Unauthorized Use of County Equipment

The whistleblower alleges and witnesses confirm that Kory Weathers, Sam Caudle, and Josh McConnell have taken large equipment to their own homes or to a relative's home for use, creating a private benefit from public property. Interviews elicited information that the practice is widespread among the Sheriff's Office leadership class and that it has been for years or decades. Arkansas state law clearly defines that gaining private benefit from public property is illegal.

Relevant Law and Authorities:

Arkansas Constitution, Amend. 55, § 3. County judges' powers and duties

The County Judge, in addition to other powers and duties provided for by the Constitution and by law, shall ... authorize and approve disbursement of appropriated county funds; [and] have custody of county property.

Arkansas Constitution, Article 5, § 9

(a) No person convicted of embezzlement of public money ... or other infamous crime is ... capable of holding any office of trust or profit in this state.

(b) As used in this section, "infamous crime" means:

(1) A felony offense;

(2) Abuse of office as defined under Arkansas law; ... [or]

(4) A misdemeanor offense in which the finder of fact was required to find, or the defendant to admit, an act of deceit, fraud, or false statement, including without limitation a misdemeanor offense related to the election process.

A.C.A. § 5-36-103. Theft of property

(a) A person commits theft of property if he or she knowingly:

(1) Takes or exercises unauthorized control over ... the property of another person with the purpose of depriving the owner of the property.

(b) Theft of property is a:

(2) Class C felony if:

(A) The value of the property is less than twenty-five thousand dollars ($25,000) but more than five thousand dollars ($5,000).

A.C.A. § 14-14-1202. Ethics for county government officers and employees (Local government, County Government Code, Personnel Procedures)

(a) PUBLIC TRUST.

(1) The holding of public office or employment is a public trust created by the confidence which the electorate reposes in the integrity of officers and employees of county government.

(3) The officer or employee may not use his or her office ... to advance his or her individual personal economic interest or that of an immediate member of his or her family or an associate, other than advancing strictly incidental benefits as may accrue to any of them for the enactment or administration of law affecting the public generally.

(b) OFFICERS AND EMPLOYEES OF COUNTY GOVERNMENT DEFINED.

(1) For purposes of this section, officers and employees of county government include:

(A) All elected county and township officers and their employees.

(c) RULES OF CONDUCT.

(1) No officer or employee of county government shall:

(A)(i) Be interested, either directly or indirectly, in any contract or transaction made, authorized, or entered into on behalf of the county ... or accept or receive any property, money, or other valuable thing for his or her use or benefit on account of, connected with, or growing out of any contract or transaction of a county.

A.C.A. § 21-8-301. Definitions (Public Officers and Employees, Ethics and Conflicts of Interest, Code of Ethics)

(2) "Governmental body" means an office, department ... agency, or other establishment of the executive, judicial, or legislative branch of the ... county;

(4)(A) "Public employee" means an individual who is employed by a governmental body.

(5)(A) "Public official" means a person holding an elective office of any governmental body.

(6) "Public servant" means a:

(B) Public employee; or

(C) Public official; and

(7) "Public trust crime" means a crime prohibited under the Arkansas Constitution, Article 5, § 9.

A.C.A. § 21-8-304. Prohibited Activities (Public Officers and Employees, Ethics and Conflicts of Interest, Code of Ethics)

(a) No public servant shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or ... other persons standing the first degree of relationship, or for those with whom he or she has a substantial financial relationship that are not available to others except as may be otherwise provided by law.

Case Law:

> Conversion is a common-law tort action for the wrongful possession or disposition of another's property. The tort of conversion is committed when a party wrongfully commits a distinct act of dominion over the property of another which is inconsistent with the owner's rights.... **The intent required is not conscious wrongdoing but rather an intent to exercise dominion or control over the goods that is in fact inconsistent with the plaintiff's rights.** [*Internal citations omitted, internal bold font added*].

Buck v. Gillham, 80 Ark. App. 375, 379, 96 S.W.3d 750, 753 (2003).

Arkansas Regulations: 004.03.1-1212. Inmates Housed in County Jails and City Jails (Act 309)

Section IV. POLICY: ... It shall be the responsibility of the county ... to ensure that assigned inmate(s) are not used to provide personal services for private benefits.

County Policies:

Washington County Employee Handbook: Section 3. General Safety Rules.

B. These safety rules must be observed at all times ...

8. Employees shall not operate any machinery or equipment unless properly trained. Where an employee requires training to complete a job within the employee's job

responsibilities, the employee shall coordinate such training with the employee's supervisor.

Washington County Employee Handbook: Section 7. General Work Rules.

B. Policy: Employees who violate any County rule or regulation will be disciplined fairly, consistently, and in proportion to the seriousness of the circumstances. This may include disciplinary action up to and including discharge from employment for the first offense. The following list includes but does not limit the major items which are deemed sufficient cause for disciplinary action:

4. Unauthorized possession of County property.
5. Willful destruction of County property.
6. Deliberate misuse of, or unauthorized use of County supplies, materials, or machines.
13. Disobedience or insubordination.

Witness Statements:

Each of the six witnesses or targets interviewed gave statements supporting the allegation that Sheriff's Office employees are using county equipment for personal gain. No one denied this.

Roy: Brian Roy stated that Kory Weathers had the skid steer at his home "for a long time" with the bucket, ditcher, grapple, and forks, and that he had the gas welder for two or three years. He describes long absences of the scissor lift, and that the pole saw was gone for months and was returned inoperable, with repairs paid for by the county. Roy produced a photo from his phone showing Weathers loading the skid steer attachments onto a trailer attached to Weathers' truck at the Sheriff's Office. Roy stated he had seen the skid steer used twice in the past at the sheriff's office (to sweep snow and to move gravel), then twice in the weeks immediately previous to his interview. When he asked Weathers for permission to use the skid steer to work gravel on the drive behind the Sheriff's Office, he was not given permission. He said the use of large equipment by general employees was not common.

Nubbie: Jason Nubbie states that he had seen the skid steer used at the Sheriff's Office twice. Once to sweep snow and once to mow the firing range berm. He stated the berm was also being mowed on the day of this interview. To his knowledge the skid steer was gone for weeks or months at a time, with the bucket, auger, and broom also missing. He saw the gas welder on a trailer, then it was gone for years. He heard it was at Weathers' new house. Nubbie stated the pole saw was gone for a while then came back inoperable. He thought Weathers was the last to use it. He states only Weathers and possibly Caudle have the code to start the skid steer, and that he personally could "absolutely not" use the skid steer at his home, that he wouldn't have permission.

Caudle: Sam Caudle states that Sheriff's Office employees can use county equipment if they have permission from the head of the department the equipment is assigned to, and that this has been the practice since he began work there seventeen years ago. He says many people borrow the lift, and that people borrow hand tools. He additionally adds the items are expected to be returned in good working order.

Caudle: The way it's I've always seen it to be was, I mean they go to the department head to make sure that they're not going to have to use it, and they can take it home, use it, bring it back in good working order and everything's fine.

Weathers: Yes, um, over the twenty years of me working here it is common practice, I felt, that ... for ... for uh ... for me to be able to use ... um, you know ... county equipment for use around my house as long as we brought it back in the same condition it was in when we took it.

Weathers: (3-5-2024) So, I took them out there to use for training purposes, um, I did move stuff around on my place, but I was not comfortable with using the skid steer, um and took it out there to pick things up and move things around in open, wide open spaces and not around vehicles and stuff like that, so that's what the uh, the movement was, I ... you know, did not take it anywhere besides my own property and use it at my house.

Analysis:

Kory Weathers and Josh McConnell admit using county equipment for personal benefit.

Weathers: Both Weathers and Caudle explain that Weathers had the skid steer at his home for training purposes, and that any work completed there was incidental. This position does not stand up to scrutiny for several reasons. First and most importantly, the use of county equipment for personal benefit is illegal. Second, Weathers states he "did not feel very comfortable using the skid steer, so I felt that if I used it ...um ... in a wide open area, and kinda away from any kind of vehicles or any kind of other equipment or anything like that, that I might be able to increase my mobility in it and be more comfortable in it." Weathers stated on his application for employment that he is skilled in backhoe and bulldozer operation. Additionally, the Sheriff's Office sits on an 80+ acre campus, and witness testimony states that Sheriff's Office Legal Advisor Sam Martin practiced using the skid steer in the front parking lot.[20] The argument that Weathers needed to take the skid steer to his home in order to safely practice its operation does not match the facts. Weathers also states in his February 16 interview that he went to the Fayetteville Public Library at least twice to use the simulator to practice skid steer operation. The County Judge's Chief of Staff Michael Stewart contacted the library; they have no record that Weathers ever used the simulator, and have no record that he has a library card. The Sheriff's OPC investigators did not follow up to confirm this. Weathers states in his February 16 OPC interview:

> I've also taken it upon myself on my own time to go to a, uh, simulator to try to ... um ... further my skill level to be able to use that ... um, you know... that piece of equipment. The Fayetteville Public Library has a simulation machine and I have been to there, been there, and used it for, uh ... um ...a couple of times to try to ... try to get my skill level honed up a little bit so that I felt more comfortable but there's uh ... you know I feel like it needs to be, it needs to be used, um, in a wide open area and I think you need to be in the seat of it to kind of make you feel a little better when you're doing that.

Weathers states that Sheriff's Office's employees may use county equipment on their personal property with permission from whoever is the supervisor over the equipment, that this has been "common practice" over the twenty years of his employment. He also states that he is the supervisor over the skid steer. This library-style system of checking out county equipment is a scheme not practiced in any of the other elected offices of the county except among this leadership group. Not only would it be illegal to give employees permission to take county equipment home for personal use, but no one at the Sheriff's

Office, not even the Sheriff, has such authority over county property. Under the Arkansas Constitution and statutes, clearly and without exception, only the County Judge has this authority and control.

McConnell: Josh McConnell admits taking the skid steer for his brother to use, and the dump trailer for his own use. This is illegal as stated above. McConnell also admits using the dump trailer to take things "to the cabin." When asked about the practice of certain employees taking home county equipment for personal use, McConnell answered:

> Uh ... pretty lenient as far as using stuff. I mean, use it and bring it back, and as long as nothing happens to it ... if something happens to it, you gotta fix it, and ... kinda the practice of it.

Hours of use. Weathers stated in his February 16 OPC interview that before he took the skid steer home, it had been used at the facility "two or three times ... for snow removal and moving stuff," that he "did not feel very comfortable using the skid steer ...so I was trying to use it for ... um ... training purposes" at his home. When asked how many hours he had likely put on the skid steer at his home, Weathers answered "Maybe ... oh, maybe ... ten" and that he believed the current hour count would be less than fifty. (Use of equipment of this type is measured in hours, similar to an odometer.) The witnesses we spoke with recall four times that the skid steer has been seen used for work at the Sheriff's Office before the OPC began – once for snow removal, once to carry asphalt, once to work gravel, and once to mow the shooting range berm. Chief of Staff Michael Stewart requested the current number of hours of use on the skid steer from the Sheriff's Department, which was 76.0. If employees of the Sheriff's Office had only seen the skid steer perform work on perhaps four occasions before the OPC investigation was initiated, where did those hours of use occur?

Mistaken belief. The Sheriff's Office OPC report states that Weathers "was operating under the understanding that for the past 20 years of his employment it was common practice to utilize county property for personal purposes. This practice has been in place and utilized by many people," and that Weathers "had no intent to violate state law and was operating with a long-standing practice." The reasoning that this mental state exonerates him of the criminality of his actions is not supported by law. The Arkansas Supreme Court opines that for the crime of conversion[1], "the intent required is not conscious wrongdoing but rather an intent to exercise dominion or control over the goods that is in fact inconsistent with the plaintiff's rights." (Buck v. Gillham, 80 Ark. App. 375, 379, 96 S.W.3d 750, 753 (2003)). Here, both Weathers and McConnell had the intent to exercise dominion or control over the equipment that was inconsistent with the owner's rights. Any Washington County taxpayer can sue Weathers or McConnell for the value of their use of the taxpayers' equipment, and recoup these funds under the facts presented. In Arkansas, theft of property requires the mental state "knowingly"; the county ethics statute does not require a particular mental state, but simply that the violation did occur; the statewide ethics code requires "knowingly or willfully". We find the definitions of knowingly and willfully in A.C.A. §§ 5-1-102, 5-2-201 et seq. The relevant definitions include the following:

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[1] Conversion is a common-law tort action for the wrongful possession of another's property. Conversion is proved when the defendant wrongfully committed a distinct act of dominion over the property of another, which is inconsistent with the owner's rights. The intent required is not conscious wrongdoing, but rather an intent to exercise dominion or control over the property that is inconsistent with the plaintiff's rights. Additionally, Arkansas does not require that the owner be completely deprived of their property for a conversion to occur; it is sufficient if the person exercises dominion over the property in a way that is inconsistent with the rights of the owner.

Inconsistency in interviews.

- In Weathers March 5 OPC interview, he states he used the lift at his home when he was trimming trees.

  Augustine: Ok. And the lift?
  Weathers: Um, I used it to ... trim some trees.

- In Weathers' April 2 OPC interview, he seems to contradict himself about using the lift at his home (bold font added), but again confirms he used it to work on his personal property.

  Augustine: Ok. And uh, so, the ... the lift. How many times had it been out there?
  Weathers: I mean, I have taken it home because it was hooked to my truck multiple times. **Never used it**, but it was at my house. Um, so I mean, I ... I couldn't tell you exactly how many, but it was ... there's been multiple times that I have picked it up in different places or taken it to other county places to use and then taken it home and brought it back.
  Augustine: Um hm.
  Weathers: So I ... I couldn't' tell you exactly, I mean if it was ten, fifteen, twenty over the duration of my twenty years here, but it's been multiples.
  Augustine: Ok. For the purpose of using it for anything at your place?
  Weathers: **Uh, maybe two or three.**
  Augustine: Ok. And the length of time it was there?
  Weathers: A few days at a time.

Materials shipped to Sheriff's Office / electrical wire.

The OPC investigator asked Weathers about the allegation that he had taken spools of electrical wire from the Sheriff's Office to his home to use in its construction. Weathers and Caudle both stated that Weathers often has items that he has personally purchased delivered to the Sheriff's Office, that not everything that is delivered to the Sheriff's Office belongs to the Sheriff's Office. Other witnesses have no knowledge of this. I gave the example of courthouse employees having amazon packages delivered to the office so they're not left out on porches during the work day. I also gave the example of having something large delivered, like a set of tires, or something that would need to be signed for. The witnesses stated this is not the practice of any of the Sheriff's Office employees they could think of. Additionally, as a point of interest, both Weathers and the OPC investigators make a point that, in investigating the allegation of electrical wire being stolen from the Sheriff's Office and used in the construction of Weathers' new home, that this wire was not used on his *house*. Caudle goes into great length about how this is not the type of wire used in residential construction. Weathers was also constructing a large shop at or around this time as well.[21] [22]

Sheriff's Office OPC report:

Upon receiving the initial complaint from Judge Deakins that Weathers was using the county scissor lift at his home, the OPC report reflects that Chief Tabor went to the Sheriff's Office shop and saw the scissor lift was there. Tabor makes no report of asking Weathers about this initial allegation, seeing

the scissor lift in the equipment shed seemed to be enough to satisfy him the allegation was unfounded. Three weeks later, Tabor received a second complaint from Prosecutor Durrett reporting that Weathers had the skid steer at his home. Sheriff's Office leadership was aware Kory Weathers was constructing a home and shop on his land at the time these reports came in. Upon this second allegation, Tabor went to talk with Weathers. Weathers confirmed the skid steer was at this home since the previous Thursday (this was a Monday) and that the lift had also been at this home. Weathers returned the skid steer some time later.

Weathers admitted he used the scissor lift at his property to trim limbs. He stated he took the skid steer home to practice operating it, and any work he completed was incidental to this training. With this confession, the Sheriff's Office investigator found no policy violation, and only a potential violation of A.C.A. § 21-8-304. At this stage, investigator Leon Frisard found Weathers was exonerated of misconduct. No laws were cited in this initial OPC.

Recommendation:

The Sheriff's Office investigation states that there was no theft when Weathers used the equipment for personal gain, because Weathers did not rent or lease it out, or earn income from it. However, the "personal gain" conferred, as contemplated in state law, is that Weathers saved himself the cost of renting or leasing the equipment, or of hiring someone to complete the work. When a public employee uses equipment for personal gain, Arkansas courts calculate the damages as either the value of the property at the time of the taking, or the rental value of the unauthorized use, whichever is appropriate. The Arkansas Supreme Court decided a case in which a county judge used county equipment to construct ponds and terraces on private property for persons making conservation improvements. In calculating the financial damage to the taxpayer, the Court dismissed the fact that the judge had collected rent from the equipment's use and deposited it in the county treasury. The Court opined that "[w]e think there can be no doubt that if a county judge is given the right, limited only by his own discretion, to use county road machinery for private purposes, it could result in the need for more tax money to repair and replace the road machinery." (Needham v. Garner, 233 Ark. 1006, 1010, 350 S.W.2d 194, 196 (1961)).

The Arkansas Supreme Court finds that not only is it a violation of law for county equipment to be used on private property, but that the correct method of determining the value of the use is to determine the value of the work performed, not by asking whether the employee in question charged others for its use. (McGhee v. Glenn, 244 Ark. 1000, 1006, 428 S.W.2d 258, 261 (1968)). In fact, even if the reverse were true – even if Weathers had in fact paid the county an amount for the lease of the equipment that would have amounted to a profit, which he did not – the Arkansas courts would still find his use of county equipment a theft against the taxpayer, or "illegal exaction". In Pogue v. Cooper, the Supreme Court stated "We reasoned that illegal exactions were likely to occur because such use of county property could result in the need for more tax money to repair and replace the ... machinery."

The culture of the Sheriff's Office appears to be that once a person attains a certain rank and is established in a certain group, that person may use equipment for their personal enrichment, but other employees not in that group would not be allowed such personal benefits. Weathers and McConnell admit to using county equipment for their own or their immediate family's personal financial gain. Weathers knew his actions were a problem, demonstrated by the fact that he encouraged McConnell to engage in the same activity, took a photo of it without McConnell's knowledge, then stated this photo was for the purpose of bringing McConnell down with him if he got in trouble. Black's Law Dictionary

defines blackmail as "the offense of coercing someone by threats of public exposure or criminal prosecution."

If the Sheriff's Office had cooperated with our interview process, we would have interviewed Sam Caudle and Sheriff Cantrell, who are cousins, and own 19 local rental properties together (Caudle Commercial Properties, LLC and Caudle Enterprises, LLC. Sheriff Cantrell is the registered agent for each corporation).[23] [24] Two witnesses made a comments implying that county tools and equipment have been used on those properties over the years.

Weathers himself admits to a minimum use time valued at $3,300.00, which reaches the threshold for felony theft ($1,000). These are his statements based on the allegations made in just the instant complaint. Weathers states he has felt free to use county equipment during the 20 years of his employment. If witness statements are correct and Weathers understand his use of the equipment, the rental value could be as much as $42,000.00. The cost of McConnell's use would be $160.00 - $320.00, depending whether it was kept one day or two. I am concerned that the Sheriff's Office investigation did not attempt to allocate any dollar value to Weathers' use of the taxpayer's equipment.

- "Reasonably believes" means that an ordinary and prudent person would form the same belief under the circumstances.
- "Knowingly" means the person is aware of his conduct and the nature of his conduct, and the nature of the relevant circumstances; or that he is aware that it is practically certain what the result of his actions will be.

Weathers and McConnell both state they took county equipment for personal use. They were aware the equipment was county property (evidenced by the "check out" system – they knew they needed some kind of permission), they were aware they were using the equipment for personal gain (why did they borrow it instead of buying their own?), and were aware of the value of the use of the equipment (Weathers was the one who purchased it). These mental states apply to the other uses of county equipment as well.

Monetary value of use. As part of the investigation into Weathers' use of county equipment, I collected quotes from several equipment rental companies in Northwest Arkansas, and took to lowest of the quotes for each piece of equipment of similar size/power to the ones Weathers admits taking and using at his private property. Each time is the minimum amount that could be interpreted from the interviewee's statement.

Minimum time attested to – Maximum time attested to				
Subject or Witness	Skid steer	Scissor lift	Gas welder	Gas pole saw (damaged)
Kory Weathers	2 weeks – 2 months	4 days – 12 days		
Joe Franco	--	--	--	--
Brian Roy	2 weeks – 2 months	2 days – 1 week	2 years – 3 years	2 months – 3 months
Jason Nubbie	2 weeks – 2 months	--	2 years	"a while"
Steven Ridenoure	2 months – 3 months		2 years	

	Daily rental	Weekly rental	Monthly rental	Low end, time in possession	High end, time in possession	Low total	High total
Skid steer	566	1495	3519	2 weeks	3 months	$2,990.00	$10,577.00
Scissor lift	161	321	832	2 days	12 days	$322.00	$642.00
Gas welder	66	264	792	2 years	3 years	$19,008.00	$28,512.00
Gas pole saw	66	272	816	2 months	3 months	$1,632.00	$2,448.00