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IN THE FOURTH JUDICIAL DISTRICT COURT

IN AND FOR UTAH COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

vs.

PAUL D. PRATT,

Defendant.

ORDER GRANTING DEFENDANT'S
MOTION FOR SANCTIONS, INCLUDING
DISMISSAL, FOR THE STATE'S
CONTINUING FAILURE TO COMPLY
WITH COURT'S ORDERS GRANTING
DEFENDANT'S MOTION FOR BILL OF
PARTICULARS

Case No. 121402331
Judge Darold McDade

Defendant's Motion for Sanctions, including Dismissal, for the State's Continuing Failure to Comply with the Court's Orders Granting Defendant's Motion for Bill of Particulars ("Motion for Sanctions") came before the Court for argument and decision on August 6, 2013. At the hearing, Defendant was represented by Rodney G. Snow and Aaron D. Lebenta, of Clyde Snow & Sessions, P.C., and the State was represented by Curtis Larsen. Based upon the parties' written submissions, arguments of counsel on August 6, 2013, the record of the Court, and other

good cause appearing, the Court enters the following Findings of Fact and Conclusions of Law and ORDER:

FINDINGS OF FACT

1. The State filed a Criminal Information on August 24, 2012, alleging various securities charges against Defendant, along with a money laundering count.
2. On December 13, 2012, after receiving the State's response to Defendant's Request for Discovery, Defendant filed a Motion for Bill of Particulars requesting additional information, specified therein, necessary to provide Defendant with notice as to the nature, cause and bases of the offenses charged, and which was necessary to allow the Defendant to prepare a defense and satisfy constitutional requirements.
3. The certificate of service on the Motion for Bill of Particulars establishes that Defendant served a copy on Curtis Larson and Sherry Regan with the Utah County Attorney's Office on December 13, 2012.
4. The State did not respond to any of the arguments contained in Defendant's Motion for Bill of Particulars.
5. On February 20, 2013, Defendant filed a Request to Submit for Decision on Defendant's Motion for Bill of Particulars.
6. On March 8, 2013, Defendant filed a proposed Order Granting Motion for Bill of Particulars.

7. It is undisputed that Defendant filed the proposed Order, along with a letter dated March 8, 2013 to the Court, after the Court's clerk contacted Defendant's counsel on March 6, 2013 and indicated that the Court had requested that Defendant file a proposed Order granting his Motion for Bill of Particulars.
8. Defendant served Mr. Larson and Ms. Regan with a copy of the March 8, 2013 letter and proposed Order.
9. The State did not object or otherwise respond to the proposed Order.
10. The Court entered the Order Granting Motion for Bill of Particulars (the "March Order") on March 14, 2013. The March Order provided, in pertinent part:

The State shall provide a Bill of Particulars, in the form, and providing the information, requested by Defendant in his Motion for Bill of Particulars within 10 days from the date of entry of this Order.

(March Order, pp.1-2.)

11. The State did not provide a response to the Bill of Particulars within ten days of March 14, 2013, as ordered by the Court.
12. During the August 6, 2013 hearing, Mr. Larson, appearing as counsel for the State, acknowledged that the State did not comply with this Court's March Order.
13. During a June 3, 2013 hearing, counsel for Defendant raised the issue of the State's non-compliance with the Court's March Order to provide a Bill

of Particulars. Mr. Larsen, appearing for the State, represented that he had recently been reassigned as lead counsel and requested additional time to respond to the Court's March Order to provide a Bill of Particulars.

14. Following a colloquy with Mr. Larson, the Court set a new hearing for July 8, 2013, and ordered the State "to have the bill of particulars complied with by the next hearing." ("June Order").

15. On June 10, 2013, the State filed a Response to Defendant's Request for Bill of Particulars.

16. On June 27, 2013, counsel for Defendant sent a letter to Mr. Larsen detailing Defendant's concerns with the State's Response and requesting "the State comply with the Court's Order and provide the information sought in the attached Motion for Bill of Particulars." In the June 27, 2013 letter, Defendant's counsel requested the State confirm its intent to provide the requested information by July 1, 2013, and offered to work with the State to develop a mutually acceptable time frame for the State to provide the information. Defendant's counsel

also indicated that Defendant would seek sanctions, including dismissal, "absent compliance with the Court's Order."

17. The State did not respond to the June 27, 2013 letter. Instead, on July 1, 2013, the State filed a "Motion for Defendant to Provide Discovery" and a "Motion for Setting of Preliminary Hearing."

18. On July 2, 2013, Defendant filed his Motion for Sanctions. In the Motion for Sanctions, Defendant argued that the State's Response did not "provide a Bill of Particulars, in the form, and providing the information, requested by Defendant in his Motion for Bill of Particulars," as ordered by the Court in the March and June Orders.
19. The Court agrees with Defendant. The State's Response consists of seven pages. The State used the majority of the Response (six out of the seven total pages) to present argument as to why Defendant's Motion for Bill of Particulars should not have been granted. A few documents were also submitted, which had already been provided in discovery, but which were not responsive to the Bill of Particulars. (*See State's Response*, pp. 1-6.)
20. The additional information provided by the State in "Specific Response" to the Bill of Particulars and "the Court's order that it be provided" was limited to (a) a repetition of the probable cause statement from the Criminal Information; and (b) an excerpt from the police report prepared by the investigating officer. (*See State's Response*, pp. 6-7.)
21. Neither the probable cause statement nor the excerpt from the police report provides the information the State was ordered to provide in a Bill of Particulars.
22. The State did not provide any further information in response to the Bill

of Particulars.

23. The Court finds, therefore, that the State has not complied with two separate Orders of this Court to provide a Bill of Particulars “in the form, and providing the information, requested by Defendant in his Motion for Bill of Particulars.” The State’s period of non-compliance continued from March 29, 2013 through the August 6, 2013 hearing when the Court granted Defendant’s Motion for Sanctions.

CONCLUSIONS OF LAW

1. Rule 25(a) of the Utah Rules of Criminal Procedure provides, “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.” Utah R. Crim. P. 25(a).
2. The Utah Code further gives “every court” the authority to “compel obedience to its judgments, orders and process” and the power to “control . . . the conduct” of all persons before it. *See* Utah Code Ann. § 78A-2-201(4) and (5).
3. Rule 25(c) of the Utah Rules of Criminal Procedure states that “[t]he reasons for any such dismissal shall be set forth in an order and entered in the minutes.”
4. The Court concludes that dismissal without prejudice of this case, and the State’s Criminal Information, is warranted by the State’s noncompliance

with this Court's Orders and is supported by both substantial cause and is in the furtherance of justice.

5. This Court has a significant interest in ensuring that its Orders are complied with, particularly where, as here, the Orders are to provide information necessary to protect a criminal defendant's right to notice and due process. *See, e.g., State v. Lafferty*, 749 P.2d 1239, 1261 (Utah 1988) (observing that a bill of particulars protects a criminal defendant's "due process right to notice"). As indicated in greater detail above, the State has disregarded two separate Orders of this Court to provide a Bill of Particulars containing the requisite information, and this period of non-compliance has continued for over four months. This is unacceptable and has unreasonably and unnecessarily delayed this proceeding, to the prejudice of Defendant.
6. The State argues that dismissal as a sanction would be inappropriate under the Utah Court of Appeals' decision in *Salt Lake City v. Dorman-Ligh*, 912 P.2d 452, 456 (Utah Ct. App. 1996). The Court disagrees. The *Dorman-Ligh* case is distinguishable from the case at bar. In *Dorman-Ligh*, the trial court dismissed the information *with prejudice* because the Salt Lake City prosecutor failed to comply with the court's oral direction for a specific prosecutor "to be in attendance at and prepared for, and to represent the Plaintiff at, the May 19, 1994 hearing in this matter." *Id.* at 454. The Court of Appeals overturned the dismissal because it could not find "an

enforceable order on the record.” *Id.* at 455.

7. Conversely, in the present case, the March and June Orders are clearly orders of the Court that left no room for doubt as to the conduct required of the State. Furthermore, while the *Dorman-Ligh* court observed it is “rarely appropriate” to dismiss a case as a sanction against the prosecutor, there the Court was referring to a dismissal *with prejudice*. Unlike *Dorman-Ligh*, the dismissal here is *without prejudice*. A dismissal without prejudice serves the interests of justice as it provides the necessary sanction for the State’s non-compliance with this Court’s Orders and protects Defendant’s constitutional rights, while also minimizing any possible prejudice to interests of both the State and Defendant. Based on the facts of this case, the Court believes that a dismissal without prejudice is consistent with the principles in *Dorman-Ligh*, as it is supported by substantial cause and is in the interests of justice. *See id.* at 456.

8. In addition, the Court observes that during the August 6, 2013 hearing, the State was unable to identify any alternative sanctions that would be appropriate for its non-compliance with this Court’s Orders to provide a Bill of Particulars.

ORDER

For the foregoing reasons, and good cause appearing, the Court GRANTS Defendant's Motion for Sanctions, and orders this action, and the Criminal Information, DISMISSED WITHOUT PREJUDICE:

IT IS SO ORDERED

DATED this _____ day of _____ 2014.

BY THE COURT:

HONORABLE DAROLD MCDADE
FOURTH DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a true and correct copy of the foregoing ORDER GRANTING DEFENDANT'S MOTION FOR SANCTIONS, INCLUDING DISMISSAL, FOR THE STATE'S CONTINUING FAILURE TO COMPLY WITH COURT'S ORDERS GRANTING DEFENDANT'S MOTION FOR BILL OF PARTICULARS, by email and through the Court's Greenfiling System, on this 13th day of December 2013:

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/s/ Aaron D. Lebenta
