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IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR

UTAH COUNTY, STATE OF UTAH – AMERICAN FORK DEPARTMENT

STATE OF UTAH, Plaintiff, vs. DAVID LEE HAMBLIN, Defendant.	: : : : : : : : :	DEFENDANT'S REPLY TO STATE'S RESPONSE TO MOTION TO DISMISS Case No. 121101477 Judge Christine Johnson

COMES NOW defendant, by and through his counsel, Michael D. Esplin, and replies to State's Response to Defendant's Motion to Dismiss.

FACTS

Defendant relies upon the facts set forth in his Motion to Dismiss and Memorandum in Support previously filed with the Court.

ARGUMENT

The State agrees that on April 23, April 25, June 2, and June 28, 2000, Provo City

police received reports that defendant had sexually abused his daughters, including Katie who would have turned 14 years of age on April 14, 2000. The reports included claims by Katie's sister Rachel, age 19, that defendant put his finger in the anus of her and her sisters and "wiggled" it around on numerous occasions. Also Rachel reported that the defendant would "make all of the girls watch while he raped one of them. State agrees that Eliza also claimed that defendant inserted his finger in the anus of the girls and that defendant made the sisters watch while he "put his penis into" Katie.

The State takes the position that the statute of limitations applicable to sexual offenses does not begin to run unless there has been "a discrete and identifiable communication, intended to notify police that a 'crime' or the 'offense' has been committed, 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."[1] The State relies upon the case of *State v. Green,* 108 P.3d 710 (Utah 2005) to support this position.

In *Green*, defendant/appellant argued that there were several "reports" to law enforcement which would have begun the running of the statute of limitations. First, the Court considered the claim of an claim by a Mr. Slaugh that he had informed the Uintah County Sheriff's office of the offense. The Court reviewed the evidence from Uintah

[1] State's Response to Motion to Dismiss.

county law enforcement witnesses who denied ever being contacted. The Court upheld the trial court's finding that this claim was not credible and that he had not made any claim to 108 P.3d at 718.

The second claim of a report of sexual abuse was alleged to have been made to Uintah County Deputy Sheriff Wayne Hollebecke. The claim was based upon testimony by Hollebecke that a local resident had arranged for the marriage of his 13 year old daughter to "one of Mr. Slaugh's friends". The deputy denied that the alleged victim's name was mentioned in any conversations with him. The Court sustained the trial court's finding that no report of rape had been made to Hollebecke. 108 P.3d at 718.

The third claim of a report to law enforcement by Green was the filing of the birth certificate of Melvin Green, the son of Green's under age wife Linda. Green claimed that since the birth dates of both the child and the mother were on the birth certificate, the state was notified that the mother was 13 years of age when the child was conceived, therefore the report requirement had been satisfied. The Court determined that the filing of a birth certificate constituted the report of an offense and that the Bureau of Vital Statistics was not a police agency. 108 P.3d at 718.

The Court also considered claims by Green that allegations were made to DCFS by a LeeAnn Beagley and also to a Sandy City detective Benson concerning the rape of the alleged victim by Green and upheld the findings of the trial court that the claims of

abuse of the alleged victim were not reported nor investigated and that the a subsequent investigation by a different Sandy City detective did not produce any claims of abuse by Green of the victim. 108 P.3d at 119.

In the present case, two of the sisters of the complainant specifically reported directly to the Provo City police, describing specific acts of sexual abuse, including sodomy and rape alleged to have been committed upon complainant.

The State's position, although agreeing that specific acts constituting sexual offenses were reported to law enforcement, seems to be that since all the acts now claimed by the complainant were not specifically reported at the time of various interviews of complainant by Provo City police and DCFS, the statute of limitations does not apply to all of the acts of abuse filed in this action.

The *Green* court, as agreed and cited by the State, must contain the following three parts.

> This test, which we find to be conceptually sound and to hold the promise of functional utility, requires (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. 180 P.3d at 721.

Defendant argues that the three part test set out above has clearly been met and that the statute of limitations should therefore bar prosecution of this matter. The reports made by the complainants mother and sisters, Rachel and Eliza, were discrete and identifiable

communications as required in the first part of the test. The reports of Rachel and Eliza were made during interviews where they described not only allegations of sexual abuse against each of them, but allegations of sexual abuse against the complainant. They identified the person alleged to have committed sexual abuse, the identity of the alleged victim and a time frame the sexual offenses were alleged to have occurred. As the reports indicate, all offenses were alleged to have occurred prior to 1999, the time when Mrs. Hamblin obtained temporary custody of the four girls.

Second, the reports were clearly made directly to Provo City police officers with the intent to notify the officers that crimes had been committed. The reports were sufficiently formal that the police department filed written reports of the statements made by the persons reporting. The State does not claim that the reports were made for any other purpose other than with the intent to notify the officers that crimes had been committed and to seek prosecution of the defendant for allegedly committing sexual offenses against the girls.

Third, the information communicated was information bearing on the elements of crimes that would place the law enforcement on actual notice that a crime had been committed. The reports clearly and explicitly provided information of sexual abuse of the complainant from two who claimed to witness the abuse. The police reports detailing the interviews with the sisters clearly indicate that the Katie was a child under age 14 at

the time the sexual offenses were alleged to have been committed. The description of the alleged conduct of the defendant met the requirements of offenses of rape of a child, sodomy of a child, forcible sexual abuse of a child, aggravated sexual abuse of a child. The reports made to law enforcement were sufficiently detailed and formal that Provo City referred the alleged victims to DCFS for interviews and follow-up.

Although defendant would argue that all that is necessary to initiate the running of the statute of limitations is the report to law enforcement and that it is not necessary that law enforcement initiates any further investigation or interviews to determine the reliability of a report that has been made, in this case law enforcement did much more. There were numerous interviews of the girls including CJC interviews, DCFS interviews and interviews by police officers. The complainant, Katie, when given an opportunity to confirm that her father had sexually abused her, denied ever having been abused. As a result of allegations of "emotional, sexual, physical and drug abuse from Rosalie Hamblin, reported to Bud Walker, Provo City police officer, DCFS, at the request of officer Walker, interviewed the children.[2] Katie was interviewed privately by DCFS worker Debbie Young on June 9, 1999. During the interview, Katie went into great detail concerning relationship with defendant. Although given ample opportunity by Ms. Young to disclose any physical or sexual abuse of her by defendant, there was no

[2] Detective Walker apparently indicated his concern to DCFS that the allegations made by Mrs. Hamblin were a result of the custody battle going on in the divorce.

indication of either physical or sexual abuse against Katie. [3]

Katie was interviewed July 3, 1999, by Provo City officer Michael Bastian at the request of DCFS worker Nancy Zelenak after a call from Mrs. Hamblin. All four sisters were interviewed by officer Bastian. None reported any physical or sexual abuse by defendant. Eliza indicated that she had never witnessed any physical or sexual abuse.

. After Rachel and Eliza's last interview with Reed Vanwagoner, wherein they each described specifics of being sexually abused by their father and claimed to have observed Katie beings sodomized and sexually abused, DCFS declined to reopen the case claiming that the allegations had been fully investigated. The Utah County Attorney's office declined prosecution.

The State cites Green for support for the theory that although there may have been some sexual offenses identified in a report, if all sexual offenses were not specifically reported, prosecution for those sexual offenses is those specific sexual offenses not claimed in the report. Defendant argues that this position would result in an unreasonable interpretation of the U.C.A §76-1-303.5 and would be contrary to opinion in the Green case. In Green, the Court stated the following:

> The language of the 1991 amendment also requires that the "offense" be reported. 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 clues that criminal conduct has

[3] Each of the four daughters were interviewed separately on June 9, 1999, by DFCS as a result of concerns of defendant's wife. None disclosed abuse.

> 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. 108 P.3d at 720.

Defend argues that the theory of the State is contrary to the above statement of the Supreme Court. The Court clearly did not intend to impose such strict conditions on the definition of a report. The approached suggested by the State could result in nullifying the legislatures intent in setting the limitations beyond that intended by the legislature. Further, such an interpretation would result in situations presented by this case, where, the defendant finds himself the subject of a prosecution for claims that both the police, DCFS and the predecessor county attorney office deemed insufficiently reliable to prosecute. All a claimant would need to claim is that although specifically denying being sexually abused, they simply didn't disclose abuse when it was initially investigated. Such a position is a denial of Due Process and Equal Protection of the law and goes against the purpose of statutes of limitations which is to protect the ability of a defendant to defend himself from prosecution or claims that have been delayed through no fault of the defendant.

Defendant has suffered extreme prejudice as a result of the State's belated filing in this case. Although the Court has substantially reduced the original bail set in this matter, the bail is still excessive based upon the financial ability and resources of the defendant.

Ironically, the substantial bail amount is based upon the concerns[4] of the complainant who not simply failed to disclose abuse, but denied being abused. His ability to consult with and assist counsel is compromised by his incarceration in addition to his loss of freedom.

Based upon the foregoing, and the reasons set forth, defendant requests this case be dismissed.

Dated this 6th[th] day of May, 2013.

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MICHAEL D. ESPLIN
Attorney for Defendant

[4] As set forth in the State's argument against bail reduction, the reason for such a high cash only bail was the fear that defendant was a danger to the complainant and the community. As was argued at the bail hearing and admitted by the State, defendant had made no attempt to contact the complainant for over 13 years. Also of interest is that this second report of abuse against the defendant was made approximately January of 2012, although the State did act on the report for approximately 11 months after the report.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document, specifically identified hereafter, was served by the method indicated below to the following individuals on the date affixed below:

Document	REPLY TO STATE'S RESPONSE TO MOTION TO DISMISS

Name/Title or Interest in Case/Address	Method
Jeffrey R. Buhman Utah County Attorney David Sturgill Deputy Utah County Attorney 100 East Center Street, Suite 2100 Provo, UT 84606	U.S. mail, postage prepaid Facsimile: 801-851-8051

Date: 5-6-13