

**FILED**

MAY 21 2013

4TH DISTRICT  
STATE OF UTAH  
UTAH COUNTY

**FOURTH JUDICIAL DISTRICT COURT  
UTAH COUNTY, STATE OF UTAH**

<b>STATE OF UTAH,</b>  Plaintiff,  vs.  <b>DAVID LEE HAMBLIN,</b>  Defendant.	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER</b>  Case No. 121101477  Date: May 21, 2013  Judge Christine S. Johnson
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This matter came before the Court on the Defendant's Motion to Dismiss, filed together with a Memorandum in Support on February 14, 2013. An evidentiary hearing on the Defendant's motion was requested and scheduled for April 17, 2013, at which time the parties stipulated to the Court's receipt of various police reports, attached to Defendant's supporting memorandum. The State filed its Response to Defendant's Motion to Dismiss on May 3, 2013. The Defendant's Reply was received on May 6, 2013. Oral arguments were conducted on May 13, 2013. The State was represented by David S. Sturgill and the Defendant was represented by Michael D. Esplin. Having considered the evidence and legal arguments presented, and being familiar with the applicable law, the Court now enters the following Findings of Fact, Conclusions of Law, and Order:

## **FINDINGS OF FACT**

1. On or about January 20, 2012, Kate Hamblin Baxter (hereinafter Kate) met with law enforcement officers and reported that she was raped, sodomized, and sexually abused multiple times by her father, the Defendant, David Lee Hamblin (hereinafter Hamblin), between August 1991 and June 1999.<sup>1</sup> She described these offenses as having occurred when she was between the ages of 5 and 13, at the time in which her family resided in Provo, Utah.

2. A detailed summary of Kate's allegations is provided in the State's Affidavit in Support of Arrest Warrant (hereinafter "the Affidavit"), which was filed with the Court on December 13, 2012. In the most general terms, Kate describes multiple instances where Hamblin committed various sexual acts with her outside the presence of her mother or sisters. The singular exception would be Kate's allegation that Hamblin forcibly sodomized her with his penis in the basement of the home in the presence of her older sisters, Eliza and Rachel. This is described as occurring between 1991 and 1992 when Kate was in kindergarten.

3. On December 13, 2012, the State filed an Information against Hamblin alleging 18 separate sex offenses, including sodomy on a child, aggravated sex abuse of a child, rape of a child, and attempted sodomy on a child. The offenses are alleged to have occurred between August 1, 1991, and June 1, 1999.

4. Law enforcement had previous occasions to investigate similar prior allegations against Hamblin. Provo Police were first contacted on June 10, 1999, shortly after Hamblin brought an action for divorce against his wife, Rosalie Hamblin (hereinafter Rosalie). Allegations made by Rosalie were referred to DCFS and then forwarded to Provo City Police. The report included accusations of "emotional, sexual, physical, and drug abuse" by Hamblin.

5. Based on Rosalie's report, the case was referred to CPS for statements to be taken from the children. CPS investigator "Kristy" interviewed Rachel, who

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<sup>1</sup>Because many of the individuals referred to in the factual history share the last name of Hamblin, the Court will refer to the Defendant's family members by their given names. No disrespect is intended.

was then 18 years old. Rachel described drug use with Hamblin and sexualized statements made by her youngest sister, Mimi.

6. CPS investigator Debby Young interviewed Kate, who was then 13 years old. Kate described instances where her father hypnotized her, but did not disclose sexual abuse.

7. Young also interviewed Mimi, who was then approximately 5 years old. Mimi did not disclose any sexual abuse.

8. CPS investigator Miriam Richards interviewed Eliza, who was then 15 years old. Eliza described taking drugs with Hamblin but did not disclose any sexual abuse.

9. Police concluded that “[a]t this time, there is not sufficient evidence to demonstrate that sexual abuse is occurring.” *Defendant’s Exhibit A*, p. 2.

10. Shortly thereafter, on July 3, 1999, Hamblin’s daughter Rachel contacted DCFS with concerns regarding the welfare of her younger sisters. DCFS contacted Provo City Police. Rachel reported to police that she specifically feared for the youngest sister, Mimi, because Hamblin was trying to be alone with her while he exercised his parent-time.

11. Rachel, Eliza, and Kate were each interviewed separately and described feeling unsafe with Hamblin. They were each concerned about Hamblin’s efforts to be alone with Mimi, believing that he might “do something strange with her.” *Defendant’s Exhibit B*, p. 3. None of the girls disclosed sexual abuse.

12. Mimi was also interviewed and disclosed no concerns.

13. Police allowed the girls to leave in the custody of their mother, concluding that “[t]here was nothing said by the girls that lead me to believe that a crime had been committed this day.” *Id.*

14. On April 23, 2000, Rosalie and Rachel contacted police to report that Rachel had been sexually abused years before by Hamblin. This abuse was alleged to have occurred when the family resided in New York.

15. During a subsequent interview on April 25, 2000, Rachel was asked if any abuse had occurred at the family's Provo residence. Rachel described a game Hamblin had played which he called "fishy." In the game, Hamblin would sodomize each of the girls, including Kate, using his finger.
16. A referral was made to DCFS and the determination was made that Rachel's most recent allegations were closely related in time to the previous referral, which had just been closed. No further investigation was conducted.
17. On June 2, 2000, Provo Police received an additional report of sexual abuse involving Hamblin. This time, Eliza recounted multiple instances in which Hamblin had sexually abused her. Some of these events had occurred in New York, but some had occurred in Provo.
18. Regarding the allegations which had occurred in New York, Eliza described being raped by Hamblin, as well as having been forced to watch while Hamblin raped Rachel and Kate.
19. As part of the same report, Rachel also gave an additional statement to police and described multiple instances when she was sexually abused by Hamblin both in New York and Utah. She again recited her account of the "fishy" game, which she described taking place in Provo, Utah. She further recounted Hamblin raping Kate while she was forced to watch. This occurred in New York.
20. There is no evidence that either Kate or Mimi were interviewed again after the June 2<sup>nd</sup> report.
21. Police did speak with Rosalie and discussed options for children, including counseling and protective orders. The report then indicates that there is "no further information at this time." *Defendant's Ex. F.*, p. 6.

### **CONCLUSIONS OF LAW**

In the present motion, Hamblin raises an issue of statutory interpretation and asserts that the applicable statute of limitations bars prosecution of each of the offenses alleged in the Information. The parties are in agreement that the statute of limitations generally in effect at the time of the alleged crimes

requires prosecution within four years after the offense has been reported to law enforcement. This version of the statute was initially enacted in 1991, and it applied to crimes involving sexual abuse of a child. However, it was not until 1996 that the statute was amended to specifically apply to the offense of aggravated sexual abuse of a child. *See State v. Lusk*, 2001 UT 102, ¶16, 37 P.3d 1103.

The State has charged Hamblin in Count 4 with Aggravated Sexual Abuse of a Child. This offense is alleged to have occurred on or about October of 1995, before the applicable statute was amended. Prior to the amendment, a four year “catch-all” statute applied to this charge. *Id.*, at ¶13. However, the *Lusk* decision makes clear that a statute of limitations amendment is to apply retroactively, provided that prosecution of the offense would not already have been precluded by the running of the previously applicable statute. *Id.* at ¶29. In the present case, the four year statute for Count 4 would have expired in 1999. Because the statute of limitations was amended before that date, the legislature’s 1996 amendment applies retroactively. Hence, the statute of limitations applicable to all counts against Hamblin is as follows:

A prosecution may . . . may be commenced for rape of a child, object rape of a child, sodomy of a child, sexual abuse of a child, or aggravated sexual abuse of a child within four years *after the report of the offense* to a law enforcement agency.

Utah Code Ann. §76-1-303.5 (emphasis added).

Hamblin’s argument, in summary, is that the multiple contacts with law enforcement regarding Hamblin’s purported acts of sexual abuse against his daughters constitute a “report” sufficient to trigger the running of the statute of limitations.

In *State v. Green*, 2005 UT 9, 108 P.3d 710, the Utah Supreme Court examined the meaning of the phrase “report of the offense.” *Green* considered a case where the defendant was convicted of rape of child, the offense having arisen from the consummation of marriage between the defendant and his thirteen-year-old bride. *Id.* at ¶2. At trial, the State introduced evidence that the victim had borne the defendant’s child four months after her fourteenth birthday. *Id.* at ¶3. The defendant appealed his conviction, asserting that

various events had triggered the statute of limitations, and that the State's prosecution commenced after the statute had thereafter expired. *Id.* at ¶24. Specifically, the defendant asserted that State received a "report of the offense" once the Bureau of Vital Statistics acquired the birth certificate of the victim's child. *Id.*<sup>2</sup>

The *Green* Court adopted a three-part test in order to evaluate whether a communication qualifies as a "report" within the meaning of the statute:

(1) a discrete and identifiable oral or written communications (2) that is intended to notify a law enforcement agency that a crime has been committed and (3) that actually communicates information bearing on the elements of a crime as would place the law enforcement agency on actual notice that a crime has been committed.

*Id.* at ¶46.

Applying that test, the court ultimately concluded that the defendant's application for a birth certificate did not qualify for a report, given that the Bureau of Vital Statistics, while a State agency, was not a law enforcement agency. *Id.* at ¶53.

In the present case, application of the three-part test similarly directs that there was not a "report" sufficient to trigger the statute of limitations. The first and second elements are satisfied, in that there were multiple oral communications that were made directly to law enforcement in order to notify police of a possible crime. However, Hamblin's argument on the third prong fails because there was no information bearing on the elements of the crimes now alleged. In so concluding, this Court observes further analysis from the *Green* decision:

While it would be unreasonable to adopt an overly narrow interpretation of an "offense," for instance, one that could be satisfied only through reference to Utah Code sections, the disclosure of mere

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<sup>2</sup>The defendant also claimed that various police officers had been informed of the defendant's underage marriage to the victim. However these reports were determined to not be credible and the trial court was affirmed on that basis. *Id.* at ¶¶30-35.

clues that criminal conduct has occurred is not enough. Just as the requirement of a report implies some degree of formality in its communication, so the requirement that an offense be disclosed implies a degree of articulation of criminal conduct sufficient to permit a law enforcement agency to conclude what was done and who did it without additional investigation or analysis.

*Id.* at ¶43.

In the present case, the communications made to law enforcement amount to “mere clues.” There were allegations of sexual crimes, but the majority of these focused on other victims—specifically on Mimi, Rachel, and Eliza. Only twice are references made to Kate as a victim, and one of these descriptions referred to incidents which occurred in another jurisdiction.

The first mention of sexual crimes against Kate was made by Rachel in her April 25, 2000 interview. Rachel described the “fishy” game, which entailed Hamblin sodomizing each of the girls, including Kate, with his finger. Rachel depicted that this occurred in Provo, which would have placed the investigation within the authority of law enforcement in Utah County. The State does not dispute that the information provided to police here constituted a “report” within the meaning of the statute. Given the time elapsed, the statute of limitations has thereby expired as to those events described by Rachel in this interview. However, the State has proffered that none of the present charges are based upon Rachel’s account of “the fishy game.” Indeed, in reviewing the Affidavit, Kate’s present allegations contain no reference to anything resembling “the fishy game.” Kate does describe being sodomized by Hamblin, but not in the same manner. Rachel’s report in April of 2000 details a different offense and cannot have acted to trigger the statute of limitations for the present charges.

The second mention of sexual crimes against Kate was made by Eliza in her June 2, 2000 interview. Eliza described an event where she and Rachel were forced to watch as Hamblin raped Kate. However, Eliza explained that this incident occurred in New York. Clearly the location of the alleged event would remove it from prosecution here and this particular allegation is not included among Hamblin’s present charges.

In summary, in considering of the evidence stipulated to by the parties and comparing it against the present allegations, the Court is persuaded that the events presently described by Kate are of different incidents, perpetrated against a different victim on different days, and committed under different circumstances. Other than being crimes of the same genre, they simply do not resemble the earlier disclosures made to police. Accordingly, the earlier communications cannot be considered to be a "report" of the present offenses so as to trigger the statute of limitations. This Court thereby rejects Hamblin's argument, which appears to suggest that once the State is on notice that a defendant may have committed any sort of sexual crime, it is the duty of the State to exhaust its investigatory tools in order to uncover any similar crime the defendant may have committed. This interpretation is simply not consistent with the plain language of the statute. A statute of limitations runs after the report of an *offense*, not after the report of a general *category* of offense.

### CONCLUSION


Based upon the foregoing, the Defendant's Motion to Dismiss is DENIED.

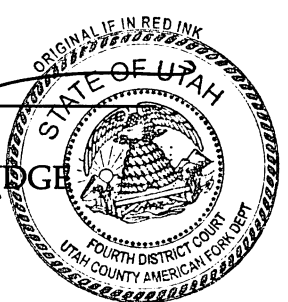
SO ORDERED.

This Ruling shall stand as the Order of the Court. Pursuant to Rule 7, no further order is required.

DATED this 21 day of May, 2013.

BY THE COURT:

  
Christine S. Johnson  
DISTRICT COURT JUDGE



A certificate of mailing is on the following page.



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 121101477 by the method and on the date specified.

✉MAIL: STATE OF UTAH, UT

MAIL: MICHAEL D ESPLIN 290 W CENTER ST PROVO UT 84601

Date: 05/21/2013  
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/s/ MARTA WHITTINGTON  
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Deputy Court Clerk