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MAR 20 2025
4th DISTRICT
STATE OF UTAH
UTAH COUNTY

IN THE FOURTH JUDICIAL DISTRICT COURT, STATE OF UTAH

UTAH COUNTY, PROVO DEPARTMENT

| STATE OF UTAH,<br>Plaintiff,<br>v.<br>DAVID L. HAMBLIN,<br>Defendant. | **Ruling and Order re:**<br>**STATE'S MOTION TO DISMISS**<br>GRANTED, with Prejudice<br>Case no. 221101048<br>Judge Roger W. Griffin |
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## INTRODUCTION

On February 19, 2025, the State filed a Motion to Dismiss charges against Defendant David Hamblin ("Hamblin"). *See* Dkt. no. 290 (State's Motion to Dismiss). During a status conference on the same date, the Court then heard from the parties regarding the substance of motion.

At the hearing, the Court asked the parties what legal standard should apply to the dismissal, and whether the Court was required as a matter of law to dismiss the case on the facts presented with prejudice, or if the Court should consider the dismissal a discretionary dismissal without prejudice. The State noted that the issue may be largely moot given statute of limitation

issues that would apply to future charges, but nevertheless argued in favor of a dismissal without prejudice. Hamblin argued that a dismissal with prejudice is nondiscretionary pursuant to the application of the facts referenced in the State's motion (and in the case as a whole) under relevant governing law, including the Utah Rules of Criminal Procedure.

The Court granted the motion, and informed the parties it would enter a written order on the type of dismissal at a later date. Following the hearing, the State filed a supplemental brief arguing the case should be dismissed without prejudice. *See* Dkt. no. 293. Hamblin also filed a subsequent supplemental brief addressing the with or without prejudice question. *See* Dkt. no.'s 303-04. Upon consideration of governing law and the arguments of counsel, the Court orders the dismissal to be with prejudice. The Court's reasoning follows below.

## RELEVANT MATERIAL FACTS

1. **August 16, 2022:** The Court entered a global ruling disqualifying the Utah County Attorney's Office from prosecuting cases involving Hamblin for various conflicts in a separate case also assigned to this Court. *See* Fourth Judicial District, *State v. Hamblin*, Case no. 121101477 (Minute: Expungement (Aug. 16, 2022) ("The court removes the County Attorney's Office and sends this matter back to the Attorney General's Office.")); *id.* Dkt. no. 85 (Tr. Hearing Aug. 16, 2022).

2. **September 29, 2022:** The State filed charges against Hamblin via an assigned conflict prosecutor (the first conflict prosecutor) who then prosecuted the case from filing until approximately late October or early November of 2023. It was also on or shortly after this

date (one day later according to Hamblin, and on the same day according to the State), that a supplemental police report documenting another recorded interview with the alleged victim was created. Despite repeated orders of this Court, the State failed to produce this report until February 2025. *See* Dkt. no. 288. The likelihood of the report existing was discovered by Hamblin's counsel, while combing through discovery, they determined an interview between the alleged victim had not been produced. *See id.*; *see also infra*, Fact ¶¶ 40-42.

3. **October 3, 2022:** An initial appearance was held and this case was assigned to the present judge. Hamblin's first waiver hearing was scheduled for the next day. *See* Minute (October 3, 2022).

4. **October 4, 2022:** The waiver hearing was continued at the request of Hamblin's counsel. *See* Minute (Oct. 4, 2022).

5. **November 3, 2022:** The Court granted a stipulated motion to continue scheduling a preliminary hearing in this matter, because the parties agreed that further time was needed to consider documents that would be relied upon at that hearing. *See* Dkt. no. 17.

6. **November 4, 2022:** This was the date of the continued preliminary hearing referenced above.

7. **November 7, 2022:** Hamblin filed a "Motion for Special Discovery" seeking disclosure of potentially exculpatory *Brady* material from the State, including among other things various communications and unredacted police reports. *See* Dkt. no. 20.

8. **November 21, 2022:** The State responded to Hamblin's first special discovery motion. The State asserted statutory and rules-based privileges to not produce certain documents. As grounds to not produce some discovery, the State also argued it did not yet have the materials sought in its possession and control, and that certain discovery sought was irrelevant or immaterial given the State's theory of the case (*i.e.*, that the State believed charges or the case should be narrowly focused on specific abuse allegations only "directly related to the case"). *See* Dkt. no. 23, ¶ 4. As a further basis to withhold producing the requested discovery, the State asserted that ongoing investigations would be jeopardized by its disclosure, and reserved the right to supplement later as development of those cases (and this one) proceeded forward. *See id.*

9. **November 23, 2022:** Hamblin filed a "Motion: Second Motion for Special Discovery" seeking disclosure of mandatory exculpatory *Brady* material from the State regarding decisions to prosecute or not prosecute Hamblin. *See* Dkt. no. 27. On this date, Hamblin also filed a "Motion to Compel Discovery" to compel the State to produce discovery concerning Hamblin's "First Special Discovery" request dated November 27, 2022. The State opposed by asserting privilege and/or arguing it sought irrelevant and immaterial discovery for this case based upon the State's theory of prosecution. Hamblin argued that the State's grounds to deny disclosure were not sufficient since the discovery sought was necessary, relevant, and material context. *See* Dkt. no. 25.

10. **November 29, 2022:** The Court held a waiver hearing; among other issues addressed, the Court was informed that further discovery was being produced. *See* Minute: Waiver Hearing (Nov. 29, 2022).

11. **December 16, 2022:** Hamblin filed a second motion to compel discovery regarding his second motion to produce. *See* Dkt. no. 41 ("Motion to Compel Defendants Second Set of Special Discovery"). In this motion, Hamblin sought discovery that would show the State's allegations against him arose in the context of a "broader, large-scale satanic child abuse cult" and did not merely concern sexual abuse. *Id.* This was in stark contrast to the State's position that the case did not concern satanic sexual abuse but only isolated sexual abuse allegations of the alleged victim. *See infra* Fact ¶ 12.

12. **December 28, 2022:** The State filed a response to Hamblin's second motion to compel relating to Hamblin's second special discovery production motion. *See* Dkt. no. 43. Among other arguments, the State again asserted privilege to not produce, and again argued materiality and relevance. The State was aware of other allegations made against individuals claimed to have been involved in ritual satanic sex abuse, but argued that there were no allegations of widespread sexual satanic abuse in this matter, which the State asserted only concerned Hamblin's alleged sexual abuse of the alleged victim. *Id.* at ¶¶ 4-5.

13. **January 1, 2023:** Hamblin filed replies to the State's responses addressing his first and second motions to compel discovery. *See* Dkt. no.'s 45-46. Hamblin argued that the

State's position did not adequately show that sexual satanic abuse allegations were not a part of the case as context (*i.e.*, the State had not shown its theory had merit that this was a charge only of abuse and that ritual satanic sex abuse facts and allegations were irrelevant). *See* Dkt. no. 45. Hamblin supported his argument that satanic sex abuse were necessary context, pointing to background allegations of "threats, burying child caskets, and abuse in confined space by multiple adults, which may or may not include her own parents who have been previously named as satanists." *Id.* at 1-2. Hamblin also raised these arguments in his second special discovery request–*i.e.*, that the State's response admitted to Hamblin's framing of the case that included a background of satanic sexual abuse allegations. *See* Dkt. no. 46 at 1.

14. **May 8, 2023:** The parties agreed to file as private a declination-to-prosecute letter sent from the Utah County Attorney's Office to Hamblin's prior counsel back in 2002. *See* Dkt. no. 92. Hamblin argued that the prior investigation provided material context to this case, given those making the allegations detailed in the declination letter would be witnesses in this case. *Id.* Among other things specified in the letter, the prosecutor described in detail evidentiary weaknesses in the prior investigation that persuaded authorities not to prosecute. *Id.* Generally, these matters concerned credibility issues, a lack of objective physical evidence, reliability issues with recovered memories and treatment (hypnosis); these matters also included allegations of satanic ritual sex abuse that the State has resisted as irrelevant and immaterial to this case. *Id.* The letter also

informed Hamblin that the decision not to prosecute him had been reached as a consensus among all staff assigned to the [Utah County Attorney's] Office. *Id.*

15. **May 9, 2023:** The Court addressed Hamblin's two pending motions to compel discovery, before ruling to partially grant and partially deny the motions. The Court informed the parties that it could be persuaded to revisit its rulings on these matters as the case developed. *See* Dkt. no. 108 (Order Re: Discovery Hearing from May 9, 2023). The order directed the State to produce any relevant material evidence concerning potential witnesses. The order explained that some materials may not be produced if an applicable privilege applied. For example, the Court did not order the production of privileged work product privilege or materials related to an ongoing investigation(s). The order directed the State to create a privilege log to show which matters it claimed any privilege applied to that would prevent production. *Id.* Other materials, such as matters relating to grants of immunity from the 2002 investigation and/or the 2012 case were also ordered to be produced, although the State averred that no such records existed. *See id.* The order specified that discovery would have to be combed to comply with the order; this included discovery that was referred to by the AG/State in the expungement proceeding referred to in the above fact section. As a reminder, the Court had disqualified the Utah County Attorney's Office, and also denied Hamblin's expungement request due to claims of an ongoing investigation. To support the investigation claim (and the expungement denial),

an assistant attorney general for the State of Utah showed the Court a large three-ring binder containing the State's file in the new investigation.

16. **September 5, 2023:** In another status or waiver hearing, Hamblin asked for a continuance to review a "large amount of discovery" produced by the State. The Court granted the continuance. *See* Minute: Continuance (Sept. 5, 2023).

17. **September 27, 2023:** Hamblin filed a third motion for special discovery. *See* Dkt. no. 116.

18. **October 13, 2023:** Hamblin filed a fourth motion for special discovery. *See* Dkt. no. 118. This motion argued discovery showed that the alleged victim had met with and discussed the case with other potential witnesses, raising an issue of possible witness taint. *Id.* The motion sought documentation/content of any such discussions if available. *Id.* Hamblin also filed a motion to to compel discovery styled as Defendant's October 2023 Motion to Compel. *See* Dkt. no. 119. Hamblin alleged that a review of discovery showed that the State had engaged in a pattern of slow walking discovery production to obtain a strategic advantage at bindover without allowing Hamblin a fair opportunity to challenge evidence. *See* Dkt. no. 119. This included the following statement from investigators to the alleged victim:

> The Court's order for discovery involving EH and RH "came in sooner than expected . . . we were hoping to get through preliminary hearing before that happened . . . we were just hoping to hold off on that for a period of time strategically."

*See id.* at 5.

Additionally, the briefing detailed evidentiary problems, failures by the State to produce discovery previously which led to a dismissal, and discussed reliability issues for some allegations given their arising allegedly incident to contentious divorce and custody proceedings. *Id.*

19. **October 31, 2023:** At a status hearing, the State discussed the need for additional time to respond to Hamblin's outstanding discovery motions, and the need for a new prosecutor as will be detailed further below. *See* Minute: Status (Oct. 31, 2023).

20. **October/November 2023:** Just prior to taking leave of the case, the first conflict prosecutor requested the Court reconsider its global prosecutor disqualification ruling in oral and written requests which the Court ultimately declined. *See* Dkt. no. 173 (Ruling and Order re: State's Motion to Reconsider (referencing a global disqualification ruling the State asked for regarding prosecution in an expungement hearing concerning Hamblin for a separate matter that had allegedly overlapping facts with this case). The Court declined to revisit its decision, for among other reasons its view that the conflicts that caused the ruling had not been dissipated and also due to concerns of possible discovery violations given statements by State investigators that Hamblin flagged for the Court. *See id.* at 9-10. As mentioned, State investigators indicated a hope that the production of mandatory Utah R. Crim. P. 16 *Brady* exculpatory material would not occur until after the

preliminary hearing. *Id.*; *see also id.* at 18-19 (discussing how under governing law this incident concerned the Court).

21. **December 22, 2023:** As the Court had not received an opposition from the State to the Defendant's third and fourth motions to compel, the Court granted these motions. *See* Dkt. no. 152.

22. **December 28, 2023:** The State, via a deputy conflict attorney, who had been working with the first conflict attorney, filed an objection to the December 22 discovery order despite the first conflict prosecutor no longer overseeing the case. The objection asserted that the State had complied with previous discovery orders, and argued the State had not yet had a chance to adequately respond to Hamblin's discovery motions given the switch in prosecutors which had also rendered matters uncertain. *See* Dkt. no. 154.

23. **March 14, 2024:** The State filed an interlocutory petition to the Utah Supreme Court via a Special Assistant Solicitor General asking for leave to appeal the Court's disqualification decision and denial of a motion to reconsider. *See* Dkt. no. 182; *see also* Dkt. no. 186 (the Court of Appeals noting it had been assigned the case).

24. **May 9, 2024,** The Utah Court of Appeals summarily denied the request for permission to file an interlocutory appeal of the Court's disqualification order. See Dkt. no. 216.

25. **May 29, 2024:** Following the court of appeals' decision, this Court set a scheduling conference to discuss Hamblin's pending oral motion to dismiss and the Court's concern that there was no prosecutor of record. Notice was sent to the Utah Attorney General, the

Chief of the Utah Attorney General's Criminal Division, and the Assistant Attorney General who had previously appeared at the above referenced expungement hearing. Subsequent to this notice, and shortly before the hearing, the Utah Attorney General's Chief Criminal Deputy appointed Mr. Nathan Evershed (the second or final conflict prosecutor) to appear on behalf of the State as a Special Assistant Attorney General. *See* Dkt. no.'s 206-07.

26. **May 30, 2024:** At a status hearing (at what was previously set as a preliminary hearing date (*see* Dkt. no. 209 and surrounding entries)) following the second conflict prosecutor's appearance, the parties discussed next steps including scheduling a preliminary hearing. *See* Minute: Status (May 30, 2024). Hamblin objected, arguing a preliminary hearing was still premature as he had not yet received all available discovery; the Court again ordered the State to produce all outstanding discovery within thirty days. *Id.*

27. **July 8 or 9, 2024:** At a status hearing, the parties again discussed outstanding discovery issues. *See* Minute: Status (Jul. 9, 2024); Dkt. no. 234 (Order re: Status Hearing).

28. **July 12, 2024:** The State finally produced the "expungement hearing binder" that was discussed during the parties' July 9, 2024[1], hearing before the Court. *See* Dkt. no. 232.

29. **Aug. 19, 2024:** In response to the Court's discovery orders, the State produced additional discovery in its possession. *See* Dkt. no. 248.

[1]For clarity, the State's discovery response indicates the hearing was on July 8 but the Court's CORIS entry shows a date of July 9.

30. **September 4, 2024:** The State filed its "First Supplemental Response to Order on Discovery Issues." *See* Dkt. no. 253.

31. **September 17, 2024:** A preliminary hearing scheduled for this date was cancelled and a waiver hearing was set in its place for October 1. *See* Dkt. no. 262 (and surrounding entries). Upon review of the docket, it appears this was done as a result of Hamblin withdrawing a motion to change venue that would need to be argued and decided before a preliminary hearing.

32. **October 1, 2024:** The preliminary hearing set for this date was cancelled and replaced with a waiver hearing. During the hearing, the parties discussed with the Court ongoing discovery issues and the State's effort to comply with its discovery obligations. *See* Minute: Preliminary Hearing-Waive (Oct. 1, 2024); Dkt no. 264 (Order: Preliminary Hearing-Waive). For the fourth time, the Court set a preliminary hearing on May 13, 15, 16, 2025. *See* Webex Recording at 2:23:00.

33. **October 11, 2024:** The parties discussed the upcoming three day preliminary hearing, but again discussed discovery issues as creating problems/delays. *See* Dkt. no. 265.

34. **November 9, 2024:** The State asked the Court for a limitation on discovery production, and for further direction (including a hearing) as to how to comply with court discovery orders in light of the State's obligation to redact information that would jeopardize ongoing investigations pertaining to certain discovery that the Court had previously ordered be provided to Hamblin. *See* Dkt. no. 271.

35. **December 3, 2024:** At a hearing regarding the discovery issue raised by the State on November 9, the Court ordered discovery be produced consistent with the parties' stipulated agreement in Court; this was classified as "attorneys' eyes only protected." *See* Dkt. no. 275 (Stipulated Order Re: Discovery Limitation); *see also* dkt. no. 278 (Order: Status Hearing).

36. **December 9, 2024:** The State filed a second supplemental response to the Court's discovery orders, compliant with the Dec. 3 order. *See* Dkt. no. 280.

37. **January 13 & 16, 2025:** Hamblin filed a Motion to Lift a Discovery Protective Order, and the State filed a response. *See* Dkt. no's 309-10 (sealed entries).

38. **January 22, 2025:** At this status hearing, the parties discussed discovery issues in light of ongoing investigations and the need for a protective order to apply to the production of discovery order materials produced. *See* Minute: Status (Jan. 22, 2025). The Court then issued an oral order regarding discovery and directed the defense to submit a final order for signature. *See* Dkt. no. 282 (Order: Status).

39. **February 4, 2025:** The Court entered a sealed order in the docket regarding a discovery issue that arose pertaining to a motion filed by the defense. *See* Dkt. no's 309-10; 284.

40. **February 6, 2025:** The State filed a third supplement to the Court's discovery order. *See* Dkt. no. 286. This supplement produced for the first time a police report that was, as per the State's representation, conducted on the same day charges (or one day after as per Hamblin's papers) were filed in this case. *Id.* Investigators met with and interviewed the

alleged victim for a third interview (the previous interviews having been conducted in June 2022, where charges were filed based on these disclosures). *Id.* An audio recording was made of the third interview. *Id.* Investigators also met with and interviewed the alleged victim's parents and another potential witness (all of this information was included in the supplemental report). *Id.*

41. **February 14, 2025:** Hamblin moved for sanctions against the State for various discovery failures relating to the State's failure to timely produce the most recent discovery, including a request for an evidentiary hearing to probe the motives of the investigators for failing to timely disclose this material. *See* Dkt. no. 288. Among the issues raised by Hamblin was that a previously produced police report (October 13, 2022, disclosure) was labeled "version 2" in recent discovery production. This disclosure included two interviews, and was dated as September 26, 2022, (Utah County Sheriff's report). Also upon review of the recent August 2024, produced discovery, Hamblin discovered a recording of the alleged victim dated September 29, 2022, but this was not reflected in the police report produced to Hamblin. It was after consulting with the State about the apparent discrepancy that the unproduced police report referenced in the most recent discovery disclosure by the State was produced to Hamblin. That report is dated as being printed on May 22, 2023 (a report from Juab County). In substance, the report documents certain evidence, but also shows evidence favorable to the defense. This is so because it includes content that undermines the State's position that ritual satanic sex

abuse was not an issue in this case. This newly disclosed evidence is also exculpatory in light of Hamblin's expert report detailing the limitations and possible flaws of such evidence. *See* Dkt. no. 48 (particularly at p. 6, ¶ 14). The report references the alleged victim is or was "processing" issues or memories of alleged abuse in therapy; Hamblin should have been allowed to probe what such "processing" meant or entailed. *See* Dkt. no. 307 at pp. 6-7. A new issue for the Court was whether this new therapy was similar to the questionable therapy methods for the origin of allegations referenced in the 2002 Utah County Prosecutor's declination letter to Hamblin? These methods were described in the letter as having inherent reliability and credibility problems for any evidence sourced from these methods. *See* Fact ¶ 14 (citing Dkt. no. 92). In any event, the late disclosure makes this topic one that could potentially cause even more delay.

42. Another issue is that Hamblin's expert on p. 5,¶ 14, of her report stated: "The 2022 complaint by [the alleged victim] against David Hamblin is presented as a fresh complaint, separate from, and unrelated to the satanic ritual abuse case against him in 2012." Because of the State's discovery violations, we know this assumption of a lack of ritual satanic sexual abuse allegations was incorrect. *See* Dkt. no. 286 (referencing content of sealed police report). The report also contains summaries of interview transcripts. There is also no indication that these interview transcripts were ever produced or if they were, when the State produced them. In short, Hamblin credibly argued the report contained evidence that could be fairly classed as exculpatory material. As a matter

of course, the State was required to timely produce the same per the rules of criminal procedure and under both the United States Constitution and the Utah Constitution. *See* Utah R. Crim. P. 16; *State v. Williamson*, 2024 UT App 141, ¶ 44, 558 P.3d 143, 153 (citing, *inter alia*, due process protections enshrined under the Utah Const. art. I, §§ 7, 12, 13); *Tillman v. State*, 2005 UT 56, ¶ 27, 128 P.3d 1123 (discussing how under *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) suppression of material exculpatory or impeachment evidence favorable to the accused violates due process of law guaranteed under the federal constitution, "even if the evidence is known only to police investigators and not the prosecutor" and "regardless of whether the evidence has been requested by the accused" (additional citations omitted)).

43. **February 19, 2025:** The State filed its Motion to Dismiss referenced in the introduction of this order. *See* Dkt. no. 290. Also on this date, the Court held a status hearing where it discussed the evidentiary and discovery issues relating to the State's Motion to Dismiss and Hamblin's Motion for Sanctions. The second special prosecutor also informed the Court he had reached his conclusion that a dismissal was warranted for evidence concerns due to his assessment of the case as a neutral or independent prosecutor with significant experience. The second special prosecutor properly informed the Court that he takes seriously his ethical obligations under the rules and the law to only proceed with cases that have a reasonable likelihood of obtaining a conviction. The second special prosecutor also informed the Court that he had kept the victim updated with multiple

discussions about the status of the case, including a recent half hour discussion about the ongoing evidentiary and discovery issues in this case which eventually led to the motion to dismiss. The second special prosecutor also indicated he had met and counseled with the Utah Attorney General's Office regarding the appropriate course of the case in light of the evidentiary and discovery issues in this matter, including the filing the State's request to dismiss.

44. An attorney with the Utah Crime Victim's Legal Clinic office also appeared on behalf of the alleged victim. That attorney voiced her opposition to the State's Motion to Dismiss. In light of the repeated and ongoing discovery issues, and the evidentiary issues involving among others the alleged victim and other named witnesses by the defense (*see* Dkt. no's 309-10 (sealed filings)) and the argument of counsel for all parties, the Court granted the motion to dismiss forthwith but as discussed, told the parties it would issue a written order on the type of dismissal.

## DISCUSSION

### *I. Legal standard.*

Dismissals without trial are governed by Utah Rule of Criminal Procedure 25, which provides:

> (a) Dismissing an Information. In its discretion, for substantial cause and in furtherance of justice, the court may, either on its own initiative or upon application of either party, order an information or indictment dismissed.

(b) Mandatory Dismissal. The court shall dismiss the information or indictment when:

(1) There is unreasonable or unconstitutional delay in bringing defendant to trial;

(2) The allegations of the information or indictment, together with any bill of particulars furnished in support thereof, do not constitute the offense intended to be charged in the pleading so filed;

(3) It appears that there was a substantial and prejudicial defect in the impaneling or in the proceedings relating to the grand jury;

(4) The court is without jurisdiction; or

(5) The prosecution is barred by the statute of limitations.

(c) Record of Dismissal. The reasons for any such dismissal shall be set forth in an order and entered in the minutes.

(d) Effects of Dismissal. If the dismissal is based upon the grounds that there was unreasonable delay, or the court is without jurisdiction, or the offense was not properly alleged in the information or indictment, or there was a defect in the impaneling or of the proceedings relating to the grand jury, further prosecution for the offense shall not be barred and the court may make such orders with respect to the custody of the defendant pending the filing of new charges as the interest of justice may require. Otherwise the defendant shall be discharged and bail exonerated.

An order of dismissal based upon unconstitutional delay in bringing the defendant to trial or based upon the statute of limitations, shall be a bar to any other prosecution for the offense charged.

Utah R. Crim. P. 25

The Utah Court of Appeals cautions lower courts that a dismissal under rule 25 is a "serious responsibility" as criminal charges are made "in the interests of and for the protection of

the public." *See State v. White*, 2011 UT App 155, ¶ 12, 256 P.3d 255 (quoting *Salt Lake City v. Hanson*, 19 Utah 2d 32, 425 P.2d 773, 775 (1967)).

"Because the dismissal of a criminal case is such a serious matter, rule 25 expressly requires a dismissing court to state its reasons for dismissal on the record 'so that all may know what invokes the court's discretion and whether its action is justified.' " *Id.* (citing *Hanson*, 425 P.2d at 775). The *White* court reviewed a district court's decision to dismiss a case with prejudice, observing that the district court "clearly complied with the [rule's] requirement that it state its reasons for dismissal on the record." *Id.* at ¶ 13. The court had also "weighed all applicable factors and concluded that dismissal was warranted." *Id.* (cleaned up). Among these factors in *White* included the age of the case and the unlikelihood of either side getting a fair trial due to the staleness of the evidence. *Id.* at ¶ 16.

Also as pertaining to rule 25, our court of appeals considered the kinds and length of delays under the rule as grounds to dismiss charges. *See State v. Pacheco-Ortega*, 2011 UT App 186, ¶ 25, 257 P.3d 498 ("[T]he magistrate's discretion to allow delay in prosecuting a defendant is not limitless." (citation omitted)). *Pacheco-Ortega* noted the language in rule 25(b)(1) that requires a dismissal for an "unreasonable or unconstitutional" delay contains two standards. That is, a delay may be unreasonable, in which case a dismissal with prejudice is not permitted. Or, a delay may be an unconstitutional one, where refiling is not permitted and the dismissal should be with prejudice. *See id.* at rule 25(d).

*White* also considered but ultimately found that an eight month delay in timely moving a case forward to trial that lasted from approximately October 2008 to May 2009, while substantial, was not an unconstitutional one. *Id.* ("Nor do we conclude that it is plain from this record that the delay here rose to constitutional levels that would justify a dismissal with prejudice.").

Presumptively unreasonable and/or unconstitutional delays triggering judicial scrutiny generally occur as a case approaches a year; the Court is persuaded this trigger has been tripped as this case was delayed by the State's dilatory responses and not just due to Hamblin's discovery requests or venue motion. *See Doggett v. United States*, 505 U.S. 647, 652, n.1, 112 S. Ct. 2686, 2691, 120 L. Ed. 2d 520 (1992) ("Depending on the nature of the charges [in the federal system regarding Sixth Amendment rights to speedy trial] the lower courts have generally found postaccusation delay "presumptively prejudicial" at least as it approaches one year."); *State v. Hintze*, 2022 UT App 117, 520 P.3d 1 (citing *Doggett's* one year review standard for unreasonable delays triggering speedy trial review, and holding as applied, a two-year delay solely attributable to the State triggered review of speedy trial right).

This delay also occurred notwithstanding this Court's multiple, repeated discovery orders that attempted to move this case along for over the course of approximately 863 days (date of arrest through the date the State filed its Third Supplemental Discovery, s*ee* Dkt. no. 286.[2]). A

[2] While there may have also been some brief delay attributable to Hamblin's Motion to Change Venue, the lion's share of the general delay in this case can be fairly attributed to the State's dilatory efforts to comply with its legal duty to produce discovery. Indeed, the Court's docket shows that while the preliminary hearing scheduled for October 2, 2024, was stricken so that oral arguments on the Motion to Change Venue could be scheduled, the

review of the facts as laid out in this ruling document the course of discovery failures by the State. The first delay, to assess discovery, was requested by the defense, but thereafter there were repeated continuances, delays and discovery lapses fairly scored against the State. *Compare* Fact ¶ 4 (defense delay) *with* Fact ¶¶ 8, 16, 23, 27-29 (discovery delays attributable to the State).

Once a speedy trial review has been triggered to assess a delay, a court applies the *Barker* balancing test to determine whether the violation is a substantive one. *See Hintze*, 2022 UT App at ¶ 26 ("In *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), the court set forth the familiar four-factor framework by which we evaluate a Sixth Amendment speedy trial claim. Under this framework, we consider (1) the "[l]ength of delay," (2) "the reason for the delay," (3) "the defendant's assertion of his right," and (4) whether there was "prejudice to the defendant" resulting from the delay." (citing *Barker* at 530, 92 S.Ct. 2182)).

"None of the factors are necessary or sufficient; rather, the factors are related and should be considered together with other relevant circumstances." *Id.* (citation omitted).

***II. The motion to dismiss should be granted with prejudice for substantial cause and in furtherance of justice due not just to evidentiary problems, but also for significant unreasonable and unconstitutional delays and discovery abuses that materially and substantially prejudiced Hamblin's defense.***

The Court is persuaded that a dismissal with prejudice is warranted due to both a lack of evidentiary strength and discovery issues as outlined in the State's motion and oral representations. *See* Dkt. 290 (State's Motion to Dismiss identifying both emergent "evidentiary

preliminary hearing would have most likely been continued regardless due to the State's recent production of discovery with yet more discovery disclosures anticipated following along behind. *See* Dkt. August 20, 2024.

concerns" and "discovery problems" as grounds for the State's dismissal request). The Court accepts the State's position that its motion is "primarily based" upon its view of the likelihood of obtaining a conviction on the strength of the available evidence. *Id.* The State's final prosecutor, at the dismissal hearing, told the Court he had arrived at the conclusion that the case should be dismissed as a "neutral" experienced prosecutor looking at the case with fresh eyes. He also said that he had reached his decision in consultation with the Attorney General and the alleged victim.

However, the State's discovery abuses or production problems also loom large for the Court in determining whether the case should be dismissed with prejudice. Over an approximate two years and four months timeframe, the State repeatedly failed to comply with its affirmative, mandatory discovery disclosure obligations. Those obligations are owed as due process of law rights guaranteed under the Utah and United States Constitutions. This obligation is also described and required by Utah Rule of Criminal Procedure 16 and the United States' Supreme Court's holding in *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Under these authorities, the State must timely produce material exculpatory evidence to Hamblin. As will be further discussed, the State's delay in producing such evidence undeniably prejudiced Hamblin.

Also, in the course of this two-year plus discovery disclosure saga, delay alone was not the State's only misstep. As recounted in the facts, above, the State's own investigators expressed a hope to withhold material exculpatory evidence or to slow-walk its production to Habmlin's attorneys before a preliminary hearing. Indisputably, this shows the State knew it had a duty to

produce exculpatory evidence, but was hoping to prolong its disclosure and use delays for a strategic or tactical advantage.

Unquestionably this factor does not favor the State's dismissal without prejudice argument. *See State v. Sosa-Hurtado*, 2018 UT App 35, ¶ 46, 424 P.3d 948, 959, *aff'd,* 2019 UT 65, ¶ 46, 455 P.3d 63 ("It is well-established that prosecutors must disclose to defendants all exculpatory evidence in their possession, *see Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), and that this duty includes an obligation to disclose any plea bargains that the State may have reached with witnesses, *see Giglio v. United States*, 405 U.S. 150, 154–55, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972).")); *see also Carter v. State*, 2019 UT 12, ¶ 48, 439 P.3d 616 (citing *Kyles v. Whitley*, 514 U.S. 419, 437-38, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995) (stating that "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police")); *Kyles*, at 437-38 ("[T]he prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is *inescapable*." (emphasis added)).

The plain application of the express language of Rule 25(b)(1) of the Utah Rules of Criminal Procedure also requires a dismissal with prejudice for unreasonable and unconstitutional delay as recounted in the legal standard section, above.[3] The Court is persuaded

[3] *See supra* at pp. 19-21 (discussing delay). That there were unquestionably rule 25(b)(1) unconstitutional and unreasonable delays is evident when the Court applies the appropriate *Barker* speedy trial delay review that is triggered as per *Doggett* by presumptive prejudice that attaches when a case reaches a year old. This case is about two-and-a-half years' old. A *Baker* review is thus clearly triggered by the approximately twenty-nine months delay since this matter was filed. Each *Barker* factor necessary to show a substantial violation of constitutional right to a speedy trial tilts in Hamblin's favor. Again, as discussed above, the relevant test has four elements: (1) length of delay, (2) reason for delay, (3) defendant's assertion of the speedy trial right, and (4) prejudice to the defendant for

that the facts and evidence in the record establish such delays, thus requiring a dismissal with prejudice.

Key *indicia* of unreasonable and prejudicial delays is the State's latest disclosure of exculpatory evidence that shortly preceded the State's dismissal request (the late produced police report documenting the police interviewing the alleged victim on the day or day after this case was filed). This is the report the State finally produced to Hamblin on February 6, 2025. *See* Dkt. no. 286. Prior to production, the State's investigators and thus the State's prosecutor knew this piece of evidence existed. It is materially exculpatory given the State moved to dismiss for evidentiary reasons just after its production. Yet inexplicably, this evidence was not produced for approximately twenty-eight months. *See Smith v. Sec'y of New Mexico Dep't of Corr.*, 50 F.3d 801, 825 & n.36 (10th Cir. 1995) ("Clearly, if the prosecution had actual knowledge that several arms of the State were involved in the investigation of a particular case, then the knowledge of those arms is imputed to the prosecution."); *id.* (citing *Williams v. Whitley*, 940 F.2d 132, 133 (5th Cir.1991) ( "[T]he prosecution is deemed to have knowledge of information readily available to it"); *United States v. Beers*, 189 F.3d 1297, 1304 (10th Cir. 1999) ("Information possessed by other branches of the federal government, including investigating officers, is typically imputed to the prosecutors of the case.").

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the delay. *See State v. Hintze*, 2022 UT App 117, ¶ 26, 520 P.3d 1 (citing *Barker v. Wingo*, 407 U.S. 514). Here, the record plainly establishes (1) there has been a substantial delay of twenty-nine months, (2) the reasons are almost exclusively due to failures by the State to timely and adequately produce mandatory discovery, (3) Hamblin has timely and continually asserted speedy trial/constitutional claims in various filings (*see, e.g.*, dkt. no. 20, 27, 41, 116, 118 (a nonexhaustive list)), and (4) Hamblin suffered substantial prejudice (the State moved for dismissal shortly after this information was produced).

That the police report evidence is materially exculpatory means its nondisclosure violated *Brady*. Moreover, It is a *Brady* violation even absent a prosecutor not knowing about it directly (it was known to police) or the prosecution's good faith attempts to meet its *Brady* obligations; its nondisclosure is still a *Brady* violation even where Hamblin did not specifically request it (and for good reason, because at least initially Hamblin did not have reason to know it existed). *See Tillman v. State*, 2005 UT 56, ¶ 28, 128 P.3d 1123 (explaining the United States Supreme Court's test for recognizing a successful *Brady* claim as requiring a defendant to show that "(1) the evidence at issue is 'favorable to the accused, either because it is exculpatory, or because it is impeaching'; (2) the evidence was 'suppressed by the State, either willfully or inadvertently'; and (3) prejudice ensued" (citation omitted)).

The Court noted above that the failure to disclose this *Brady* material unquestionably prejudiced Hamblin. That it did so should be facially obvious. This material was created on or about the very day of filing. It was not produced for more than two years. Had this material been produced timely by the State, there is a significant likelihood that the case might have been dismissed early on. Instead, the case languished through years of discovery problems and discovery production litigation only for Hamblin to eventually discover the *Brady* material and demand that the State produce it. Shortly thereafter the State moved to dismiss for what it identified as primarily a concern over the strength of the evidence, but also citing discovery problems..

That the case likely would have been dismissed early on is also shown because, had the State produced this exculpatory evidence at the outset, the police report evidence would have also bolstered the strength of Hamblin's expert's opinion. Hamblin's expert had opined that the ritual satanic sex abuse context of this case is a key weakness. But that opinion lacked the strength it might have had if it had a solid hook to show how such abuse was more than a background issue. The exculpatory evidence corroborated that a ritual satanic sex abuse allegation was in fact directly relevant to this case. The expert's opinion thus became more material, relevant, and applicable with a report that should have been available early on but was not. *See* Dkt. no. 48 at p. 5, ¶ 14.

These arguments–a party's inability to early or timely make adequate use of *Brady* evidence show they were prejudiced unfairly–are similar to the conclusions of prejudice to a defendant by *Brady* violations drawn by our Supreme Court in *Carter v. State*, 2019 UT 12, 439 P.3d 616. *Carter* held that a defendant had colorable *Brady* claims and prejudice sufficient to defeat summary judgment and required a remand for an evidentiary inquiry into those issues. *Id.* These claims included evidence of witness coaching, financial benefits conferred upon those material witnesses by the State, and threats to those witnesses if they did not lie on the stand about the scope of benefits received from the State. *Id.* ¶¶ 48-106.

Hamblin should have been allowed to timely raise a defense at an early stage that would have aided a motion to dismiss. That he was not was *Brady* prejudice for a clear *Brady* violation.

This prejudice includes potentially lost additional exculpatory evidence[4], his pretrial detainment, an unnecessary need for Hamblin to expend significant resources to obtain discovery the State had an affirmative obligation to produce (under both our state and federal constitutions), and delays in scheduling a preliminary hearing because of the discovery violations. This is a nonexhaustive list of prejudice.

As is evident from review of the factual record recounted in this ruling, Hamblin has taken significant steps to timely move the case forward as is evident from his four motions to compel discovery, and the lengthy litigation about discovery production.

The Court finds a dismissal with prejudice is warranted after considering all these above matters. The record shows Hamblin's defense was prejudiced. Having the exculpatory police report evidence would have allowed not just Hamblin, but also the prosecutor to timely assess the strength of the case. It would have allowed Hamblin to mount a more timely and robust defense, and/or likely timely move to dismiss. But this early dismissal evidence strength issue is coupled with undisputed unconstitutional and unreasonable discovery production delays. There

[4] Despite the diligent efforts of the final special prosecutor, the Court has no guarantee the State has even now disclosed all required discovery. This is so for among other reasons such as the State has repeatedly and continually argued it may indefinitely withhold relevant discovery material because disclosure could prejudice ongoing investigations. In addition, as best as the Court can tell, the State never took any steps to reassign the investigators working on this case who had expressed a hope to slow-walk production of exculpatory evidence. And yet, at this late date, the Court is expected to accept their representations and those of their attorney (an attorney that this Court has previously disqualified for a conflict, at his office's request) that discovery is complete and satisfactory and any withholding of discovery is justified. Given the history, it is difficult to accept these representations at face value. *See* Dkt. no. 272, at p. 2; *see also e.g.*, Jon B. Gould et. al., *Mapping the Path of Brady Violations: Typologies, Causes & Consequences in Erroneous Conviction*, 71 Syracuse L. Rev. 1061, 1088 (2021) (recounting how courts lost trust in investigators in two high profile, high pressure cases; in the first case investigators had been reprimanded for too much disclosure by superiors and in a second case a discovery response had been narrowly tailored by prosecutors to conceal exculpatory statements with the result that "[i]n both cases, judges later reprimanded justice officials for withholding material exculpatory evidence").

are also the problematic statements from State investigators, possible witness taint issues.[5] As discussed in footnote 4, the Court cannot even be certain that all of the required disclosures have been made as of the date of this order.

Speaking to the general evidentiary problems, these are evident given the age of the allegations. Neither the Court, the defense, nor the State can be certain that some exculpatory evidence may not have been lost given the passage of time from when the exculpatory *Brady* evidence should have been produced until it was discovered. This is significant because it is axiomatic that a primary purpose of our criminal discovery rules is to allow for the timely exploration and development of relevant material evidence. *See State v. Hintze*, 2022 UT App 117, ¶ 45 520 P.3d 1 (recognizing the types of harm a defendant can suffer for prosecutorial delays, including "oppressive pretrial incarceration" "anxiety" "dimming memories and loss of exculpatory evidence" but also including prejudice a defendant jailed on other charges may suffer due to what the charges and incarceration may mean as enhancements for time served, and so forth).

Further addressing the strength of the evidence, the allegations indisputably as per the record show that they rely upon recovered memories that are of some age. *See* Information; *see also* Dkt. no's 307, 284 (sealed docket item). As per *State v. White*, 2011 UT App 155, ¶ 16, this age issue is key to assessing dismissals with prejudice for whether a fair trial can be had in the

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[5]The alleged victim and other witnesses have been communicating regarding the case for some time, without notifying the defense until 2025. This raised witness taint issues the Court noted when this was brought to its attention. *See* Fact ¶ 18; Dkt. no. 118 and Dkt. no. 309 at 2, ¶ 7.

future. The allegations and supporting evidence have general reliability, credibility, and plausibility issues given their emergence is or may be sourced in recovered memories or "processed" (whatever this means) in therapy sessions.

Hamblin had the right to timely raise, develop, investigate, and air these issues. *See* Jon B. Gould et. al., *Mapping the Path of Brady Violations: Typologies, Causes & Consequences in Erroneous Conviction Cases*, 71 Syracuse L. Rev. 1061, 1090 (2021) ("We found that defendants do not typically learn of undisclosed evidence until post-conviction, and then often from extra-judicial sources."); *Carter v. State*, 2019 UT 12, ¶ 102, 439 P.3d 616 (citing *Tillman v. State*, 2005 UT 56, 128 P.3d 1123 (explaining that both the *Carter* defendant and the *Tillman* defendant should have been able to explore issues raised by *Brady* material before or at trial and sentencing).

A dismissal with prejudice begins to appear inevitable as these sorts of prejudicial problems accumulate as a backdrop to the State's Motion to Dismiss. That said, the Court appreciates that the final special prosecutor exercised his judgment to file for a dismissal after coming to this case in the wake of several prosecutors and investigators. The final special prosecutor had to pick up the case and help, as he put it "uncork discovery" productions, given disputes.[6] Despite all this, the special prosecutor assessed the evidence independently as was required by his ethical duties, and felt it was just to dismiss after consulting with the Utah

[6] That the final special prosecutor was able to move the case forward as a solo prosecutor shows that the State's prior expressed concern that adequate resources explained why it was having difficulty securing a prosecutor for this matter was unfounded. *See* Dkt. no. 173 (and related matters recounted therein).

Attorney General's office, and informing the alleged victim of outstanding issues. However, this does not alleviate the prejudice the State has caused Hamblin by prosecuting the case in the manner that it has.

The age of the case (and the underlying allegations) weigh in favor of a dismissal with prejudice for substantial cause and in furtherance of justice. This case is rife with problems with evidence and discovery issues. These same sorts of problems also plagued a separate yet contextual case also involving Hamblin in 2002. Then, the unanimously staffed Utah Country Attorney's Office decided to decline to prosecute Hamblin for similar allegations based upon similar evidentiary issues and of course the 2012 case that was dismissed for discovery issues.[7] Here, the likelihood of both sides obtaining a fair trial given the undisputed pretrial discovery delays and related evidentiary problems, also like in *White*, is also implicated by the way the case has been prosecuted and handled, as described in the body of this ruling.

Hamblin has withdrawn his motion for sanctions against investigators/the State raising the police report issues in light of the dismissal motion as it renders his motion moot. But the Court notes all these factors are concerning and played a role in the Court's decisionmaking process regarding whether to dismiss the case with prejudice. The Court is aware that case law indicates a dismissal with prejudice for prosecutorial misconduct is only "rarely appropriate" as a sanction, and that usually instead "in appropriate circumstances, sanctions may be imposed on

[7] For whatever reason, it appears both the instant case, the earlier 2002 investigation, and the 2012 case share similar evidentiary flaws. *E.g.*, reliability issues given method and context in which the allegations arose, probability and plausibility problems for their facial content/credibility issues, general quality problems (lack of objective empirical evidence) and of course discovery issues.

the individual prosecutor." *State v. Pacheco-Ortega*, 2011 UT App 186, ¶ 27, 257 P.3d 498 (citation omitted). But it should be obvious by now that this case is not a usual one. Granted, every case is unique in its own way. But this case is unusual for the quantity and quality of prosecutorial missteps that amount to more than a lack of preparedness by the prosecutor or garden-variety delays or mishandling a case for the reasons that have been discussed herein and are readily apparent upon review of the record. In short, this is that "rare" case where dismissal with prejudice is warranted.

As referred to in the Court's prior conflict order, one of the primary purposes of the preliminary hearing is for the magistrate to ferret out "groundless and improvident prosecutions." *See State v. Virgin*, 2006 UT 29, ¶ 19, 137 P.3d 787, 792, *holding modified by State v. Levin*, 2006 UT 50, ¶¶ 19-20, 144 P.3d 1096. Denying the defense, and the Court, an ability to meaningfully perform their mandatory duties under the law are serious and grave threats to our judicial process. Any effort to slow-walk exculpatory material for a strategic advantage, negatively impacts a defendant's preliminary hearing rights, their constitutional rights, and raises the specter of partiality. *See* Dkt. no. 173.

Finally, the Court notes that ruling to dismiss this case with prejudice does not dispose of the case on any "technicality." The United States Constitution and the Utah Constitution guarantee an accused a substantive right to due process of law. This means an accused has a right to a meaningful defense. This includes an accused's right to be timely advised of the nature of the charges against them, and to be free of abuses by prosecutors that prejudice their ability to

obtain a fair trial. *See State v. Williamson*, 2024 UT App 141, ¶ 44, 558 P.3d 143, 153 (citing, *inter alia*, due process protections enshrined under the Utah Const. art. I, §§ 7, 12, 13); *State v. Herrera*, 1999 UT 64, ¶¶ 21, 25, 993 P.2d 854 (citing similar due process protections in the U.S. Const. amend. XIV, § 1 as providing that no state shall "deprive any person of life, liberty, or property, without due process of law" or "deny to any person within its jurisdiction the equal protection of the laws."); *see also State v. Briggs*, 2008 UT 83, ¶ 24, 199 P.3d 935 (quoting Utah Const. art. I, § 7 that "[n]o person shall be deprived of life, liberty or property, without due process of law"; also quoting U.S. Const. amend. V "[n]o person shall be ... deprived of life, liberty, or property, without due process of law").

The Court emphasizes its decision to dismiss this case with prejudice is not made lightly. The Court considered the rights of the alleged victim and the impact of this decision. But, as recounted before, the State informed the Court that before it filed its dismissal motion, it had multiple discussions with the alleged victim prior to the Motion to Dismiss was filed. This included informing the alleged victim of the discovery issues and the State's assessment of the strength of the evidence. As such, the State's Motion to Dismiss should not have come as a surprise.

As recounted in the legal standard portion of this ruling, district courts are to tread carefully with dismissals since "[b]ecause of the nature of criminal proceedings, and because they are in the interests of and for the protection of the public, there is a sound basis in public policy for requiring the judge who assumes the serious responsibility of dismissing a case to set

forth his reasons for doing so in order that all may know what invokes the court's discretion and whether its action is justified." *See Salt Lake City v. Hanson*, 19 Utah 2d 32, 35, 425 P.2d 773, 775 (1967). The Court has endeavored to follow this counsel in this ruling and order. Similar statements were also quoted above from our Court of Appeals in *State v. White*, 2011 UT App 155, ¶ 12, 256 P.3d 255 that discussed the gravity of adequately handling criminal dismissals since these implicate the duty of the Court, the prosecutor, and the justice system to protect the public from serious harm.

Allegations like the ones raised in this case require careful scrutiny. Sexual abuse is abhorent and elicits a sense of deep horror and revulsion. However, it is our respect for fundamental rights protected by our constitutions that requires that a criminally accused defendant be given a fair trial. For the reasons given above, as well as the facts evident in the record, the Court concludes it must dismiss this case with prejudice because a fair trial and process cannot be had.

## ORDER

For the above reasons, including not least the respect due for the rights of an accused protected by both the Utah Constitution and the United States Constitution, the Court is required to DISMISS this case WITH PREJUDICE for good cause and in furtherance of justice. So

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ordered.

DATED this the 20 day of March, 2025.

BY THE COURT:

ROGER W. GRIFFIN
District Court Judge