



DANIEL SHUE

PROSECUTING ATTORNEY
TWELFTH JUDICIAL DISTRICT
SEBASTIAN COUNTY COURTS BUILDING
901 SOUTH B STREET, SUITE 209
FORT SMITH, ARKANSAS 72901
GENERAL OFFICE 479-783-8976
479-784-1554 (Restitution) 479-783-1069 (Hot Checks)

March 14, 2016

Honorable James O. Cox
Circuit Judge
Sebastian County Courts Building
901 South "B" Street
Fort Smith, AR 72901

Re: Capt. Jarrard Copeland-FSPD / Perjury Complaint

Dear Judge Cox:

I am in receipt of an exhaustive investigative file submitted to my office by the Sebastian County Sheriff's Office with regard to the above complaint which was originally brought to my office, but as in all cases involving a felony allegation, was referred to law enforcement to be investigated. Arkansas Code Annotated § 5-53-102 provides that "(a) a person commits perjury if in an official proceeding he or she knowingly: (1) makes a false material statement under an oath required or authorized by law...(b) lack of knowledge of the materiality of the statement is not a defense to a charge of perjury under this section; (c) Perjury is a class C felony." In addition, Arkansas Code Annotated § 5-53-101(1)(A) defines "false material statement" as follows: "'false material statement' means any false statement, regardless of its admissibility under the Rules of Evidence, which affects or could affect the course or outcome of an official proceeding or the action or decision of a public servant in the performance of any government function. (B) **Whether a false statement is material in a given factual situation is a question of law...**". The gravamen of a Perjury charge is a "false material statement" made under oath in an official proceeding. An immaterial statement made under oath in an official proceeding is not Perjury, whether true or not true. The element of materiality is essential because without a false material statement, there is no Perjury despite the presence of the other essential elements (false statement made under oath in an official proceeding).

I have spoken with Investigator Philip Pevehouse and we are both of like mind that this investigation is, at this point, ongoing and incomplete until you apprise us as to your view regarding whether the statement was material. Oftentimes, criminal investigations are begun and the first determination must be whether or not a crime has been committed, which is the current status of this matter. Pursuant to A.C.A. § 5-53-101(1)(A), I am soliciting your response to our joint inquiry as to whether you consider the alleged false statements complained of by Mr. Campbell to be false material statements in the context of the hearing held on August 29, 2014. It would be a vain and useless exercise to pursue criminal charges of Perjury where probable

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cause is lacking on the critical element of a false material statement. As a matter of policy, I am seeking your opinion with regard to the materiality of the alleged false statements made while you presided over the hearing, particularly where, as in this case, you not only made conclusions of law, but also made findings of fact (i.e., this was a bench trial/hearing and not a jury trial).

Included in this letter is the original investigative file. I look forward to receiving your opinion on the issue of the materiality, or lack thereof, of the statements that form the basis of Mr. Campbell's complaint. If there is anything further you need from my office, please advise.

SINCERELY,



DANIEL SHUE
PROSECUTING ATTORNEY

DS:js
Enclosure
CC: Lt. Philip Pevehouse (w/out enclosure)