IN THE FIFTH JUDICIAL DISTRICT COURT
WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. ALLEN GLADE STEED, Defendant.	ORDER DENYING DEFENDANT'S MOTION TO DISMISS FOR STATUTE OF LIMITATIONS Case No. 071501596 Judge G. Rand Beacham

Before the Court is Defendant's "Motion to Dismiss for Failure to Comply with the Statute of Limitations." The State opposes the motion. Counsel for the State and for Defendant have provided the Court with "Stipulated Facts Regarding Motion to Dismiss for Statute of Limitations," and the Court now recites, with certain non-substantive emendations, the facts as stated within that document:

STIPULATED FACTS

A. Time Frame of Allegations

1. On September 26, 2007, Defendant was charged by information with one count of rape, a first-degree felony, in violation of Utah Code Annotated § 76-5-402.

2. Although the offense is charged as a single count of rape alleged to have occurred "on or about a certain days or days between April 14, 2001[] and September 30, 2004," the parties stipulate and agree that for purposes of this motion, the only relevant time period is May 4, 2001 through May 12, 2001.

3. More specifically, the parties request a ruling on the viability of a prosecution that is specifically limited to conduct that is alleged to have occurred between May 4, 2001 and May 12, 2001.

B. Applicable Limitations Statute

4. In 2001, when Defendant is alleged to have committed the crime of rape, the applicable 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). The 2001 limitations provision provided no exception or enlargement of time for the crime of rape.

5. In 2005, the Utah Legislature amended the statute of limitations. 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).

6. Based upon all stipulations, the parties agree that a prosecution for conduct alleged to have taken place between May 4, 2001 and May 12, 2001 is time-barred unless there was a "report" to law enforcement with four years of the offense, or, more specifically, unless there was a "report" to law enforcement prior to May 12, 2005.

7. The parties agree that the burden of proof is upon the State.

8. For purposes of this motion, the State does not allege that Defendant's actions have tolled the statute of limitations.

C. Underlying Conduct and Statements to Law Enforcement

9. On April 21, 2001, Defendant and Elissa Wall were placed in a spiritual union by

their religious leaders. Defendant and Ms. Wall participated in a religious ceremony that purported to join them as husband and wife. The ceremony did not meet the civil legal requirements to constitute a lawful marriage.

10. After the ceremony, Defendant and Ms. Wall resided together and engaged in sexual intercourse. Although the parties disagree as to whether Ms. Wall consented to this sexual intercourse, for the purposes of this motion, the parties agree that the relevant act of intercourse occurred before May 12, 2001, but no earlier than May 4, 2001.

11. On January 10, 2005, Gary Engels, an individual employed as an investigator by the Mohave County Attorney's Office in Arizona, was eating breakfast at a JB's Restaurant in Hurricane, Utah, with a friend, Richard Holm. Mr. Engels and Mr. Holm were joined by Lamont Barlow, and a conversation followed.

12. All of the participants in the conversation had gone to the restaurant to eat breakfast and had not anticipated that the conversation would take place. In a later interview, Mr. Barlow stated that Mr. Engels was introduced as being connected with the Mohave County Attorney's Office. In the interview, Mr. Barlow stated that he believed that he was talking to someone associated with law enforcement.

13. On January 11, 2005, the day following the encounter at the restaurant, Mr. Engels sent an email to Washington County Attorney Brock Belnap. The email says in part, "Did you tell me that you have the ability to bring people in and put them under oath and then question them? I have found a girl married at 14, but I'm not sure she is ready to talk. She was also married to her first cousin."

14. Mr. Engels produced handwritten notes and a typewritten report regarding his

January 10, 2005 encounter with Mr. Barlow.

15. Currently, and at all times relevant to this motion, Gary Engels is and was an investigator with the Mohave County Attorney's Office and was not deputized or POST-certified. He was, however, acting under the authority and direction of the Mohave County Attorney.

ANALYSIS

A. "Law Enforcement Agency"

The issues having been narrowed by the parties' stipulations, the Court examines whether the communication to Mr. Engels was a "report" to a "law enforcement agency" within the meaning of the present version of § 76-1-302(1)(a). In analyzing this question, it is crucial to note what the statute does *not* say: First, the statute specifies that the report be made to a "law enforcement *agency*," not to any particular individual within such an agency. Section 76-302, moreover, contains no requirement that the report be taken by a POST-certified or deputized officer. So long as the communication is directed toward a law enforcement agency, the statute is without any requirement that the initial recipient of the report within the agency have any particular position, training, or experience.

In *State v. Green*, 2005 UT 9, the Utah Supreme Court discussed the meaning of "law enforcement agency" in reference to whether a report had been made before the expiration of the statute of limitations. The court found that the statute's designation should be understood in accordance with "commonly understood features" of law enforcement, which include "the authority to exercise reasonable force to maintain order, to detect crime, and to enforce criminal statutes." *Id.* ¶ 48. Primary considerations for the inquiry are the "purpose" and "functions" of

the agency, *see id.* ¶ 50. The *Green* court also examined various other provisions of the Utah Code, primarily the Public Safety Code, §§ 53-1-101 et seq., to give context to its definition of "law enforcement agency." *Id.* ¶ 49.

Following this "purpose" and "function" approach, the Court finds that the communication at issue here was made to a "law enforcement agency" as required by § 76-1-302. Investigators within a county attorney's office have the general purpose and obligation to assist in the detection of crime and the enforcement of statutes. Additionally, other portions of the Utah Code support a reading of the phrase "law enforcement agency" that encompasses a county attorney's office and its investigators. For instance, the Public Safety Code defines "law enforcement agency" as "an entity of the federal government, a state, or a political subdivision of a state, ... that exists primarily to prevent and detect crime and enforce criminal laws, statutes, and ordinances." Utah Code Ann. § 53-1-102(c). In another part of the Utah Code, the Legislature, in defining "law enforcement officer," specifically includes "special agents or investigators employed by ... county attorneys," Utah Code Ann. § 53-13-103(1)(b)(vi). The prosecutors' offices that ultimately direct these investigators, moreover, have broad authority to initiate and terminate investigative action, *see, e.g*, Utah Code Ann. § 77-2-1 et seq. When a county attorney's investigator detects crime, gathers evidence, and assists the prosecutor, he therefore fulfills the primary function of law enforcement.

B. Adequacy of the "Report"

The Court must next determine whether under the stipulated facts the conversation that took place "reported" the offense at issue within the meaning of § 76-1-302. In *Green*, the court found that for a communication to a law enforcement agency to amount to a qualifying "report"

under the statute there must be all of the following:

> (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. ¶ 46. Clearly, for the purposes of the statute, more is required than an "overheard remark" suggesting criminal activity, *id.* ¶ 42, and there must be some degree of detail and formality to the communication. Additionally, because the statute requires "communication made for the purpose of alerting law enforcement to the existence of criminal conduct," *id.*, there must exist some subjective expectation on the part of the person making the report– that is, he must "intend" to notify the law enforcement agency of a crime– and there must be some objective reasonableness to his expectation– that is, his communication must impart some "actual notice" of the crime to the agency. The particular phrasing of the third part of the test regarding "information *bearing on* the elements of a crime," is significant, suggesting that the communication need not precisely establish every one of the elements of a crime, so long as enough information is provided to indicate that those elements in fact exist.

The communication Mr. Barlow made, as recounted by the witnesses and memorialized by Mr. Engel's notes, satisfies the requirement of a "report" under the test enunciated in *Green*. First, the conversation in the restaurant was a "discrete and identifiable" oral communication, with time, place, parties, and circumstances detailed. Second, in the encounter, Mr. Barlow "intended to notify a law enforcement agency that a crime ha[d] been committed": The parties agree that Mr. Barlow believed himself to be talking to someone connected with a law enforcement agency and that he availed himself of the opportunity to relate details of the

"marriage" between Defendant and the then-fourteen-year-old Ms. Wall. It is true, as Defendant argues that the meeting came about by happenstance and the offense was not fully detailed in some particulars; however, regardless of the impromptu nature of the meeting, there was "purposeful communication," *id.* ¶ 42, of the elements of the offense, the alleged perpetrator, the complaining witness, and other potential witnesses. This communication provided "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.* ¶ 43. It follows, then, that the State has established the third and final part of the *Green* test, that the conversation "actually communicate[d] information bearing on the elements of a crime" to "place the law enforcement agency on actual notice that a crime has been committed." Mr. Engels' field notes contain the phrase "sexual assault" and his typewritten report references "rape"; both state the alleged victim's age as fourteen and note other salient details. While there is not recorded within these documents the precise legalistic formulation that would be required in an information, for example, it is clear that Mr. Engels did receive a sufficient report of "what was done and who did it."

CONCLUSION

As there was a legally sufficient "report" of the offense to a "enforcement agency," the Court finds the stipulated facts and statements of law do not provide a sufficient basis for granting Defendant's motion. The motion is therefore DENIED.

Dated this 20 day of September, 2010.

JUDGE G. RAND BEACHAM