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IN THE FOURTH JUDICIAL DISTRICT COURT
STATE OF UTAH

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

Comes now the State by and through counsel, David Sturgill, Deputy Utah County Attorney, objects to defendant's Motion to Dismiss, and requests that said motion be denied.

STATEMENT OF FACTS

1. On or about January 20, 2012, Kate Baxter met with Provo detective, Dan Dove and reported, for the first time to law enforcement, that she was raped, sodomized and sexually abused numerous times by her father between August 1991 and June 1999. All of the reported offenses occurred in Provo, and occurred when the victim was between the ages of 5 and 13.

2. Based upon the report, the State filed an Information on December 12, 2013, charging the defendant as follows:

Count 1: Sodomy on a Child, a first degree felony, in violation of UCA §76-5-403.1. The defendant, on or between August 1, 1991 and June 1, 1992, allegedly anally sodomized the victim.

Count 2: Attempted Sodomy on a Child, a first degree felony, in violation of UCA §76-5-403.1. The defendant, on or between August 1, 1991 and June 1, 1992, allegedly attempted to force his penis into the victim's mouth.

Count 3: Sexual Abuse of a Child, a second degree felony, in violation of UCA §76-5-404.1. The defendant, on or between August 1, 1991 and June 1, 1992, allegedly had the victim manually masturbate him until he ejaculated.

Count 4: Aggravated Sexual Abuse of a Child, a first degree felony, in violation of UCA §76-5-404.1. The defendant, on or about October 1995, allegedly fondled the victim's vagina.

Count 5: Rape of a Child, a first degree felony, in violation of UCA §76-5-402.1. The defendant, on or about October 1995, allegedly engaged in sexual intercourse with the victim.

Count 6: Rape of a Child, a first degree felony, in violation of UCA §76-5-402.1. The defendant, on or between October 1, 1995 and June 1, 1996, allegedly engaged in sexual intercourse with the victim.

Count 7: Rape of a Child, a first degree felony, in violation of UCA §76-5-402.1. The defendant, on or between August 1, 1998 and June 1, 1999, allegedly engaged in sexual intercourse with the victim.

Count 8: Rape of a Child, a first degree felony, in violation of UCA §76-5-402.1. The defendant, on or between August 1, 1998 and June 1, 1999, allegedly engaged in sexual intercourse with the victim.

Count 9: Rape of a Child, a first degree felony, in violation of UCA §76-5-402.1. The defendant, on or between August 1, 1998 and June 1, 1999, allegedly engaged in sexual intercourse with the victim.

Count 10: Rape of a Child, a first degree felony, in violation of UCA §76-5-402.1. The defendant, on or between August 1, 1998 and June 1, 1999, allegedly engaged in sexual intercourse with the victim.

Count 11: Rape of a Child, a first degree felony, in violation of UCA §76-5-402.1. The defendant, on or between August 1, 1998 and June 1, 1999, allegedly engaged in sexual intercourse with the victim.

Count 12: Rape of a Child, a first degree felony, in violation of UCA §76-5-402.1. The defendant, on or between August 1, 1998 and June 1, 1999, allegedly engaged in sexual intercourse with the victim.

Count 13: Rape of a Child, a first degree felony, in violation of UCA §76-5-402.1. The defendant, on or between August 1, 1998 and June 1, 1999, allegedly engaged in sexual intercourse with the victim.

Count 14: Rape of a Child, a first degree felony, in violation of UCA §76-5-402.1. The defendant, on or between August 1, 1998 and June 1, 1999, allegedly engaged in sexual intercourse with the victim.

Count 15: Rape of a Child, a first degree felony, in violation of UCA §76-5-402.1. The defendant, on or between August 1, 1998 and June 1, 1999, allegedly engaged in sexual intercourse with the victim.

Count 16: Rape of a Child, a first degree felony, in violation of UCA §76-5-402.1. The defendant, on or between August 1, 1998 and June 1, 1999, allegedly engaged in sexual intercourse with the victim.

Count 17: Sodomy Upon a Child, a first degree felony, in violation of UCA §76-5-403.1. The defendant, on or between August 1, 1998 and June 1, 1999, allegedly sodomized the victim or forced her to perform oral sex on him.

Count 18: Sodomy Upon a Child, a first degree felony, in violation of UCA §76-5-403.1. The defendant, on or between August 1, 1998 and June 1, 1999, allegedly sodomized the victim or forced her to perform oral sex on him.

3. On or about June 3, 1999, the Division of Child and Family Services (DCFS) referred to Provo Police "allegations of emotional, sexual, physical, and drug abuse." *Provo Police Report (PPR) No. 863817.A093.* Specifically, the allegations were that the defendant

"was emotionally abusing his daughters [Eliza and Mimi Hamblin] and providing them with Peyote." *Id.*

4. On or about June 9, 1999, DCFS conducted a home visit, and spoke to the defendant's wife, Rosie Hamblin, and two of the defendant's daughters, Rachel and Katie Hamblin (Katie is the alleged victim in the underlying case). Rosie related to DCFS peculiar statements made my Mimi related to semen and sex, but expressed that she had "a hard time believing that [the defendant] would sexually abuse the children." *DCFS report, p. 3.* Rachel also expressed concern about Mimi's statements, but didn't report any sexual abuse during the interview. Katie did not report any sexual abuse during her interview.

5. The next day, June 10, 1999, the defendant's remaining two daughters, Eliza and Mimi Hamblin, were interviewed at the Children's Justice Center (CJC). Neither girl reported sexual abuse, and the investigating officer reported, among other things, "there is not sufficient evidence to demonstrate that sexual abuse is occurring[.]" *PPR, No. 863817.A093.*

6. On or about July 3, 1999, Provo Police were dispatched to the defendant's residence. At the residence, the officer spoke to Rachel, Eliza, Katie and Mimi. Rachel reported that the defendant was "trying to be alone with [Mimi]," and was concerned that he was trying to sexually abuse her. *PPR, No. 871169.A138.* Eliza reported "she had never witnessed any physical or sexual abuse from her father . . . [but] felt afraid for her sister Mimi and felt that her father was capable of doing something to her." *Id.* Katie was questioned and

stated only that she "did not feel safe with her father due to his strange therapies and was afraid for her sister." *Id.* Mimi "stated that everything was fine and did not understand why [the officer] was there." *Id.*

7. On or about April 23, 2000, Rachel Hamblin arrived at the Provo Police department and reported that she had been sexually abused by the defendant, and feared that the defendant might be abusing her younger sisters. *PPR, No. 942750.A132.*

8. On or about April 25, 2000, Rachel was interviewed a second time at the Provo Police department, in more detail, regarding the report she made on April 23. Among other things, Rachel reported that the defendant "used to play a game called 'fishy' which involved putting his finger in the anus of herself as well as her sisters." *PPR No. 942945.A122.* Rachel also reported that "she [believed] that her sisters [were] also being victimized or [had] been victimized prior to being given to the custody of their mother[.]" *Id.*

9. On June 2, 2000, Provo Police received a DCFS referral, reporting that the defendant "had sexually abused his daughters," specifically Eliza and Rachel. *PPR No. 958669.A145.*

10. On or about June 28, 2000, Rachel and Eliza Hamblin were interviewed by Provo Police at the Children's Justice Center. Both disclosed being victims of years of sexual abuse at the hands of the defendant. During her interview, Rachel again disclosed details related to the "fishy" game, and also reported that while the family resided in New York, the defendant "would make all of the girls watch while he would rape one of them." *Id.*

Rachel specifically reported that the defendant "brought [Katie] in and made her watch." *Id.*

11. During Eliza's interview at the CJC, she too spoke about the same "fishy" game, and reported that while the family lived in New York, she witnessed the defendant bring Katie into the bedroom she shared with Rachel and "put his penis into [Katie]." *Id.*

12. There is no evidence that either Katie or Mimi were ever interviewed a second time by either DCFS or police.

ARGUMENT

According to the defendant, the earliest allegation of sexual abuse against the defendant, occurred on or about June 3, 1999. The first report that specifically included Katie Hamblin as a possible victim was made by Katie's sisters, Rachel and Eliza, in June of 2000. The statute of limitations, at that time, provided that "[a] prosecution may . . . be commenced for rape of a child, object rape of a child, sodomy upon 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*). Unlike other felony offenses, the statute of limitations for sexual crimes against children is not triggered by the date the offense was committed, but rather by a "report of the offense" to police.

In State v. Green, 108 P.3d 710 (Utah 2005), the Supreme Court of Utah examined the meaning of the phrase "report of the offense." First, the Court determined that, in interpreting §76-1-303.5, the meaning of the statute "may be derived from the ordinary and generally accepted meaning of the statutory language." *Id.*, *citing* State v. Hodges, 63 P.3d 66 (Utah

2002). The key phrase, "report of the offense," the Court continued, "contains two related elements: a description of a type of communication–a report–and the content of that communication–the offense." *Id.* at 720. A "report" is "[a] formal oral or written presentation of facts." *Black's Law Dictionary* 1303 (7th ed. 1999). The "formal" connotation distinguishes a report from an overheard remark or a passing comment. The word "report" also strongly suggests purposeful communication. *See Id.* "In its statutory setting, the report is a communication made for the purpose of alerting police to the existence of a crime." *Id.*

The statute also requires that "the offense" be reported. The Supreme Court held, "[w]hile it would be unreasonable to adopt an overly narrow interpretation of an 'offense,' . . . the disclosure of mere clues that criminal conduct has occurred is not enough." *Id.* The Court continued:

> 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. During its analysis in the Green case, the Supreme Court essentially adopted a three-part test to determine whether something qualifies as a "report of the offense." The test requires:

> (1) a discrete and identifiable oral or written communication (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 721. None of the reports prior to April 23, 2000, meet this standard as it relates to Katie Hamblin. Although there were concerns that Mimi had been sexually abused by the defendant, due to the bizarre comments she made to family members, when questioned by police, none of

the girls, including Mimi, disclosed sexual abuse. On April 23, 2000, the only detail that might be related to Katie was Rachel's fear that the defendant "might be abusing her younger sisters." Not until Eliza and Rachel reported in June 2000, was Katie even mentioned as a possible victim of sexual abuse. The June 2000 reports, however, were limited to specific offenses they witnessed committed against Katie by the defendant. The specific offenses were a rape that occurred while the Hamblins resided in New York, and incidences of digital-anal penetration that occurred in Utah (the "fishy" game), neither of which are the bases for the charges in the underlying case. The defendant argues that the sisters' reports of their own rape, sodomy and sexual abuse, and the specific offenses they witnessed committed against Katie, triggered the statute of limitations with regards to all offenses committed by the defendant against Katie, even the offenses that have never been reported. The defendant's position is contrary to the standard outlined in State v. Green, and inconsistent with the plain language of §76-1-303.5. The rapes, sodomy, and sexual abuse, that are the bases of the underlying charges are separate and distinct offenses, each of which requires 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. That simply has not occurred in relation to the offenses Katie Hamblin has only recently reported and are the bases of the underlying charges.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court deny the defendant's Motion to Dismiss.

Dated this 3rd day of May, 2013.

David Sturgill
Deputy Utah County Attorney

CERTIFICATE OF MAILING

I hereby certify that I delivered a true and correct copy of the foregoing State's Response to Defendant's Motion to Dismiss this 3rd day of May, 2013, to the following:

Mike Esplin
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