Unlawful Sale of Scrap Metal; Theft of Property

The allegations being investigated here are that Kory Weathers, Sam Caudle, David Lindabury, and Leon Frisard have a practice of taking scrap items to the scrapyard to sell without a lawful destruction order and keeping the cash proceeds for themselves. Further, the use of a 309 inmate in furtherance of this scheme violates a fiduciary relationship as well as the tenants of the state's 309 inmate program. Based on the evidence collected and the interviews, I believe these allegations are credible against Weathers, Caudle, and Lindabury, and rise to the level of felony theft in at least two cases based only upon the evidence we have collected thus far. I found Frisard misleading in his interview, but do not have evidence he participated in this scheme at this stage of the investigation.

Relevant Law and Authorities:

Ark. Code Ann. § 14-16-106. Sale or disposal of surplus property

(c) **(1)** If it is determined by the County Judge and the County Assessor that any personal property owned by a county is junk, scrap, discarded, or otherwise of no value to the county, then the property may be disposed of in any manner deemed appropriate by the County Judge.

(2) However, the county judge shall report monthly to the quorum court any property that has been disposed of under subdivision (c)(1) of this section.

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.

Analysis:

Selling scrap or surplus county-owned materials is a routine practice established in Arkansas law. The procedure is to have the County Assessor declare whether the items are scrap or they have value. If they have saleable value, the items might go in an auction or be sold under procedures outlined in law. Scrap items with no value are listed out and submitted to the County Judge in a Disposal Report. This is converted into a Court Order from the County Court, then the items can be sold for scrap, recycled, thrown away, or whatever is appropriate. Logically, the county would encourage these items be sold for scrap if practical. The Sheriff's Office produces scrap from maintenance projects, converting cars to patrol cars (back seats removed, etc), brass from the firing range, and aluminum cans from the commissary.

Based on the information gathered from the OPC investigation, Judge's Office investigators collected recent receipts from the scrapyard under Kory Weathers' name. Later, investigators learned that Washington County has an account, and suspect that these sales should have been conducted under the county account. In any case, no cash receipts under any name have been collected by the county treasurer for the past five years from the Sheriff's Department. We recommend follow up at this scrapyard and the other local scrapyard mentioned in interviews to confirm that scrap was sold over the past five years but the proceeds were not given to the Treasurer. Accounts under the names of each person mentioned in interviews should be searched as well as the county account. This provides the clearest proof that cash was collected but not turned over to the Treasurer. There is no circumstance in law that a county office should have cash on hand that is not clearly documented and receipted through the Treasurer's Office and the office in which the cash resides. Here, we have zero documentation from the Treasurer and zero documentation from the Sheriff's Office regarding the origin and management of these cash funds.

Frisard contradicted himself in his interview, saying to me "I never saw any money exchange hands, I stayed in the truck," but telling the OPC investigator "I got out to watch him open up the back doors of the trailer ... when we got out, he opened up the back of the dump trailer and dumper, we got back in the truck and I never got out after that til we got back to the office." Perhaps Frisard was trying to communicate to me that he stayed in the truck while Weathers was collecting the cash, but if that is the case, the answer was misleading.

Sheriff's Office OPC.

The Sheriff's Office investigators sustained the allegation that Weathers scrapped metal. The investigator writes "I do understand that money collected from county property must be documented/submitted for deposit." The act of theft in retaining these funds and their further use for personal benefit is not directly addressed in their report; only that these funds "were for office use".

In the OPC 24-2-1 report written by Leon Frisard, Weathers is exonerated of using county equipment for personal gain, though both Frisard and Weathers agree that this in fact occurred. In the second OPC report, Weathers' complaints are sustained, including two statutory violations. However, the WCSO did not follow their own OPC procedures by not making a written note to this in Weathers' personnel file. We are assured the file is complete, but there is no write up of this finding in the file we received. Additionally, the investigator in the second complaint states, "I am not able to find the proper laws, polices, or procedures on how to handle the collection of money from county property. I do understand that money collected from county property must be documented/submitted for deposit." The law regarding the collection of money from county property is clearly outlined in state statute.

Recommendation:

The maintenance positions for the county jail should be moved back under the Buildings and Grounds Department so they will under the same supervisory authority and the same property management and control systems as all the other elected offices of Washington County.

Theft of Funds: Analysis and Findings

Arkansas law provides no process for a county governmental office to have an off-the-books cash fund. The fund or funds in question were formed by taking "scrap" county property from the county jail facility and selling them for cash. Interviewees stated this is a routine procedure spanning years or decades. However, compared against this statement of the routine practice of collecting funds, the County Treasurer has no receipts of any deposits within the past five years except those made after this investigation was initiated. Those deposits account for most of the cash receipts in this instant matter of investigation, but not all of it. Witness statements reveal that the leadership class enjoyed benefits from these funds.

Relevant Law and Authorities:

§ 14-25-105. Petty cash funds--Authorization

(a) County officials are permitted to establish petty cash funds, so long as the funds are maintained on the basis set forth in this section.

(b) **(1)** The establishment of a petty cash fund must be approved by the county quorum court.

(2) (B) That amount may be maintained in the county offices for the handling of small operating expenditures.

(c) **(1)** A paid-out slip is to be prepared for each item of expenditure from the fund and signed by the person receiving the moneys.

(2) These paid-out slips shall be maintained with the petty cash.

§ 5-36-106. Theft by receiving

(a) A person commits the offense of theft by receiving if he or she receives, retains, or disposes of stolen property of another person:

(1) Knowing that the property was stolen; or

(2) Having good reason to believe the property was stolen.

(b) As used in this section, "receiving" means acquiring possession, control, or title or lending on the security of the property.

(c) The following give rise to a presumption that a person knows or believes that property was stolen:

(1) The unexplained possession or control by the person of recently stolen property; or

(e) Theft by receiving is a:

(3) Class D felony if:

(A) The value of the property is five thousand dollars ($5,000) or less but more than one thousand dollars ($1,000);

(f) A person convicted of a felony offense under this section is subject to an enhanced sentence of an additional term of imprisonment of five (5) years at the discretion of the court if the finder of fact finds that the stolen property was nonferrous metal, as it is defined in § 17-44-101.

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 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.

Washington County Sheriff's Office Policy Manual, Section 25.0, Office of Professional Conduct (OPC)

25.6 Dispositions. Only case dispositions that have a finding of "Sustained" shall be filed in the employee's personnel file.

Analysis.

Proper legal procedure for public cash funds.

The use of cash funds in Arkansas counties is governed by A.C.A. § 14-58-105. These funds may be used for the "handling of small operating expenditures", and are approved by the quorum court and established by writing a check for cash. The fund would then be operated by providing pay-out slips signed

by the person receiving the money, and repaid from the county treasury by check in that amount upon request. This is not the type of cash fund the Sheriff's Office has been operating with the cash proceeds from scrap metal sales. Instead, these funds are established by the sale of county property, do not provide a record of the cash either as it comes in or as it goes out, and make no record of what this cash eventually purchases.

Lack of cash receipts to County Treasurer.

To determine whether the Sheriff's Office was depositing the cash it received, I requested all receipts from scrap metal or recyclable sales from the Sheriff's Office from the Washington County Treasurer, Bobby Hill, for the past five years. One deposit occurred in 2019, just previous to the five year mark, for $232.75. Treasurer Hill has no other cash receipts from the Sheriff's Office until after this investigation was opened. In March and April of 2024, the Sheriff's Office brought over four cash deposits:[25]

- $405.00 March 5 Weathers' envelope of cash, desk drawer
- $550.80 April 4 unknown origin
- $2,510.32 April 5 Lindabury's envelope of cash, glovebox
- $83.70 April 12 unknown origin

The Sheriff's Office OPC investigation reported that the remaining funds in Weathers' envelope of cash were not turned in to the Treasurer because they did not have any receipts showing where those funds came from. Chief Tabor reported that the remaining $459.33 in Weathers' envelope is now in Chief Tabor's office. Chief Tabor's report on this matter was written March 5, 2024, which is the first day a cash deposit was made at the Treasurer's office from the Sheriff's Office in five years, though the same report includes information that scrap is taken to the scrapyard routinely.

Public employees are never to retain cash for private use from any sale of county materials. This position seems to make common sense, but the Sheriff's Office takes an opposing view. They have made comments that no law or policy was violated in this practice. This finding was eventually sustained against Weathers – sustained means the act *did* occur and constitutes misconduct – but he experienced no discipline. The Sheriff's Office internal OPC policy states that if a finding is sustained, it must go in the employee's personnel file. No such memo was turned over with Weather' personnel file.

Personal gain.

Both the OPC interviewers and interviewees made a point to emphasize that these funds weren't used for personal goods but "for the betterment of everyone." However, whether this cash was spent to benefit one person or ten people, its use in this way is unlawful. It belongs to the taxpayer, not the discretionary group of individuals Kory Weathers decides to spend it on.

Others did not know about this fund or have access to it. This was an opportunity for Weathers to exert influence. These funds were spent, by his own admission, for birthday lunches and other meals at least. If these meals are the ones described by witnesses, the implications do not improve. The attendee list for these invitation-only lunches is limited to many of the top leadership of the office.

Lindabury and other witnesses stated the cash proceeds from selling the brass from the firing range was used to have retiring officers' duty weapons engraved. A search of the county's employment

and purchasing records over the past five years show that the county has paid for the service weapon engraving for 22 of the 24 Sheriff's Office retirees in the past five years.

Recommendation.

Further investigation is warranted to confirm scrap sales over the past five years at the scrapyards mentioned in this investigation, under each named subject as well as the Washington County Sheriff's Office. This list of sales can be compared against the list of cash receipts on file with the County Treasurer. If this longstanding practice of the Sheriff's Office of taking scrap property, converting it to cash, and retaining the cash for personal benefit is in fact an illegal practice, as it appears, these funds should be restored to the taxpayer.

Matter for Further Investigation: P Card Purchases

During the course of the investigation, Kory Weathers' "P card" (purchasing card, a business debit card issued by Washington County) transactions since January 2018 were reviewed alongside County and Sheriff's Office policies and procedures. While this matter was not squarely under the scope of the original investigation, it arose during the course of the investigation. The potential violations include purchasing unauthorized items, but the larger issue is that Weathers appears to have no oversight or supervision of his purchases. For example, he purchased a skid steer and attachments at the time he began construction at his home, when the Sheriff's Office already owned a tractor, and Road Department and Buildings and Grounds Department are on the same campus, and have equipment such as this available. The facts do not make it clear what business purpose was put forward, if any, for this large equipment purchase. If Weathers does in fact have such oversight or supervision at the Sheriff's Office, there is no evidence of it in the paperwork and receipts we received as part of this investigation, nor any in the routine paperwork kept in the course of county business. While the Judge's Office has no authority over whether Weathers violated Sheriff's Office policy, it does have authority over purchasing and the P card program, and above all has an interest in ensuring county purchases would meet with the approval of county taxpayers.

Relevant Authorities:

A.C.A 14-14-1101. County Judge

(a) Arkansas Constitution, Amendment 55, § 3, established the following executive powers to be administered by the county judge:

(2) To authorize and approve disbursement of appropriated county funds.

Sheriff's Office Policy Handbook

Section 52.1: The Washington County Sheriff's Office will provide uniforms for all employees required to wear them and what manner, quantity and frequency, as specified within this policy.

Section 60.0 POLICY: WCSO requires all sworn personnel to maintain and demonstrate a minimum level of firearms proficiency. To ensure this proficiency level is maintained, all sworn personnel must qualify annually on a CLEST approved course and complete all in-service firearms training.

Section 60.01 DEFINITIONS: AGENCY OWNED FIREARMS – All firearms purchase or otherwise owned by WCSO.

Section 60.02 FIREARM PROCEDURE: A qualified WCSO armorer will review, inspect and approve all authorized weapons before issuance to authorized employees. Before being authorized to carry any on-duty firearm, the employee must meet minimum proficiency standards on an approved CLEST course of fire for that weapon system....All authorized firearms must have a current CLEST approved qualification with WCSO....Firearms/weapon related accessories must be evaluated and approved by the Firearms Division prior to use.

Sheriff's Office Boot Request Form: Washington County Sheriff's Office will pay NO MORE THAN $175.00 for a pair of ALL BLACK SLIP RESISTANT FOOTWEAR.... The employee is responsible for any remaining balance at the time of purchase. [Capitalization in original].

The Washington County Comptroller is in the process of revising and strengthening P card and purchasing policies, so all the purchasing-related issues that have arisen in this investigation will be put forward as the types of violations the new policy should address. Disciplinary action that may arise from these potential violations over which the County Judge has immediate authority includes revoking P card privileges.

This matter is further illustration of the lack of proper structure and oversight at the Sheriff's Office, and further evidence supporting moving these duties back under the departments they were originally separated from. The current Buildings and Grounds Department should have authority and control over this jail maintenance position, and authority and control over the inventory management of all equipment and vehicles. I recommend moving the Sheriff's Office Maintenance Department back under the authority of the county's Buildings and Grounds Department.

Matter for Further Investigation: 309 Inmate Program

During the course of the investigation, Arkansas' 309 Inmate Program's rules and policies were reviewed and compared to how the program is managed at the Washington County Sheriff's Office. My understanding of the state's policy is that 309 inmates must not receive cash directly, but have it placed in their account at the jail. But most importantly, 309 inmates are not to perform work for private benefit. Evidence supporting violation of both of these policies was collected during this investigation. While this is not a matter under the County Judge's authority, these likely violations did come to light, and so are reported here for further investigation.

Inmate Transfer Cooperation Agreement Between County, a Political Subdivision of the State of Arkansas, and State of Arkansas, Arkansas Division of Correction (undated, unsigned):

Section IV: County Duties and Responsibilities: The County shall ensure that no inmate under this agreement is used to provide personal services for private benefit.... The County may request assignment of inmates to their approved jail facilities to perform particular jobs for the approved jail facilities or for a political subdivision, or to assist a political subdivision in supporting or working with a nonprofit organization with a chapter committee, or other governing body that is based in the county, when the jobs or assistance are in a particular area of need of the approved jail facilities, political subdivision, or nonprofit organization with a chapter, committee, or other governing body that is based in the county, and in which the inmate(s) are under supervision at all times.

Act 309 Inmate Work Agreement (signed January 11, 2024):

Section 7. Compensation. Through a cooperative agreement between the City/County of Assignment and the ADC, Act 309 inmates are made available to provide a service to the jurisdiction in which they reside. As such they are not permitted to receive compensation nor proceeds from work performed in this capacity.

Caudle states he gave Franco $40.00 cash because he was indigent. This may violate the 309 Inmate Cooperation Agreement and Work Agreement in that Caudle should have never offered cash to an inmate, and Franco should never have received cash either as an inmate or as a 309. When questioned in his OPC interview about what is purchased with the cash funds generated from selling scrap county property, Caudle stated the funds are used to buy pizza or chicken for the 309s, and that they have Christmas and birthday parties.

Josh McConnell additionally states in his OPC interview that 309s work on private vehicles, saying "they have 309s fix civilians' cars", referencing the Sheriff's Office leadership. Additionally, 309 Franco states he created from scrap materials at the Sheriff's Office the mailbox stand for Kory Weathers' new home. This fact should be easy to substantiate by comparing the post at 260 O'Neal Lane in Elkins with the scrap that the Judge's Office interviewers observed and video recorded in the Sheriff's Office maintenance yard on October 4, 2024.

In the February 22 OPC interview of Weathers, interviewer Frisard states that the whistleblower 309 Franco alleged "that you used him, uh... to, to ... his labor ... you kind of took advantage of him at a

time of needing money for his daughter in exchange for his labor... so, just want to confirm that that's not true." Weathers states, "No, so we have a 309 that is assigned to us to do the activities that is, you know, at ... the task at hand and that's just one of the tasks that he was assigned." In the Judges Office interview of Franco, Franco talked about "walking on eggshells" as a 309, even in the facility he is currently housed in, which he has been housed in before and likes. He said 309s walk on eggshells and do whatever they are told, because they know they will be sent back to prison if they don't.

Conclusion: The Judge's Office has no authority over the 309 program. However, these facts tend to lend credibility to 309 Franco's allegations, and illustrate this aspect of the culture of the department.

Issues Noted for Follow-up:

A few clusters of P card transactions appear to be noncompliant with Sheriff's Office policy. The relevant issues are:

- Purchasing uniforms and purchasing boots in excess of boot allowance. The sheriff's office provides a $175 allowance each year for boot purchases.[26] The boots must be of a certain type, and be purchased from one of two local shoe stores. The employee pays any amount above $175, then the shoe store bills the Sheriff's Office. No part of the transaction should be on a P card.[27] Uniforms are purchased directly by the Sheriff's Office with an employee over this program; no uniform purchases should be on a P card. Violations related to uniform/boot purchases include:

    - Weathers purchased uniform pants on his P card. ($180.00, October 2022).
    - Weathers purchased two pair of boots. Employees may purchase one pair per year. The shoe shop should bill the Sheriff's Office for the boot allowance, and Weathers should have paid the overage. None should be on the P card. ($642.00, November 2022).
    - Weathers purchased 13 hardhats for "the new construction in the detention center" in December, 2022. There are 3 employees in his department including himself. ($1,825.00, January 2023).
    - Weathers purchased two pair of boots on his P card. ($356.00, November 2023).
    - Weathers purchased a third pair of shoes around the same time from an athletic store on his P card. ($66.00, November 2023).
    - Weathers purchased boots and insoles on his P card. ($368.00, September 2024).
    - Sam Caudle and Zeke Lindabury also purchased boots and insoles on this same day/time as above with the same violations. ($647.00, September 2024).

- Purchasing gun sights. ($845.88, 1-19-2023).[28] My question is whether Weathers was issued a gun by the Sheriff's Department for his maintenance position. I have no record in his personnel file indicating he has completed any proficiency qualification or firearms training. Again, Chief Tabor stated the personnel file we received was complete.
- I have no record from a WCSO armorer regarding the purchase, inspection, installation of the accessories, which is required under WCSO policy.
- The evidence I was able to evaluate indicate nearly $2,000.00 in ineligible purchases, not including the hardhats (additional $1,825.00) and the ineligible purchases by Sam Caudle and Zeke Lindabury ($300 overage).

Other matters for further review:

- What is the oversight process to review the necessity of equipment and other items purchased by Weathers, whether on his P card or through other county purchasing processes?
- How are those purchased items logged into property management, and who has authority over property management controls?

Conclusion:

While both of these issues are violations of Sheriff's Office policy and not under the direct scope of inquiry from the instant matters, they are nevertheless under the ultimate authority of the County Judge, as he oversees both the Comptroller (who manages the P card system) and the Purchasing Director.