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IN THE FIFTH JUDICIAL DISTRICT COURT

IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

<p>STATE OF UTAH, Plaintiff, v. ALLEN GLADE STEED, Defendant.</p>	<p>REPLY TO STATE'S MEMORANDUM OPPOSING MOTION TO DISMISS FOR STATUTE OF LIMITATIONS Case No. 071501596 (Judge G. Rand Beacham)</p>
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SUMMARY OF REPLY ARGUMENT

Choosing to ignore the many unusual facts regarding the investigation and reporting of this case, the State has staked the entirety of its timeliness claim on the field notes and report of Mohave County Attorney's Office Investigator Gary Engels. What happened at the JB's that morning in Hurricane, however, is less than clear as reflected in the documentary evidence and the memories of those who were present. As a starting point, it is important to acknowledge that **under any of the presented scenarios, there is no basis for the Court to conclude that a report was made to a law enforcement agency.** While Mr. Steed feels some obligation to present the issues surrounding the accuracy of the Engels reports, and has within this reply

attempted to present to the Court the most complete and accurate information regarding the encounter, for purposes of this motion, it simply does not matter which version the Court adopts.

ARGUMENT

I. THERE WAS NO REPORT OF THIS MATTER TO A LAW ENFORCEMENT AGENCY DURING 2005.

A. Accepting the accuracy of the Engels report, there was no report in January 2005.

Even accepting the Engels report as reliably capturing the conversation of that morning, it is still legally insufficient under the requirements of *State v. Green*, 108 P.3d 710 (Utah 2005). *Green* makes clear that to be sufficient, a report must have a “connotation of formality” and must be “purposeful communication.” *Id.* at 720. There is a fundamental difference between walking into a police station to file a report and the casual coffee talk that takes place in a restaurant. Application of the *Green* factors to these facts leads to the inescapable conclusion that this matter was not reported, as that concept has been defined by the Utah Supreme Court.

The first requirement of *Green* is a “discrete and identifiable oral or written communication.” *Id.* at 721. The individuals present at JB’s that morning do not agree on either the circumstance of the encounter or about what was said. Similarly, the documentary evidence is contradictory. A formal report to law enforcement necessarily includes contemporaneous notes, and some form of a record. As set out in detail below, it is difficult in this matter to reconstruct with any degree of certainty what was said during this casual social encounter. Accordingly, the record falls far short of establishing that requisite “discrete and identifiable communication.”

The second requirement of *Green* is that the information be “intended to notify a law enforcement agency that a crime has been committed.” *Id.* at 721. There is no evidence before the Court to suggest that Mr. Barlow was intending to make a report. The circumstances of this encounter suggest that Mr. Barlow’s only intention that morning was to go into JB’s for the purpose of getting something to eat.¹ Even Gary Engels’ report acknowledges that Mr. Barlow was refusing to approach his girlfriend Ms. Wall about speaking to the investigator until “after Elise has the baby.” The information Mr. Engels obtained at this “chance getting together at breakfast” was nothing more than the possibility that Mr. Barlow’s girlfriend might be willing to make a report at some point in the future.

The third *Green* requirement is that this purposeful report actually provides notice to a law enforcement agency that a crime has been committed. *Id.* at 721. This in turn “implies a degree of articulation of criminal conduct to permit a law enforcement agency to conclude what was done and who did it without additional investigation or analysis.” *Id.* at 720. A review of the four corners of the Engels report reveals that it falls far short of this standard because of what is **not** revealed. For instance, was this a Utah or Arizona crime? When did it take place? Was the alleged rape based upon age or actual lack of consent? Without addressing any of these questions, this scant report is wholly consistent with what Mr. Barlow knew at the time, next to

¹In considering whether Mr. Barlow was purposefully communicating with law enforcement, it is relevant to consider why he might choose to avoid such a conversation. In January 2005 Lamont Barlow was 25 years old. Elissa Wall was pregnant with his child who had been conceived in May 2004 when she was 17 years old. Because they were not married, in discussing these events, Mr. Barlow would necessarily be describing his commission of the Arizona felony offense of Sexual Conduct With a Minor. ARIZ. REV. STAT. §13-1405.

nothing. In her book *Stolen Innocence*, Ms. Wall has identified the first time she spoke with **anyone** about the events of her marriage: “One weekend in early July [2005], I agreed to fly to the east coast to meet [Joanne Suder from Baltimore]. . . I had never spoken to anyone about what had transpired in my marriage.” *Stolen Innocence*, p. 347.

Finally, the Mohave County Attorney’s Office is simply **not** a law enforcement agency charged with either the task of general law enforcement or general police duties. Their own website states that crimes are not to be reported to the county attorney’s office, but must instead be reported to “law enforcement,” which means “the police department.”² The website states:

Crimes are investigated by law enforcement, not the prosecutor. The crime should be reported to the police department in the city where the crime was committed. . .or to the Mohave County Sheriff [if crime committed outside the city limits]. Once law enforcement completes the initial investigation, the report is filed with the county attorney’s office. . . During the review process, the prosecutor may send the case back to the police for further investigation.

A report from Gary Engels is not made to the police or sheriff’s department and must fail under the test articulated in *Green*.

If any one of the *Green* factors is not met, the Engels report cannot serve as the means by which the limitations period is extended. In this matter the State fails on every factor. Even accepting the Engels report as accurate and reliable, it is apparent from the four corners of the

²County of Mohave website link:
<http://www.co.mohave.az.us/ContentPage.aspx?id=112&cid=189&page=1&rid=99#report>

document that it is insufficient to constitute a report to law enforcement as the concept is defined in *Green*.

B. Legislative history of the statute reveals that the 2005 exception has no applicability to the facts of this matter.

The State's filing in this case is an attempt to squeeze the JB's coffee talk encounter through the narrow exception created by the Utah legislature in 2005. The exception, however, was very focused upon an entirely different situation. The 2005 exception was drafted to accommodate the emerging ability of DNA evidence to identify a perpetrator. The legislative history clearly reveals that it was only to apply when the rape had been timely reported, but the offender's identity could not be promptly discovered. The State has not challenged legislative record or intent.

This case has no issues of perpetrator identity. Mr. Steed and the alleged victim lived as husband and wife for over three years. What has always been missing from this matter is a timely allegation. The Utah legislature never intended that the exception crafted in 2005 would apply in the absence of some form of accusation. The State's failure to respond to this issue should be viewed as recognition that the facts of this case simply do not fit within what the legislature had in mind when it created the extension.

II. THERE ARE SUBSTANTIAL QUESTIONS REGARDING THE RELIABILITY OF THE ENGELS REPORT.

In its response the State, for the first time, has provided a copy of an e-mail sent by Mr. Engels to the Washington County Attorney the day after the coffee table talk at JB's. In the e-mail Mr. Engels indicates that he has learned of a "girl married at 14 to her first cousin." Tellingly,

there is no suggestion of forced sexual relations, or reference of a rape allegation, and there is no mention of Allen Steed. It is quite revealing that although there was an inquiry to the County Attorney's office in regards to the Utah Investigative Subpoenas Act, there was no disclosure to the Washington County Sheriff's office.³

The real significance of the e-mail to the issue before the Court, however, is its purpose. Mr. Engels is inquiring about what tools might be available to force the clearly recalcitrant witness to appear and provide a report. ("I'm not sure she is ready to talk.") What seems to have been lost upon the State is the undeniable fact that **Mr. Engels is writing to determine if there is a legal means by which he could force the alleged victim to make the report that he was otherwise unable to obtain.** Indeed, that is precisely what Ms. Wall relates as taking place in her book. "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. . . .**" *Stolen Innocence*, p. 346 (emphasis added).

³Both Utah and Arizona law impose a reporting duty on any citizen that becomes aware of child sexual abuse to report that abuse. Pursuant to UTAH CODE ANN. § 62A-4a-403(1), "when any person. . .has reason to believe that a child has been subjected to abuse, . . .that person shall immediately notify the nearest peace officer, law enforcement agency, or office of the division [Child and Family Services]." Pursuant to ARIZ. REV. STAT. § 13-3620, "any person who reasonably believes that a minor is or has been the victim of abuse. . .child abuse. . .shall immediately report or cause reports to be made of this information to a peace officer or to child protective services. . . ."

The e-mail also comports with the recollection of Richard Holm who was present and a participant during the breakfast encounter at JB's. Mr. Holm recalls a general awareness of the underage marriage issue but has testified emphatically that there was no discussion regarding forced sexual relations:

- Q. You were having breakfast with Mr. Engels?
A. Yeah.
Q. Okay.
A. And Lamont had been sitting at another table and come through and come over and shook hands. I knew of him but didn't know him hardly at all, but I'd heard of Lamont from his uncle, Jethro Barlow, who is a good friend of mine, and **there'd been just a little bit of interchange on Lamont having married Lissy and whatnot**, so that was just a casual meeting. I think I introduced them at that point.
Q. That was no plan. It just happened?
A. Right.
Q. And do you remember anything of substance being discussed at that meeting?
A. Well, substance is--no.
Q. I mean, substance is something about what happened to Ms. Wall in her relationship with Allen Steed. You know, something--
A. **There wasn't anything. It wasn't even a topic that was discussed.**
Q. Okay. And you were present for the entirety of the meeting with you and--
A. **It wasn't a meeting. It was like we'd just chance getting together at breakfast**, an introduction.
Q. But you were present for the entire breakfast when he came over?
A. I considered I was.
Q. All right. And then Mr. Barlow left?
A. Uh-huh (affirmative).
Q. You got to say yes or no.
A. Yes.
Q. And during that breakfast, **nothing about Ms. Wall's relationship with Allen Steed was discussed?**
A. **No.**

Interview of Richard Holm, pp. 65-68, August 19, 2008 (emphasis added) attached as Exhibit A.

While this motion does not require the Court to adopt a particular version of this event, it is relevant to consider the remarkable consistency between Mr. Holm's recollection and the other independent facts, including Ms. Wall's statements, the e-mail to Mr. Belnap, and the failure of Mr. Engels to pass the purported rape allegation on to law enforcement. It is also interesting to consider the Engels report in the context of Ms. Wall's recollection:

There was great interest in my story and this investigator was eager to speak with me about my marriage to Allen. From what Lamont told me [my siblings] had been misinformed when they were told that the statute of limitations would run out for me **that past April**. There was still plenty of time for them to file charges and even without my cooperation, this investigator could subpoena me and force me to testify against my will.

Stolen Innocence, p. 346

It appears that sometime after April 2005, Mr. Engels was advising Ms. Wall, through her husband, that the Utah statute of limitations was not a bar to the filing of criminal charges. It is important to note that the limitations period for all possible offenses had unquestionably run, except that the legislature had created the new DNA exception which only applied to the crime of rape. The only conceivable basis for such an opinion would be Mr. Engels' conclusion that a report of the JB's coffee talk episode, which included an allegation of rape, could effectively serve as a "placeholder" until such time as Ms. Wall was willing to actually make a report. With that backdrop, it seems understandable that the Engels report drafted to preserve the ability to prosecute a rape charge might not comport precisely with the other documents and recollections. Similarly, if such a report was generated in April when the statute of limitations was expiring, rather than January when the encounter took place, that too might explain the discrepancies. It is

noteworthy that the State has offered no record in regards to when the report was written or the date it was first provided to Washington County.

III. THE ANALYSIS IS NOT CHANGED BY TOLLING OR BY A CHANGE IN THE CHARGING DATE.

Mr. Steed is accused in a single count of rape which is alleged to have been committed more than four 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, the information as currently filed is precluded and forever barred. The State has attempted to avoid that result by ignoring the Information on file and proposing a new alternative date of May 4, 2001. It has also proposed that the Court find that some of the time period was tolled as a result of Mr. Steed's temporary absence from the State during the four-year time period. UTAH CODE ANN. § 76-1-304(1).⁴

The State is free to amend the Information and change the applicable date; however, until it does so, this Court must apply the law to the facts as they presently appear. This case as filed must be dismissed.

Tolling and the change in the date are not the real issues before the court, however. Regardless of an amendment or even application of some tolling period, the fundamental

⁴The tolling provision is disfavored. *Lund v. Hall*, 938 P.2d 285 (Utah 1997) Defendant has not presented the relevant law because it seems to not be an issue. In the event the Court finds the tolling provision germane to an issue before the court, Mr. Steed requests an opportunity to present further briefing and evidence. Allen Steed has lived his entire life in the town of Hildale, Utah. He has at all times been amenable to service as evidenced by his Utah State tax returns (see Exhibit B attached) and post office box, which at all times has been tied to a physical address in Utah (see Affidavit of Martha Dutson attached as Exhibit C).


argument does not change. To meet its burden and prove compliance with the limitations period, the State has two hurdles it must clear. First, that the legislative amendment was effective prior to the lapse of the initial limitations period. Second, assuming the timeliness of the first, that there was a report of the offense to law enforcement within the initial four-year period. While the State's proposals to change the date or toll a few weeks might alter the precise date the initial limitations period lapsed, it does not alter in any manner the second requirement that it prove a report to law enforcement during the initial four-year period. Even assuming the State amends the Information to cure the current defect, it must still prove that a report was made to law enforcement within that correspondingly expanded four-year period. Similarly, the issue is not altered because of tolling. Whether the four-year period expired in April, May, or some other month, this prosecution is fatally flawed unless the State can produce a timely report complying with the requirements of *Green*.

CONCLUSION

It is the State's burden to show that the statute has not lapsed. The State has chosen to rest the entirety of its case on the report of Gary Engels from January 2005. A full and fair review of the record leads to the conclusion that this was mere chatter amongst friends and falls woefully short of the *Green* requirements. Based on the foregoing, this Court should grant the defendant's Motion to Dismiss because 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 18 day of September 2009.



JAMES C. BRADSHAW
Attorney for Defendant

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Reply to State's Memorandum Opposing Motion to Dismiss for Statute of Limitations was mailed, postage prepaid, to Brock Belnap, Washington County Attorney, and Brian Filter, Deputy Washington County Attorney, 178 North 200 East, St. George, Utah 84770, on the 18th day of September 2009.



EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOJAVE

STATE OF ARIZONA,)	
)	Interview of:
Plaintiff,)	
)	<u>RICHARD L. HOLM</u>
vs.)	
)	
WARREN STEED JEFFS,)	Case Nos. CR-2007-43
)	CR-2007-953
Defendant.)	

August 19, 2008 * 9:11 a.m.

Location: Hoole & King
4276 South Highland Drive
Salt Lake City, Utah

Reporter: Denise M. Thomas, CRR/RPR
Notary Public in and for the State of Utah

1 Q. There was a time when there was a meeting
2 with Lamont Barlow, Gary Engels and you that was, I
3 believe, at least according to records, the first
4 time that Mr. Barlow met with Mr. Engels.

5 Do you remember that meeting?

6 A. I don't know that that was the first. I
7 remember a meeting. It wasn't an appointed meeting.
8 It was just a time, the first time, I was aware of
9 Lamont and Gary being together. Yes, I'm aware of a
10 time then. It was a spontaneous just hi, how you
11 doing thing.

12 Q. Was there --

13 A. An introduction.

14 Q. Was that meeting something that you set
15 up?

16 A. It was not set up.

17 Q. Okay. Tell me about it then.

18 A. We were having breakfast at JB's in
19 Hurricane. Lamont come over, and Lamont --

20 Q. You were having breakfast with Mr. Engels?

21 A. Yeah.

22 Q. Okay.

23 A. And Lamont had been sitting at another
24 table and come through and come over and shook hands.
25 I knew of him but didn't know him hardly at all, but

1 I'd heard of Lamont from his uncle, Jethro Barlow,
2 who is a good friend of mine, and there'd been just a
3 little bit of interchange on Lamont having married
4 Lissy and whatnot, so that was just a casual meeting.
5 I think I introduced them at that point.

6 Q. That was no plan. It just happened?

7 A. Right.

8 Q. And do you remember anything of substance
9 being discussed at that meeting?

10 A. Well, substance is -- no.

11 Q. I mean, substance is something about what
12 happened to Ms. Wall in her relationship with Allen
13 Steed. You know, something --

14 A. There wasn't anything. It wasn't even a
15 topic that was discussed.

16 Q. Okay. And you were present for the
17 entirety of the meeting with you and --

18 A. It wasn't a meeting. It was like we'd
19 just chance getting together at breakfast, an
20 introduction.

21 Q. But you were present for the entire
22 breakfast when he came over?

23 A. I considered I was.

24 Q. All right. And then Mr. Barlow left?

25 A. Uh-huh (affirmative).

1 Q. You got to say yes or no.

2 A. Yes.

3 Q. And during that breakfast, nothing about
4 Ms. Wall's relationship with Allen Steed was
5 discussed?

6 A. No.

7 Q. All right. Did you arrange any meetings
8 after that with Mr. Engels and Lamont Barlow?

9 A. I didn't arrange any meetings, no.

10 Q. Were you present for any meetings after
11 that with Mr. Engels --

12 A. No.

13 Q. -- and Lamont Barlow?

14 A. No. There were later on occasions similar
15 of just passing, shake hand type, things of that
16 nature. That's all.

17 Q. So you were never present at any meetings
18 with Mr. Engels and Lamont Barlow where they
19 discussed Ms. Wall's situation with --

20 A. No, I was not.

21 Q. -- Mr. Steed? Ever?

22 A. No.

23 Q. And the only time -- the only meeting that
24 sticks out in your -- not meeting. Breakfast.

25 The only time that sticks out in your mind

1 was the time you were having breakfast with
2 Mr. Engels, Lamont Barlow happened to be in the
3 restaurant, you exchanged pleasantries, you talked a
4 little bit, but nothing about --

5 A. That's the first time I was aware of them
6 meeting each other.

7 Q. All right. So that's the only time that
8 really sticks in your mind of you being present with
9 Mr. Engels and Lamont Barlow were --

10 A. I told you about other similar type
11 things. Since then there were other similar type
12 passing hand shakes, saying hi type things.

13 Q. But never a discussion of the situation
14 between --

15 A. I didn't have any discussions with those
16 two of Lamont's issues.

17 Q. And nor did they have a discussion about
18 Lamont and Ms. Wall's issues in your presence with
19 Mr. Engels?

20 A. No.

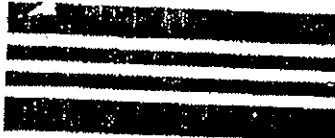
21 Q. Okay. Do you have any relationship with
22 Bruce "Weesen," Wisan?

23 A. I'm aware of who he is.

24 Q. Have you talked to him?

25 A. Yes.

EXHIBIT B



IRS-DCN

00 - 440052 - 55598 - 3

Utah State Tax Commission Utah Individual Income Tax Transmittal For Electronic Filing For the year January 1 - December 31, 2002	2002 TC-8453 Rev 12/02
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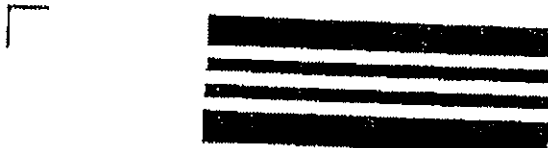
Your Social Security Number	Your Full Name (first, middle initial, last) Allen G Steed		
Spouse's Social Security Number	Spouse's Name (first, middle initial, last)		
▲ Important! ▲ Social Security Number(s) Required	Mailing Address		Daytime Telephone Number
	City Hildale	State UT	ZIP Code + 4 84784-2293
	Foreign City	Foreign State and ZIP	Foreign Country
			Evening Telephone Number

Part 1 - Documents Required

Department of the Treasury - Internal Revenue Service

Form **1040A U.S. Individual Income Tax Return (99) 2003** IRS Use Only - Do not write or staple in this space.

Label (See instructions.)	Your first name Allen	MI G	Last name Steed	OMB No. 1545-0045
	If a joint return, spouse's first name			Spouse's social security number
Use the IRS label. Otherwise, please print or type.	Home address (number and street). If you have a P.O. box, see instructions.		Apartment no.	▲ Important! ▲ You must enter your SSN(s) above.
	City, town or post office. If you have a foreign address, see instructions. Hildale		State ZIP code UT 84784-2293	
Presidential Election Campaign (See instructions.)	Note: Checking 'Yes' will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want \$3 to go to this fund?			You <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Spouse <input type="checkbox"/> Yes <input type="checkbox"/> No



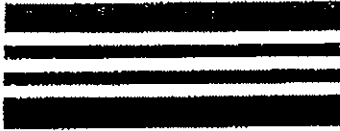
Utah State Tax Commission Utah Individual Income Tax Return All State Income Tax Dollars Fund Education <i>incometax.utah.gov</i>	2004 TC-40
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If fiscal year, enter ending date (mm/yy)

FOR AMENDED RETURN - ENTER CODE (1 - 5) from Instructions

Your Social Security number	Your full name (first, middle initial, last) Allen G Steed			<input type="checkbox"/> Deceased in 2004 or 2005
Spouse's Social Security number	Spouse's name (first, middle initial, last)			<input type="checkbox"/> Deceased in 2004 or 2005
↑ IMPORTANT! ↑ Social Security Number(s) Required	Mailing address		Daytime telephone number	
	City Hildale	State ZIP code + 4 UT 84784	Evening telephone number	
	Foreign city	Foreign state and zip	Foreign country	

40051



Intuit

2005
TC-40
Rev 12/05

Fiscal Year

1030

UT140112 11/29/05

Utah State Income Tax Dollars Fund Education

Amended Return

Utah Individual Income Tax Return
X if deceased

Your Social Security No.

ALLEN

G

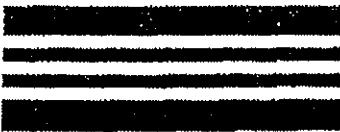
STEED

Spouse's SSN

HILDALE

UT 84784

40061



Intuit

2006
TC-40
Fiscal Year

Form 8886

1030

Utah State Income Tax Dollars Fund Education

Amended Return

Utah Individual Income Tax Return
X if deceased

Your Social Security No.

ALLEN

G

STEED

Spouse's SSN

HILDALE

UT 84784

EXHIBIT C

JAMES C. BRADSHAW (#3768)
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IN THE FIFTH JUDICIAL DISTRICT COURT
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

<p>STATE OF UTAH, Plaintiff, v. ALLEN GLADE STEED, Defendant.</p>	<p>AFFIDAVIT OF MARTHA DUTSON</p> <p>Case No. 071501596 (Judge G. Rand Beacham)</p>
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I, Martha Dutson, being first duly sworn, deposes and says:

1. I am over the age of eighteen and reside in the city of Colorado City, Mohave County, in the State of Arizona.
2. I have been employed by the Colorado City Post Office for over 20 years, including approximately 12 years as a postal clerk. The Colorado City Post Office provides services for Hildale, Utah and the surrounding area.
3. I have been asked to review our post office records and determine the history of Allen Steed in regards to the his address and residency.

4. Relative to this inquiry and based upon my review of our records, I have determined that at all times since 2001, Allen Steed has maintained a physical address in Utah and has maintained a P.O. Box which directly ties to a physical address in Utah.

5. Specifically:

a. From December 15, 2004 to the present, Allen Steed has had his own P.O. Box, # 842363. Allen Steed's P.O. Box has always been tied to a physical address in Utah, specifically 540 Williams Ave., Hildale, Utah 84784 and more recently, 536 E. Williams Ave., Apt. 3B, Hildale, Utah 84784.

b. From at least June 21, 2001 to the time Allen Steed obtained his own P.O. Box in 2004, he received mail at his father's P.O. Box. Allen's father, Lawrence Steed's P.O. Box 840125, has always, up until June 24, 2009, been tied to a physical address in Utah, specifically, 540 E. Williams Ave., Hildale, Utah 94784.

8. Throughout the entire time period between 2001 to the present time, Allen Steed has received mail at a P.O. Box with the prefix "84" which corresponds to Hildale, Utah. Further, each P.O. Box Allen Steed receives mail at corresponds to a physical address in Hildale, Utah.

