

TROY RAWLINGS, Bar No. 6969  
Davis County Attorney  
Special Assistant Utah Attorney General  
[troy@daviscountyutah.gov](mailto:troy@daviscountyutah.gov)  
P.O. Box 618  
Farmington, UT 84025  
Ph/ 801-451-4300  
Fx/ 801-451-4348

---

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT  
IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

---

THE STATE OF UTAH

Plaintiff,

vs.

**MARK LEONARD SHURTLEFF**

Defendant.

**STATE OF UTAH'S REQUEST FOR  
AN EVIDENTIARY HEARING ON  
DEFENDANT'S MOTION TO DISMISS  
FOR BRADY/GIGLIO AND SPEEDY  
TRIAL VIOLATIONS**

Case No. 141907720

Judge: Elizabeth A. Hruby-Mills

---

The State of Utah, by and through Special Assistant Attorney General Troy Rawlings and pursuant to Utah Rules of Criminal Procedure Rules 12 and 25, hereby requests a telephonic scheduling conference in approximately two weeks to set an evidentiary hearing with respect to defendant Mark L. Shurtleff's June 24, 2016 Motion to Dismiss for Brady/Giglio and Speedy Trial

Violations. Special Assistant Utah Attorney General's David Cole and Troy Rawlings must consult with the Utah Attorney General's Office concerning funding the necessary evidentiary hearing prior to scheduling it. Many witnesses will be subpoenaed and called, as well as documents and exhibits copied and produced.

The defendant is asserting numerous and varied factual assertions in support of his motion to dismiss. Those factual allegations must be vetted before this court can render any determinations with respect to possible legal consequences. The facts (from evidence derived at an evidentiary hearing) must be presented before this court to enable the State of Utah to make decisions with respect to an appropriate response to the defendant's motion. Facts, derived from an evidentiary hearing, will inform the State of Utah response and drive this court's legal decisions one way or the other.

Utah Rules of Criminal Procedure Rule 12 outlines that this honorable court must make findings on the record that would justify the dismissal determination sought by the defendant. The State of Utah is asking that this court invoke and follow procedures outlined in Rule 12 to facilitate making the findings of fact that either justify dismissal, or lead to a denial of the relief requested:

"If an evidentiary hearing is requested, no written response to the motion by the non-moving party is required, unless the court orders otherwise. At the conclusion of the evidentiary hearing, the court may provide a reasonable time for all parties to respond to the issues of fact and law raised in the motion and at the hearing.

(e) A motion made before trial shall be determined before trial unless the court for good cause orders that the ruling be deferred for later determination. Where factual issues are involved in determining a motion, the court shall state its findings on the record.”

Utah Rule of Criminal Procedure Rule 25 overtly gives this court further guidance and again supports the State of Utah’s request for an evidentiary hearing:

“Rule 25. Dismissal without trial.

(a) 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.

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

In order to determine the “substantial cause” and “furtherance of justice” prongs of Rule 25, as well as setting forth the reasons for any order made, this court must have accurate facts. Those facts must be ascertained with an evidentiary hearing. Two quick randomly selected examples in the defendant’s motion (that the State needs time to fully review), illustrate why an evidentiary hearing is critical. As articulated by defendant Shurtleff’s motion:

**Example 1:**

“The State has violated Mr. Shurtleff’s right to a speedy trial. The State filed this case approximately two years ago, and trial will not occur until at least October 2016, if not later. Over these two years, the State

has been the primary source of delay. The State's dilatory conduct included filing charges with no basis in law or fact, taking a year to amend the information, and devoting another year to attempting to resolve its *Brady* obligations."

Let's find out. This court should allow the taking of testimony and admission of documents/exhibits to determine if the State of Utah has (a) been the primary source of the delay; (b) had no basis in fact or law for criminal charges; (c) what was going on and why between the State of Utah and the defendant related to the timing and filing of the amended information, including what the State of Utah did not yet file and why; and (d) has the State been dilatory while aggressively pursuing discovery in an effort to meet Brady/Giglio obligations, particularly when the defendant has joined with and supported the State of Utah's efforts.

**Example 2:**

**"V. The Task Force's Refusal to Provide Information Relating to a Conflict of Interest**

35. In April 2013, USAO-Utah was recused in connection with the investigation or prosecution of Mr. Shurtleff based on an undisclosed conflict of interest.

36. Despite repeated requests for information and documentation, Mr. Shurtleff has been unable to confirm the basis or source of recusal. Under the United States Attorneys' Manual ("U.S.A.M."), USAO-Utah's recusal likely originated in Washington, D.C. Mr. Shurtleff believes the recusal may relate to (a) the relationship between Mr. Johnson, Mr. Swallow, and/or former AUSA Brent Ward, (b) Mr. Shurtleff's November 2012 disclosures to USAO-Utah and FBI-Utah of information relating to

what he believed was an effort to bribe a sitting United States Senator, or (c) Mr. Shurtleff's service as a confidential informant ("CI") for FBI-Utah and USA-Utah in a 2007 and 2008 investigation into several individuals' improper attempts to influence a pending prosecution of Mr. Jenson through threats and bribery.<sup>33</sup>

37. During at least one interview associated with this case, in January 26, 2014, FBI-Utah assured a witness that she should not be concerned that the USAO-Utah would become privy to her disclosures, that FBI-Utah was working with state prosecutors, and that USAO-Utah was barred from participating in the investigation or receiving any information in the case.<sup>34</sup>

38. Mr. Shurtleff's counsel has received credible information from both the State and the United States that USAO-Utah's recusal and conflict of interest extended to FBI-Utah.<sup>35</sup> Because the Task Force refuses to provide information relating to the recusal, Mr. Shurtleff has been unable to verify the reach and scope of USA-Utah's and FBI-Utah's conflict of interest.

39. As discussed in greater detail in Exhibit A, Mr. Shurtleff believes USAO-Utah's recusal from the investigation or prosecution of Mr. Swallow and Mr. Shurtleff extended to FBI-Utah. FBI-Utah apparently denies the recusal prevents it from participating heavily in this case."

The State of Utah and the defendant must call witnesses to provide answers to the above questions in order for this court to see how those answers impact both defense and prosecution theories. The State of Utah has previously attempted to obtain answers, documents and material for the defendant in other ways and forums.

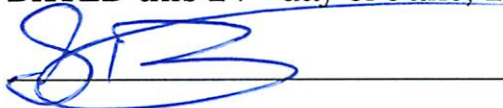
An evidentiary hearing is paramount with respect to all factual allegations made by the defendant in his dispositive motion. Full and accurate facts are

mandated so the State of Utah can properly frame a response and assist this court in making necessary findings from an actual evidentiary record and not simply from pleadings.

**Wherefore**, as contemplated by the Utah Rule of Criminal Procedure, as necessitated by the factual allegations outlined by the defendant in support of the defendant's motion, and as mandated by the nature of the requested relief sought by the defendant, the State of Utah respectfully asks that this honorable court take the following actions:

- a. Set a telephonic scheduling conference approximately two weeks out to enable the State of Utah to fully review the defendant's motion and all accompanying exhibits, as well as allow the Davis County based Special Assistant Attorney's General to approach the Utah Attorney General's Office concerning the funding and resources necessary for the evidentiary hearing; and
- b. When the scheduling conference occurs, schedule the necessary evidentiary hearing as contemplated in Rules 12 and 25 of the Utah Rules of Criminal Procedure.

**DATED** this 24<sup>th</sup> day of June, 2016:

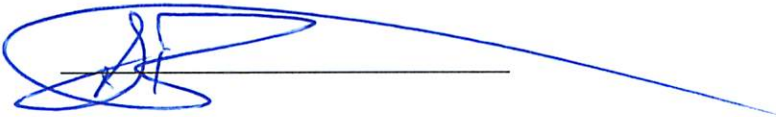


/s/ Troy Rawlings  
Troy S. Rawlings  
Davis County Attorney  
Special Assistant Attorney General

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **STATE OF UTAH'S REQUEST FOR AN EVIDENTIARY HEARING ON DEFENDANT'S MOTION TO DISMISS FOR BRADY/GIGLIO AND SPEEDY TRIAL VIOLATIONS** was served upon the following, by submission of the document for electronic filing, on June 24, 2016:

RICHARD A. VAN WAGONER (4690)  
SAMUEL ALBA (0031)  
MAX WHEELER (3439)  
NATHANAEL J. MITCHELL  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, Eleventh Floor  
Post Office Box 45000  
Salt Lake City, Utah

A handwritten signature in blue ink, consisting of a large, stylized initial 'R' followed by a long horizontal line extending to the right.