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IN THE FIFTH JUDICIAL DISTRICT COURT

IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, v. ALLEN GLADE STEED, Defendant.	<p style="text-align: center;">MOTION TO DISMISS FOR STATUTE OF LIMITATIONS and MEMORANDUM IN SUPPORT</p> <p style="text-align: center;">Case No. 071501596 (Judge G. Rand Beacham)</p>
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Pursuant to Utah R. Crim P. 25 and Utah Code Ann. §76-1-306, the defendant, Allen G. Steed, through his attorneys, hereby moves this Court to dismiss this information as it is currently charged based on the fact that the prosecution is barred by the statute of limitations. In doing so, this Court must make a specific factual finding regarding the point in time in which a “report” was made to “law enforcement” relative to the allegations in this matter.

This motion is based on the following memorandum of points and authorities.

RELEVANT BACKGROUND FACTS

General Background

1. In April of 2001, Allen Steed was informed by his ecclesiastical leaders that he had been placed into a marriage with Elissa Wall who was also a member of his religious community.

2. Subsequent to the marriage ceremony, Mr. Steed and Ms. Wall resided together and lived as husband and wife from 2001 through 2004.

3. During November of 2004, at the direction of the FLDS ecclesiastical leaders, Ms. Wall and Mr. Steed were “released” from their marriage. Ms. Wall was asked to leave the FLDS community when it was discovered that she had been participating in an adulterous affair. Ms. Wall had also become pregnant as a result of the affair.

4. Subsequent to her departure from the community, Mr. Steed had no contact or communication with Ms. Wall.

5. On September 26, 2007, over 6 ½ years after Mr. Steed’s and Ms. Wall’s marriage, this criminal information was filed against Mr. Steed. Throughout the vast majority of this time period, Mr. Steed had no knowledge of the alleged charges nor any hint that there was any allegations of wrongdoing on his part.

6. The charged offense is alleged to have taken place in Hildale, Utah. The offense is charged as a single count of Rape alleged to have occurred “[O]n or about a certain day or days between April 14, 2001 and September 30, 2004.”

The Reporting of the Rape Allegation

7. On January 14, 2006, just over four years and eight months after her marriage to Mr. Steed, Ms. Wall participated in an interview with investigators from the Washington County Sheriffs Office. It was during this interview that Ms. Wall personally, for the very first time, provided a report to law enforcement regarding the allegations underlying this case.

8. At all times prior to this January 14, 2006 interview, Ms. Wall had adamantly refused to communicate with investigators or law enforcement with respect to the allegations, instead opting to only communicate and participate with retained private civil counsel.

9. On the advise of her civil counsel, Ms. Wall refused to communicate with law enforcement until such time as a civil suit could be filed and a formal agreement could be reached with the Washington County Attorney's Office, an agreement setting forth how the information would be received and used. More particularly:

a. On January 4, 2006, ten days prior to the January 14, 2006 interview, Ms. Wall negotiated and signed a "Confidentiality and Cooperation Agreement" (the "Cooperation Agreement"), attached as **Exhibit A**. The Cooperation Agreement recites that Washington County is interested in investigating crimes arising out of the spiritual marriage of Elissa Wall and Allen Steed and states that Elissa Wall is willing to cooperate by providing all information available to her in connection with her arranged spiritual marriage "*provided* [she] is assured of confidentiality and other protections." *See id.* at 1-2.

b. On December 13, 2005, 22 days prior to her signing the Cooperation Agreement, Ms. Wall through her civil counsel, filed a civil lawsuit seeking damages in an amount to be determined by the jury. To avoid discovery of the lawsuit, the Plaintiff was known only as "M.J." and the filing was done in Iron County, Utah.

c. Ms. Wall, in 2008, published a book, entitled *Stolen Innocence*, in which she recounts among other things, the relevant events surrounding her coming forward with a

report of this alleged offense to law enforcement.¹ The introduction to the book states that “[t]he events described are based upon my recollections and **are true.**” Included are the following recollections:

i. “[I]f I didn’t come forward to authorities by what would have been my fourth anniversary to Allen that April, [2005] the criminal statute of limitations would run out on possible charges being pressed.” *Stolen Innocence* at 342.

ii. “[My siblings] were pushing hard for me to present my story to authorities . . . I was not interested in speaking to police. I had not lost my fear of law enforcement . . .” *Id.* at 342.

iii. “I finally told my siblings I just couldn’t do it. April 23, 2005, passed like any other day, and I breathed a sigh of relief . . .” *Id.* at 345.

iv. “I remained extremely fearful of what could happen to me if I decided to speak with the police.” *Id.* at 347.

v. That spring [2005], “the investigator from Mohave County [Gary Engels] redoubled his efforts to convince Lamont to have me come forward . . . they were eager to recruit me . . . I, however, was unwilling to be that girl, and Lamont made it clear that they should leave me alone.” *Id.* at 346.

vi. “Joanne Suder [from Baltimore] . . . had made a name for herself representing alleged victims of clergy sexual abuse in the Catholic Church’s . . . [o]ne weekend

in early July, I agreed to fly to the East Coast to meet with her . . . **I had never spoken to anyone about what had transpired in my marriage**". *Id.* at 347 (emphasis added).

vii. "On December 13, 2005, I filed a civil suit in neighboring Iron County against Warren Jeffs and the FLDS Church seeking monetary damages. . ." *Id.* at 351.

viii. With the civil suit filed, I refocused my attention on the criminal investigation . . . [m]y nerves were on the edge as the reality of what I was about to do hit home. I was going to talk to someone. I was going to tell that person as much as I could about what had happened to me." [January 2006] *Id.*

10. Prior to Ms. Wall making a report on January 14, 2006, her sister and her boyfriend are named in documents which the State cites as potential "reports" of the offense. More specifically;

a. Gary Engels, an individual employed by the Mohave County Attorney's Office in Arizona, has authored a report in which he represents that on January 10, 2005, he was eating breakfast in the JB's restaurant in Hurricane, Utah with a friend, Richard Holm, when they were joined by Lamont Barlow. Mr. Barlow is reported to have fortuitously happened by their table and temporarily joined them. While he sat with them in the restaurant, Mr. Engels reports that Barlow told them that his girlfriend, Elissa Wall, may have been the victim of sexual and physical abuse during her marriage with Allen Steed. Mr. Engels is not a deputized law enforcement officer and is not post certified. Mr. Barlow made clear to Mr. Engels that Elissa Wall would *not* speak with him about these matters, and in fact, Ms. Wall steadfastly refused

Engels efforts to discuss the matter until April 26, 2007, when her counsel allowed her to participate in a telephone interview with him.

b. On August 18, 2005, the Washington County Sheriff's Office received information in regards to a possible sex offense. *See* Washington County Sheriff's Office Supplemental Incident Report ("Incident Report"), attached as **Exhibit B**. The report came in the form of a telephone call from Rebecca Wall Musser, the sister of Elissa Wall. Rebecca reported that her sister and Allen Steed had been forced into a marriage by FLDS church leadership. *See id.* She further reported that **Elissa was "very reluctant to talk about it"** although "she has opened up a little bit" with attorney Joanne Sutter of Baltimore, Maryland. *Id.* Rebecca Wall said she thought it would be best if the sheriff's office "talk[ed] to Joanne [the attorney] prior to making contact with Elissa," the alleged victim. *Id.*

APPLICABLE UTAH LAW AND LEGISLATIVE HISTORY

General Law Regarding Dismissals For Statute of Limitations

The State bears the burden of proving that a criminal action is not barred by the statute of limitations whenever that issue is properly raised. *See State v. Pierce*, 782 P.2d 194, 196 (Utah App. 1989). Moreover, the delay between the commission of an offense and the initiation of prosecution raises due process concerns. *See, e.g., State v. Byrns*, 911 P.2d 981, 985 (Utah App. 1995); *United States v. Lovasco*, 431 U.S.783, 789 (1977); *United States v. Marion*, 404 U.S. 307, 324 (1971). With these concerns in mind, the purpose of criminal statutes of limitation are to avoid the filing of stale criminal charges, and are intended to foreclose the potential for

inaccuracy and unfairness that stale evidence and dull memories may cause as a result of an unduly delayed trial. *See James v. Galetka*, 965 P.2d 567, 572 (Utah App.1998) (citing cases).

As such, Rule 25 of the Utah Rules of Criminal Procedure provides that this Court **shall dismiss** a case when “[t]he prosecution is barred by the statute of limitations.” Utah R. Crim. P. 25(b)(5). In making such a determination, this Court must first determine what statute of limitations applies to the charged offense when a defendant allegedly committed the crime, and then must determine if that limitations period expired before the State filed charges. *See State v. Lusk*, 2001 UT 102 , ¶18 (Utah 2001).

Once a statute of limitations has run on a crime, it is forever barred and a defendant’s vested right to rely on that limitations defense cannot be eliminated by subsequent legislative action. *See Lusk*, 2001 UT 102, ¶30.

The Applicable Statute of Limitations

In 2001, when Mr. Steed is first alleged to have committed the crime of Rape, the statute of limitations provided that a prosecution for a “felony . . . shall be commenced **within four years after it is committed.**” Utah Code Ann. § 76-1-302 (2001) (emphasis added). There was no exception or enlargement of time for the crime of Rape under the 2001 limitations provision.

In 2005, the statute of limitations was amended by the Utah Legislature and the period available for prosecution of certain offenses was expanded under specified conditions. Under the 2005 statute, a rape prosecution “**shall be commenced within four years after it is committed, except that prosecution for [rape] . . . shall be commenced within eight years after the offense is committed, if within four years after its commission the offense is**

reported to a law enforcement agency.”Utah Code Ann. § 76-1-302 (2005) (emphasis added).

In sum, then, a rape prosecution was still barred in 2005 if not properly reported within a four year period of its commission. If properly reported within the first four year period, however, the prosecution had a total of eight years from the commission of the offense to prosecute. The effective date of the amendment was May 2, 2005.

Relative to Mr. Steed, this means that any rape charge alleged to have been committed prior to May 2, 2001 is time barred outright under the 2001 limitations provision.² Thus, the Information’s allegation that a rape occurred “on or about April 14, 2001” is barred since the 2001 four year statute of limitations had run and once April 14, 2005 passed, prosecution of the alleged crime would be “forever barred” and Mr. Steed’s “vested right to rely on that limitations defense [cannot] be eliminated by subsequent legislative action.” *Lusk*, 2001 UT 102, ¶30.

Legislative History

During the 2005 General Legislative Session, S.B. 177 (“Increase Statute of Limitations on Rape”), was introduced and passed. A review of the Audio Floor Debates for SB0177 reveals that the bill was passed in response to the new DNA technologies that had become available by the year 2005.³ The law was very clearly aimed at the situation where a rape is reported promptly, but the offender’s identity is unknown until a DNA test is performed sometime outside the 4-year statute of limitations.

²Since the four year limitation period from this date would be May 1, 2005—and the effective date of the limitations amendment being May 2, 2005.

³Audio recordings found at:
<http://www.le.state.ut.us/jsp/jdisplay/billaudio.jsp?sess=2005GS&bill=sb0177s01&Headers=true>

A discussion between the bill's Chief Sponsor, Representative Ed Mayne, and those representatives with concerns regarding the effect this bill might have on charges not being brought in a timely manner reveals the reasons for the change in the law. Representative Madsen stated:

My concern is a scenario where you have a victim and not a couple of months or a couple of weeks or even a year has transpired since the offense, since the rape, but say ten years later, some memories are conjured up, maybe they are substantial **memories, maybe they are not, and then this time period begins to toll, that really stretches out . . . I seem to remember that assurance was made that this would only happen when the reporting was done soon after the fact of the crime.**

Audio Floor Debate on 02/15/2005 (emphasis added).

Representative Mayne responded:

You are correct senator. And that is our intent, our intent is those heinous crimes that occur where an investigation has started and [they] cannot find the perpetrator . . . **DNA is what this amendment is all about.**

Id. (emphasis added).

Accordingly, the legislative history behind S.B. 177 focuses almost exclusively on DNA testing in instances where the perpetrator cannot be found.

ARGUMENT

I. THIS PROSECUTION IS BARRED BY THE 2001 STATUTE OF LIMITATIONS

Although the criminal Information states that the alleged rape occurred “[o]n or about a certain day or days between April 14, 2001 and September 30, 2004,” Utah law has long recognized that for purposes of determining a statute of limitations period, the “cause of action

accrues when the plaintiff could have **first filed** and **prosecuted** the action to successful completion.” *Cf. DOIT, Inc., v. Touche, Ross & Co.*, 926 P.2d 835, 843 (Utah 1996) (emphasis added) (noted in civil context). The statute of limitations begins to run “at the moment that a cause of action arises.” *Fredericksen v. Knight Land Corp.*, 667 P.2d 34 (Utah 1983). Said differently, and in a criminal context, a statute of limitations normally begins to run when the crime is **complete—and a crime is complete, for the purpose of commencing the running of a statute of limitations, as soon as every element in the crime occurs.** *See United States v. Reitmeyer*, 356 F.3d 1313, 1317 (10th Cir. 2004). As such, a criminal statutes of limitations begins running when a crime is first “committed” or “completed.” *See id.* *See also, e.g., Compton v. State*, 202 S.W.3d 416, 420 (Tex. App.2006) (crime is complete for limitation purposes when each of the elements of the crime has occurred); *Ex parte Rosborough*, 909 So.2d 772, 774 (Ala.2004) (limitations period runs from time crime is committed, which is determined as time when all of crime's essential elements are present and complete).

Mr. Steed is accused of only **one** count of rape which is alleged to have been committed more than 4 years before the legislative extension took effect on May 2, 2005. Because the statute of limitations would have begun to run as soon as the first instance of alleged rape occurred, this prosecution is precluded and “forever barred.” Mr. Steed had a “vested right” to rely on the four year statute of limitations which cannot be eliminated by subsequent legislative action. *See Lusk*, 2001 UT 102, ¶30. Consequently, because the State bears the burden of proving that this criminal offense is not barred by the statute of limitations, and because the State cannot meet that burden, this matter must be dismissed. *See State v. Pierce*, 782 P.2d 194 (Utah App.1989).

Such a result is also entirely consistent with the intentions of the Utah legislature as evidenced by the discussions surrounding the 2005 amendment. The change in the law was clearly not intended to expand the time period during which an incident had to be reported. Rather, the change in law was designed to expand the limitations period in those situations where their had been a clear report of the offense within the statutory period. There was no such report in this matter and accordingly, the time to prosecute has lapsed.

II. **THERE WAS NO “REPORT OF THE OFFENSE” TO A “LAW ENFORCEMENT AGENCY” SUFFICIENT TO EXTEND THE STATUTE OF LIMITATIONS.**

Although the Defendant asserts that this prosecution is time barred by the general 4-year statute of limitations in place under the 2001 statute, in order for the prosecution to even attempt to take advantage of the expanded 8 year statute of limitations for the offense of rape effective May 2, 2005, there must be, within four years after its commission, (1) a **report** of the **offense** to (2) a **law enforcement agency**. *Accord* Utah Code Ann. § 76-1-302 (2005). In *State v. Green*, 108 P.3d 710 (Utah 2005), the Utah Supreme Court interpreted and defined both of these necessary requirements (“report of the offense” and “law enforcement agency”).⁴

⁴The *Green* case arose under the rape of a child statute which likewise expanded to eight years the four-year general felony period where the prosecution is initiated “within one year after the report of the offense to law enforcement officials so long as no more than eight years [had] elapsed since the alleged commission of the offense.” *Green*, 108 P.2d at 715 (*quoting* Utah Code Ann. § 76-1-303(c)(1983)). In 1991, an amendment was made that “replace[d] the eight-year statute of limitations with a limitations period permitting prosecution of sexual abuse of a child anytime ‘within four years after the report of the offense to a law enforcement agency.’” *Id.* at 717. The *Green* defendant, in an attempt to avoid the 1991 amendment, claimed that “several communications qualified as ‘reports to a law enforcement agency,’ and thus activated the one-year time limit under the 1983 limitation, barring his prosecution before the effective date of the 1991 amendment.” *Id.* at 716. However, the Utah Supreme Court upheld the trial court’s interpretation of the phrases “report of the offense” and “law enforcement agency” and concluded

With respect to the meaning of the phrase “report of the offense,” the *Green* court ultimately denied the defendant’s interpretation of the statutory language. Therein, the Defendant argued that “the statute of limitations begins to run when ‘the facts [are] once made known to a reasonable investigator, even if the exact claim is unknown, then a duty of due diligence is imposed upon the State to investigate and prosecute the claim.” *Id.* at 719-20. The Court instead looked to the “ordinary and generally accepted meaning of the statutory language,” stating:

The meaning of the phrase “report of the offense” . . . is a phrase that contains two related elements: a description of a type of communication - a report - and the content of that communication - the offense . . . [t]his connotation of formality distinguishes as report from, for example an overheard remark... [t]he word ‘report’ is also strongly suggestive of purposeful communication . . . [and] in its statutory setting, the report is a communication made for the purpose of alerting law enforcement to the existence of criminal conduct.

Id. at 720.

Additionally, the Utah Supreme Court analyzed what “offense” meant. In defining the term, the Court stated that “the disclosure of mere clues that criminal conduct has occurred is not enough.” *Id.* at 720. “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 of analysis.” *Id.* Accordingly, the Utah Supreme Court adopted a three-part test for evaluating whether a communication qualifies as a “report of the offense.” The test requires:

that no report of the offense was made to law enforcement agency.

- (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 721.

Finally, the *Green* court determined what or who amounted to a “law enforcement agency.” In doing so, the Court found that DCFS, although it shares investigatory functions with law enforcement, is not a law enforcement agency because “these shared functions are ancillary to its primary purpose of providing child welfare services.” *Id.* at 722. The Court went on to define a “law enforcement agency” as requiring two components. First, “one whose primary duty is to prevent and detect crime,” and second, an agency “which has the general police power and is charged with making arrests in connection with the criminal statutes and ordinances of the State of Utah or any political subdivision thereof.” *Id.* The Utah Supreme Court held that “[b]ecause DCFS is not a law enforcement agency, reports made to it do not implicate [the statute of limitations].” *Id.*

Based upon the Utah Supreme Court’s defining scope of what constitutes a “report” of and “offense” made to a “law enforcement agency,” it becomes clear that no acceptable report was made which would serve to extend the limitations period in this case.

A. Gary Engel’s Meeting with Richard Holm and Lamont Barlow Did Not Constitute a “Report of the Offense” to “A Law Enforcement Agency.”

As noted above, Gary Engels is an individual employed by the Mohave County Attorney's Office in Arizona, who represents that on January 10, 2005,⁵ he was eating breakfast in Hurricane, Utah with a friend, Richard Holm. The two men were purportedly spontaneously joined by Lamont Barlow. At this time, a discussion ensued in which Barlow told them that his girlfriend, Elissa Wall, may have been the victim of sexual and physical abuse during her marriage with Allen Steed. Mr. Barlow made clear to Engels that Elissa Wall would *not* speak with him about these matters, and in fact, Ms. Wall steadfastly refused Engels efforts to discuss the matter until April 26, 2007, when her civil attorney allowed her to participate in an interview.

A chance meeting at a restaurant, however, lacks the formality necessary to meet the requirements set out in *Green*. Rather than a purposeful communication designed to alert law enforcement, this was nothing more than a fortuitous encounter with some alleged expression of an intent to provide information at some point in the future. This information was not concrete enough to require that Mr. Engels pass this information along to the Washington County Sheriff's Office as would be required by Utah law. *Accord* Utah Code Ann. §62A-4A-403. Mr. Engels instead opted to wait and see if he could "recruit" Ellisa Wall into making a report. *See Stolen Innocence* at 346. According to Ms. Wall, she rebuffed his attempts to recruit her and "Lamont made it clear that they should leave me alone." *Id.*

⁵In any event, this January 10, 2005 "report" would not serve to toll the statute of limitations (which would run on April 14, 2005 pursuant to the dates charged in the information) because at the time, the 2001 version was still in effect and provided for no exceptions to the simple four year period. The 2005 amendment was not passed yet.

Furthermore, Gary Engels was not a deputized law enforcement officer, is not a P.O.S.T. certified peace officer and would thus not be considered a “law enforcement agency.” Likewise, his employer, the Mohave County Attorney’s Office, is also not considered a “law enforcement agency,” as it has not been charged with either the task of general law enforcement or general police duties. Even if this Court were to conclude that Lamont Barlow adequately “reported the offense” to Gary Engels, neither Mr. Engels nor the Mohave County Attorney’s Office is considered a “law enforcement agency” within the meaning of Utah Code Ann. § 76-1-302 (2005). Thus, under the statute, a “report of the offense” to a “law enforcement agency” never occurred. *See State v. Green*, 108 P.3d 710 (Utah 2005).

B. Rebecca Wall’s Phone Call to the Washington County Sheriff’s Office Did Not Constitute a “Report of the Offense” to a “Law Enforcement Agency.”

Also as noted previously, on August 18, 2005, the Washington County Sheriff’s Office received a telephone call concerning a possible sex offense. The call came from Rebecca Wall, the sister of Elissa Wall. Rebecca reported that her sister and Allen Steed had been forced into a marriage by FLDS church leadership. She further reported that **her sister was “very reluctant to talk about it”** although “she had opened up a little bit” to an attorney in Maryland. Rebecca Wall also suggested that it would be best if the sheriff’s office spoke with the attorney rather than making contact with Elissa, the alleged victim.

When Rebecca Wall made this call to the Sheriff’s Office, her communication did not constitute a “report of the offense” as statutorily required to enlarge the statute of limitations time period for rape. Although Rebecca was speaking to a law enforcement agency, the content of her report was insufficient in regards to Allen Steed and was intended to initiate nothing more than a

return phone call to the family's retained attorney. As the *Green* Court noted, "the disclosure of mere clues that criminal conduct has occurred is not enough." *Id.* at 720. In stark contrast to an intention of alerting law enforcement of a crime, Rebecca **actually tells law enforcement not to speak with the alleged victim**. Nothing in Rebecca's communication, therefore, was sufficient "to permit a law enforcement agency to conclude what was done and who did it without additional investigation," especially when she "reports" it as a possible "sexual abuse case" as opposed to a "rape." *Id.*

Further, the only fact regarding this Defendant, Allen Steed, committing a crime was that he had been Elissa's husband. There was no report that he had forced sexual conduct or otherwise engaged in illegal or inappropriate behaviors. Because of the complete lack of detail concerning the alleged offense, law enforcement would most certainly need to investigate the facts further in order to determine what crime was committed and by whom. Such absence of detail renders this phone call wholly sufficient to constitute a sufficient "report" of an "offense."

It is important for this Court to consider the obvious motivation of the alleged victim, her family, and their lawyers in this time period. Ms. Wall, through her civil attorneys, choreographed the manner in which these allegations were reported to law enforcement. Prompt reporting and the legal duty to report allegations of abuse were calculatingly sacrificed to the greater goal of maximizing the likelihood of financial recovery. *See* Utah Code Ann. § 62A-4a-403. Before Ms. Wall's attorneys would allow her to speak with law enforcement investigators, they demanded the Cooperation Agreement, and they required that she be allowed to file her lawsuit seeking monetary damages. *Accord* Complaint, *M.J. v Warren Jeffs. et al.* Case No.

050500795. Ms. Wall must now live with the results of these arrangements. The *Green* case makes clear that Rebecca Musser's limited report is insufficient under Utah law so as to constitute the report of the offense to law enforcement.

III. ALTERNATIVELY, EVEN ASSUMING THE 2005 AMENDMENT APPLIES TO SOME PART OF DEFENDANT'S ALLEGED CONDUCT, ONLY MATTERS SPECIFICALLY CHARGED AS TAKING PLACE AFTER JANUARY 14, 2002, MAY CONCEIVABLY BE PROSECUTED.

A review of controlling Utah law and the legislative history behind the 2005 amendment (cited above) reveals that the first effective report of this offense was on January 14, 2006 when Elissa Wall made an official report to law enforcement. Accordingly, **the State is barred from prosecuting conduct that is alleged to have taken place prior to January 14, 2002.**

While the State has attempted to sidestep this seemingly inevitable conclusion by its creative filing, this Court must reject their attempt to skirt the requirements of the law. The statute of limitations cannot be extended by simply alleging that the offense took place over a multi-year period. The crime of rape necessarily involves an act of sexual intercourse. It is not an ongoing, continuing offense which could be carried on over several years. Due Process requires that Mr. Steed be provided specific information in regards to which act of sexual relations the State is claiming was non consensual.⁶ If the State is able to provide evidence that there was non

⁶In *State v. Fulton*, 742 P.2d 1208, 1214 (Utah 1987), *cert. denied*, --- U.S. ---, 108 S.Ct. 777 (1988), the Utah Supreme Court found that this constitutional guarantee requires "that the accused be given sufficient information 'so that he can know the particulars of the alleged wrongful conduct and can adequately prepare his defense.'" *Fulton*, 742 P.2d at 1214 (quoting *State v. Burnett*, 712 P.2d 260, 262 (Utah 1985)). See also *State v. Wilcox*, 808 P.2d 1028, 1031-32 (Utah 1991); *State v. Taylor*, 378 P.2d 352, 353 (Utah 1963); *State v. Myers*, 302 P.2d 276, 280 (Utah 1956). The Utah courts have defined the particularity requirement as the "best information" the prosecution has, and "whatever information the prosecutor has that may be

consensual intercourse which occurred subsequent to January 14, 2002, they remain free to file each such offense. What they may not do, however, is bootstrap in the form of a single charge, allegations for which the statute of limitations has passed, onto allegations which may continue to have legal viability.

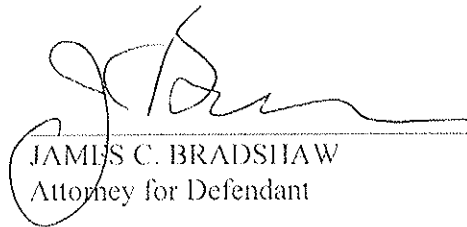
CONCLUSION

Based on the foregoing, this Court should find that this prosecution is barred by the applicable statute of limitations and the Information must be dismissed because it was not commenced within 4 years of the "commission" of the alleged crime.

Further, this Court must find that there was not a proper report made to a law enforcement agency that could serve to conceivably extend the limitations period applicable to this case.

Accordingly, prosecution of this case is barred.

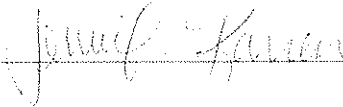
DATED this 5th day of August 2009.


JAMES C. BRADSHAW
Attorney for Defendant

useful in helping to *fix a date*, time or place of the alleged offenses." *Wilcox*, 808 P.2d at 739 (emphasis added). *See also State v. Swapp*, 808 P.2d 115, 118 (Utah App. 1991), *cert. denied*, 815 P.2d 241 (Utah 1991); *State v. Robbins*, 709 P.2d 771, 773 (Utah 1985). Under Utah law, Mr. Steed is entitled "as a matter of right" to "both a bill of particulars and a specification of the *date*, place, and time of the charged crime." *State v. Wilcox*, 808 P.2d 1028 (Utah 1991) (emphasis added).

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing MOTION TO DISMISS FOR STATUTE OF LIMITATIONS and MEMORANDUM IN SUPPORT was mailed, postage prepaid, to Brian Filter, Deputy Washington County Attorney, 178 North 200 East, St. George, Utah 84770, on the 5th day of August 2009.



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EXHIBIT A

CONFIDENTIALITY AND COOPERATION AGREEMENT

On the 16th day of November, 2005, Elissa Wall and the Washington County Attorneys Office, through Brock Belnap, Washington County Attorney, entered into the following Confidentiality and Cooperation Agreement:

WHEREAS in April of 2001 while in Hildale, Utah, Warren Steed Jeffs commanded fourteen year old Elissa Wall (DOB July 7, 1986) to enter into an arranged "spiritual marriage," despite her protest, with her first cousin, nineteen year old, Alan Glade Steed (DOB May 12, 1981);

WHEREAS on or about April 23, 2001, Warren Steed Jeffs performed the arranged "spiritual marriage" in Caliente, Nevada and commanded Elissa Wall and her alleged "spiritual husband," Alan Glade Steed, to have children to replenish the earth;

WHEREAS for over three years after the arranged marriage was performed, Elissa Wall continued to protest and object to the arranged "spiritual marriage" and the required sexual relations, but was repeatedly commanded by Warren Steed Jeffs during those years to remain in the arranged "spiritual marriage" and to submit to sexual relations with Alan Glade Steed in order to have children;

WHEREAS the Washington County Attorneys Office is interested in investigating and, if warranted, prosecuting certain crimes committed by Warren Steed Jeffs arising out of and during the "spiritual marriage" between Elissa Wall and Alan Glade Steed; and

WHEREAS provided Elissa Wall is assured of certain confidentiality and other protections, she is willing to cooperate with the Washington County Attorneys Office by providing all information available to her in connection with the arranged "spiritual marriage" and the prosecution of any crimes committed by Warren Steed Jeffs in connection with his arranging, performing and maintaining the arranged "spiritual marriage" and his requiring sexual relations.

NOW THEREFORE, the parties to this Confidentiality and Cooperation Agreement incorporate the above recitals herein and agree to cooperation and confidentiality on the following terms and conditions:

1. The names "Elissa Wall," "Alan Glade Steed," or similar names by which they are or have been known, their "spiritual marriage" date, their familial relationship as first cousins, and all other information which could reasonably lead to the disclosure of their identities, "spiritual marriage" date or familial relationship as first cousins shall be referred to herein as the "Confidential Information." In addition, the identity of "Lamont Barlow" or similar names by which he is or has been known shall be considered Confidential Information with respect to any investigation or prosecution of Warren Steed Jeffs in connection with his commanding, performing and maintaining the arranged "spiritual marriage."

2. The following three occurrences shall together constitute the "Disclosure Event":
(a) the filing of criminal charges against Warren Steed Jeffs by the Washington County Attorneys office based on information provided by Elissa Wall pursuant to this Confidentiality and Cooperation Agreement; (b) Warren Steed Jeffs' arrest on those charges; and (c) Warren Steed Jeffs' request for disclosure of the Confidential Information from the Washington County Attorneys office. All three of these occurrences are required before the Disclosure Event shall

be deemed to have occurred.

3. Except as provided herein, the Washington County Attorneys Office shall not disclose any Confidential Information during the course of its investigation or prosecution of any crimes committed by Warren Steed Jeffs in connection with his commanding, performing and maintaining the arranged "spiritual marriage" and its required sexual relations before the Disclosure Event.

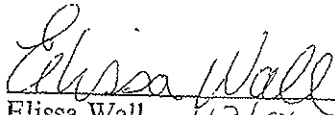
4. In order to prevent disclosure of Confidential Information before the Disclosure Event, the Washington County Attorneys Office shall, at a minimum, refer to Elissa Wall as "Jane Doe IV"; to Alan Glade Steed as "John Doe IV"; and to the "spiritual marriage" date as "Spiritual Marriage Date IV" in all of its written and verbal communications. The only exception to this use of fictitious names and dates shall be in court filings when filed under seal pursuant to court order or *in camera* communications with a judge.

5. To further prevent disclosure of Confidential Information prior to the Disclosure Event, the Washington County Attorneys Office shall provide no information which could reasonably lead to the disclosure of Confidential Information to any other agency, department or person within Washington County, any state, including the states of Utah and Arizona, and the Federal government, except for individuals in such agencies working under the direction of the Washington County Attorney's Office in an investigative capacity and who shall be subject to these confidentiality restrictions. This prevents the Washington County Attorneys Office from providing information which could reasonably lead to the disclosure of Confidential Information to any other law enforcement agencies except as provided herein.

6. Elissa Wall reserves the right to enter into similar confidentiality and cooperation agreements with other law enforcement agencies. In the event she elects to do so, she will notify

the Washington County Attorney of the name of the person in such other law enforcement agency with whom the Washington County Attorney may communicate, but in all such communications Elissa Wall shall be referred to as "Jane Doe IV"; Alan Glade Steed shall be referred to as "John Doe IV"; and the marriage date shall be referred to as "Spiritual Marriage Date IV" regardless of whether the communication is written or verbal.

7. In the event Elissa Wall's identity as Jane Doe IV is disclosed or otherwise becomes known publicly or in the media in any manner before the Disclosure Event, she shall have the right to notify the Washington County Attorneys Office that she withdraws her cooperation in which event the Washington County Attorneys Office shall discontinue its investigation or prosecution of Warren Steed Jeffs based on the information provided by Elissa Wall pursuant to this Confidentiality and Cooperation Agreement.


Elissa Wall 1/3/06

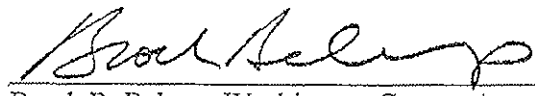

Brock R. Belnap, Washington County Attorney
1/4/06

EXHIBIT B

08/19/05

10:11

Detail Incident Report

Page:

17

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Incident #: WC86381

Case #: 050800235

Washington County Sheriff's Office
Supplemental Incident Report

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DEPUTY: Nolan Gray

DATE: 08/18/2005

TIME: 15:00 Hrs.

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LOCATION:

Telephone interview.

STATEMENTS:

Rebecca Wall, Complainant. (Telephonic Interview).

Rebecca Wall said she wanted to make a report of a sexual abuse case that involved her juvenile sister, Elissa Wall and an adult male, Allen Steed. Rebecca said Elissa was forced into marriage with Allen by the leaders of the FLDS church. She said the marriage was preformed in Caliente Nevada motel, which was owned by Merrill Jessop. Rebecca said she was present when the ceremony took place, but was not in the room when it took place. Rebecca said Warren Jeffs performed the wedding ceremony. Rebecca said the ceremony took place around April 20 2004, and after the ceremony the couple went back to the Hildale area where they resided for a while.

Rebecca said Elissa has since left the marriage, but she is very reluctant to talk about it because of her fear of the leadership. Rebecca said Elissa has opened up a little with attorney Joanne Sutter of Baltimore, Maryland, who was hired to assist with the "lost boys" cause.

Rebecca said she thought it would be best if we would talk to Joanne prior to making contact with Elissa.

EVIDENCE:

None.

PHOTOGRAPHS:

None.

FINGERPRINTS:

None.

DIAGRAMS:

None.

S000545