offender, a baseless allegation of attempted sex abuse against Ashley Sawyer, and also an inducement of the media to publicize and share the same unlawful, demonstrably false, extremely prejudicial and personally traumatizing "unregistered" narrative with over 100,000 Oregonians.

To date, the state has not taken responsibility for their actions. As a result, the false reports have remained on the Internet for the last nine years, and thereby have poisoned the community with falsity, and also fostered an attitude of malice towards the defendant.

Importantly,

> "The practice of dismissing charges motivated by prosecutorial vindictiveness is rooted in due process protections. To punish a person because, he has done what the law allows is a due process violation of the most basic kind. *Borden Kircher v. Hayes,* 434 U.S. 357,

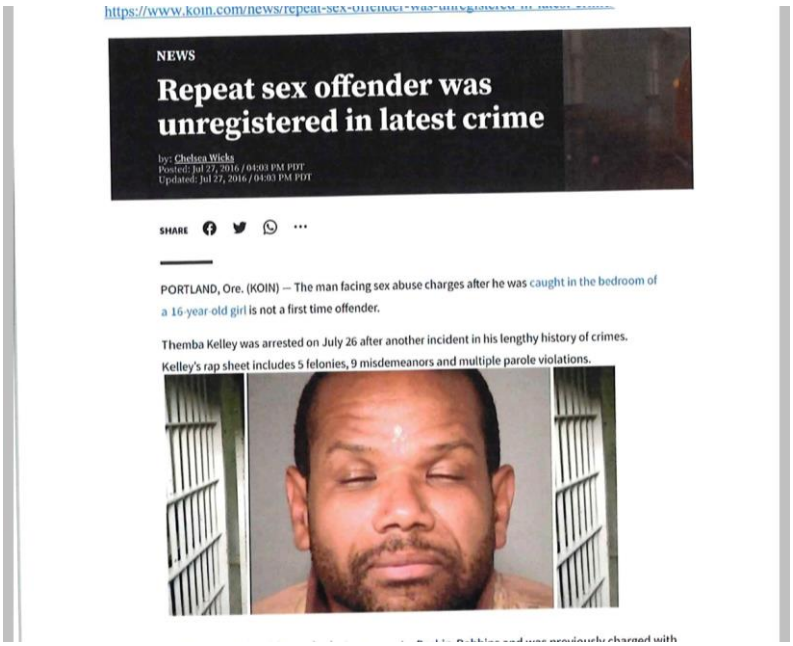
363...(1978). The danger is not only that a defendant will be deterred from exercising his Constitutional rights, but also that the state might be retaliating against the accused for his lawful exercise of them." *State v. Haling*, 66 Or. App. 180, 672 P.2d 1388.

"A VENDETTA IS NOT A GOOD LOOK FOR THE STATE"

- **Regarding the above, defense counsel, Lee Wachocki will testify to the following:**

> "Following the judgement of acquittal [for failure to register as a sex offender], myself, and [the state] were brought into Judge Dailey's chambers. [The state] brought up one of Mr. Kelley's outstanding misdemeanor cases and referenced it as another avenue the state had to pursue punishment of Mr. Kelley. Judge Dailey responded with a comment along the lines of **"A vendetta isn't a good look for the state."** Email sent April 28, 2022. See Exhibit ???

It is clear that the state has never conceded to the fact that, the defendant defeated them at trial. That is, 1.) Directly after they were defeated at trial, they immediately threatened to punish Themba Kelley because he won and 2.); they disturbingly and willfully ignored the ruling. That is, they issued a warrant out for his arrest for not registering, and then charged him for not registering two years later, which induced the media to publicize the wrongful accusation to over 100,000 deceived Oregonians. For example:



https://www.koin.com/news/repeat-sex-offender-was-unregistered-in-latest-crime/

NEWS

Repeat sex offender was unregistered in latest crime

by: Chelsea Wicks
Posted: Jul 27, 2016 / 04:03 PM PDT
Updated: Jul 27, 2016 / 04:03 PM PDT

SHARE

PORTLAND, Ore. (KOIN) — The man facing sex abuse charges after he was caught in the bedroom of a 16-year-old girl is not a first time offender.

Themba Kelley was arrested on July 26 after another incident in his lengthy history of crimes. Kelley's rap sheet includes 5 felonies, 9 misdemeanors and multiple parole violations.

Notably, he was not a "Repeat Sex Offender" as the headline above reports. Nor was he a sex-offender at all. Thus, the only reason he was "unregistered" was because he wasn't required to be, per the ruling of the Oregon Court two years prior.

It's also important to note, that in 2016, when the defendant was arrested for burglarizing Ashley Sawyer's home and also *wrongfully* charged for failing to register as a sex-offender, the state was given the opportunity to take responsibility for their false reporting to the public and the media.

However, they only responded to media by telling them *"we're looking into it,"* according to defense, counsel, Westbrook Johnson, who declared the above (under penalty of perjury) before she passed away.

In short, there was no accountability for the injustice. Moreover, not only were they dismissive about dealing with it, they vindictively forged ahead as follows:

1. After knowingly, intentionally, wrongfully and vindictively charging the defendant with "Failure To Report As A Sex Offender," the state knowingly, intentionally, wrongfully and vindictively charged the defendant with another baseless sex offense charge the following day as follows:

> The said Defendant, **THEMBA HASAAN KELLEY**, on or about July 26, 2016, in the Multnomah, State of Oregon, did unlawfully and intentionally by means of **FORCIBLE COMPULSION**, attempt to subject, to sexual contact by attempting to touch a sexual or intimate part of ASHLEY SAWYER...

2. The state charged the defendant for attempting to sexually abuse Ashley Sawyer by way of "forcible compulsion," knowing, that there was zero evidence in the case to support it. Thus, it's apparent, that the "forcible compulsion" allegation, was only charged in retaliation, because the state lost on the "sex-regisitration" issue - two years earlier.
3. Importantly, because the "forcible compulsion" allegation was baseless, it was dismissed shortly after it was charged.

4. Just as important, because the state had already lost on the "unregistered" issue two years earlier, that count was dismissed shortly after it was charged as well.

5. Nonetheless, days later, on August 3, 2016, the state knowingly, intentionally, wrongfully and vindictively charged the defendant again as follows:

> The said Defendant, THEMBA HASAAN KELLEY, on or about July 26, 2016, in the Multnomah, State of Oregon, did unlawfully and intentionally by means attempt to subject ASHLEY SAWYER **WHILE SHE WAS INCAPABLE OF CONSENT BY REASON OF BEING PHYSICALLY HELPLESS**, to sexual contact by attempting to touch a sexual or intimate part of ASHLEY SAWYER...

6. Importantly, not only was this twice that the state had lost on the same "sex-registration" issue, this was also twice that the state had falsely reported to over 100,000 citizens that Themba Kelley was a registered sex-offender. However, what the state unfairly didn't do, was circle back around to the media to have them correct the error. Instead, they forged ahead with the same "vendetta."

The history of the vendetta is as follows:

1. On November 7, 2014, the state induced the media to tell over 100,000 Oregonians, that Themba Kelley was " a narcissist... a sex offender...a drug addict."
2. Two weeks later on November 26, 2014, the "sex-offender" designation was ruled to be false[1].
3. The state then (in the presence of a judge and former defense counsel Wachocki) threatened to pursue, "another avenue" to punish Mr. Kelley.
4. What they didn't do however, was circle back around to the media to correct their error.
5. What they vindictively did instead was issue a warrant out for the defendant's arrest. That is, for being "unregistered."

[1] See November 26, 2014, Judgement of Acquittal, Multnomah County Case # 14CR21923, Hon. Kathleen Dailey presiding.

6. Enter the Ashley Sawyer case two years later.
7. On July 26, 2016, (per the unlawfully issued warrant,) the state charged the defendant with "Failure To As a Sex-Offender.
8. That then induced the media to publicize the wrongful accusation to over 100,000 deceived Oregonians.
9. The state then charged the defendant with a "Forcible Compulsion" allegation on the following day, knowing that too was false.
10. Mere days later on August 3, 2016, they once again charged the defendant with another allegation, that they also had to know was false.
11. That is, Ashley Sawyer has never alleged to anyone, that she was **"INCAPABLE OF CONSENT BY REASON OF BEING PHYSICALLY HELPLESS."**

Importantly, ORS 163. 305 (4) defines "physically helpess"as follows:

- A person is "physically helpless" if that person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

Ashley Saywer, however, has never alleged that she was **"unconscious or for any other reason [was] physically unable to communicate unwillingness to an act."** ORS 163. 305 (4). Thus, this consequently also means, the state has known from the inception of the case, that they could not prove that Themba Kelley, "attempted" to sexually abuse Ashley Sawyer, **"WHILE SHE WAS INCAPABLE OF CONSENT BY REASON OF BEING PHYSICALLY HELPLESS."** Relevantly,

1. On the day of the arrest July 26, 2016, Officer John Meyers reported, "Sawyer...told me she had just laid down in her bed a few minutes prior and **while laying in her bed, she heard**[2] her bedroom door open and a person came inside of her room."

[2] The state's expert, Dr. Leeper also noted the same thing in her report, which means she too knew, that Ashley Sawyer has never said that she was "physically helpess."

2. Similarly, Chris Liedie of KATU News reported, "She told KATU News **she was awake and looking at her phone when** a stranger opened her bedroom door." [3]

Thus, because Ashley Sawyer clearly told the state and the media **NINE LONG YEARS AGO,** that she "was awake" when **"she heard** someone open up the bedroom door," the state has unequivocally known from the inception of the case, that Ashley Sawyer was never "unconscious or for any other reason physically unable to communicate unwillingness to an act." ORS 163.305. (4)

Corroberating the above even further, the police report further state's that Ashley Sawyer *"told the man to leave"* further proving, that the state has unequivocally known for the last NINE LONG UNCONSTITUTIONAL YEARS, that she was more than capable of communicating her "unwillingness to an act;" though she never had to. ORS 163. 305 (4). Why? Because, the defendant, never once "attempted" to sexually touch Ashley Sawyer, according to her own words nine years later, under penalty of perjury as follows:

> **"The man never tried to touch me...The closest he got...was three feet away, before he turned around and left the room. "***Filed July 19, 2024, Case No. 16CR46168*

Let us also not forget, that after holding the defendant 17 long hard months on a allegation, that was known to be baseless from it's inception, the state agreed to dismiss the case. Why? Because they agreed that there was no criminal intent, and in fact, were complimented by the court (with no objection,) that the defendant had acted **"because of illness rather than out of some evil"** within him.

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[3] It's important to also note, that every statement that Themba Kelley gave the police regarding aspirations for consenual-adult-experience, unequivocally, involved people that were "partying" with him. In other words, people that were wide awake. Thus, there is equally zero evidence in the case, that Themba Kelley had the "intent" to sexually touch anyone "while they were asleep." And this has been known, for the last nine vindictive years.

It was also at that same release hearing, that the Court also stated, that **"Counts 2, 4, 5, 6, 7 and 8 are dismissed on the motion of the State."** Why is the above important? It's important because, one of those dismissed charges was another baseless sex charge. That is, that the state also tried to use in retaliation, for losing on the registration issue two years earlier, and also two years later, when they wrongfully induced the media to report to over 100,000 citizens, that Themba Kelley had failed to register as a sex-offender.

CONCLUSION

'To punish a person because, he has done what the law allows is due process violation of the most basic kind. Borden Kircher v. Hayes, 434 U.S. 357, 363...(1978). The danger is ... that the state might be retaliating against the accused for his lawful exercise of them."

State v. Haling, 66 Or. App. 180, 672 P.2d 1388.

The defendant thereby request, that this case be dismissed with prejudice and this prosecutorial noose of vindictive misconduct be removed eternally.

Sincerely, Pro Se Defendant, Themba Hasaan Kelley

A BIAS PROSECUTION:

- **Dr. Leeper report omits the fact that I won at trial on the registration issue in 2014**
- **The state manufactured a non-existent warrant and put it in the police report, in order to justify charging me with it?**
- **Because of that fabricated warrant and being wrongfully charged with failing to not register, I was maliciously publicized to thousands of Oregonians as being a unregistered sex offender.**

[HAVE WACHOCKI TESTIFY]