ALAN WILSON
ATTORNEY GENERAL

June 28, 2011

The Honorable Raymond E. Cleary, III
Senator, District No. 34
Suite 501, Gressette Office Building
Columbia, SC 29202

Dear Senator Cleary:

We received your letter concerning a person giving a false police report as proscribed by South Carolina law. You request an opinion from this office regarding an explanation of the law reading this issue.

Law/Analysis

As provided in §16-17-722:

> (A) It is unlawful for a person to knowingly file a false police report.
>
> (B) A person who violates subsection (A) by falsely reporting a felony is guilty of a felony and upon conviction must be imprisoned for not more than five years or fined not more than one thousand dollars, or both.
>
> (C) A person who violates subsection (A) by falsely reporting a misdemeanor is guilty of a misdemeanor and must be imprisoned not more than thirty days or fined not more than five hundred dollars, or both.
>
> (D) In imposing a sentence under this section, the judge may require the offender to pay restitution to the investigating agency to offset costs incurred in investigating the false police report.

Thus, a person commits the offense of filing a false police report pursuant to §16-17-722 if he or she (1) knowingly (2) files a false police report, and (3) the false report relates either to a felony or a misdemeanor.

We are unaware of any decisions by the South Carolina appellate courts or opinions of this office construing such provision. In addressing this provision, however, several principles of statutory construction are relevant. First and foremost is the fundamental principle of construction which is to ascertain and give effect to the intent of the Legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if

it can reasonably be discovered in the language used. Clearly, the statute's wording must be construed in light of the Legislature's intended purpose. Multi–Cinema, Ltd. v. South Carolina Tax Comm'n, 292 S.C. 411, 357 S.E.2d 6 (1987). In essence, the statute as a whole must receive a reasonable, practical and fair interpretation consistent with the purpose, design and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948).

The words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). The plain meaning of the statute cannot be contravened. State v. Leopard, 349 S.C. 467, 563 S.E.2d 342 (2002).

Furthermore, any statute must be interpreted with common sense to avoid absurd consequences or unreasonable results. United States v. Rippetoe, 178 F.2d 735 (4th Cir. 1950). A sensible construction, rather than one which leads to irrational results, is always warranted. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

As placed in §17-17-722, the word "false" modifies the words "police report." The word "false" is defined as: "1. Untrue . . . 2. Deceitful; lying . . . 3. Not genuine; inauthentic . . ." Black's Law Dictionary, 677 (9th ed. 2009); see also State v. Johnston, 149 S.C. 195, 146 S.E. 657, 659 (1929) [citing an earlier edition of Black's Law Dictionary, defining "false" as "something more than untrue; it means something designedly untrue and deceitful, and implies an intention to perpetrate some treachery or fraud"]. We further note that while "report" is not defined by statute, the word "report" is defined in Black's Law Dictionary, 1414 (9th ed. 2009), as "[a] formal oral or written presentation of facts or a recommendation for action . . ." Construing the statute in this light, a person would violate §17-17-722 if he or she files any communication with a law enforcement agency, knowing that such report is false. While the statute speaks of filing a false "police report," this proscription very clearly would apply to either written or oral communications to a law enforcement agency. The definition of "report" would not require that the communication always be made at the outset of any contact with a law enforcement agency. The definition could clearly cover subsequent communications as well.

There are a number of other states with statutory provisions similar to §16-17-722. Interpreting their individual state statutes, several courts have considered various types of conduct sufficient to charge individuals with falsely reporting the commission of a crime to law enforcement officials. For example, in People v. Chavis, 468 Mich. 84, 658 N.W.2d 469 (2003), the defendant reported to the police that he had been carjacked at gunpoint and then beaten with a baseball bat by several individuals. He also claimed numerous items were stolen from his person. The officers made the report and later spotted the defendant's car and gave chase, arresting the individual driving the car. After further investigation of the report, the police became suspicious and spoke with the defendant. During questioning, the defendant admitted the details of his report were not true; specifically, the location of the crime's occurrence, and that he wanted to cover up he was in another area because he was a crack cocaine user. The police further observed no physical injuries on the defendant. Id., 658 N.W.2d at 470-71. The court determined the defendant's conduct violated Mich. Comp. Laws §750.411a, which provides: ". . . a person who intentionally makes a false report of the commission of a crime, or intentionally causes a false report of the commission of a crime to be made, to a peace officer, police agency of this state or of a local unit of government, 9-1-1 operator, or any other governmental employee or contractor or employee of a

contractor who is authorized to receive reports of a crime, knowing the report is false, is guilty of a crime . . ." The court concluded the statute was not limited to only those situations where the defendant reported false details about an actual crime to the police, but that it also applied where no crime has been committed. Id., 658 N.W.2d at 474.

In Curry v. State, 89 Ark. App. 176, 201 S.W.3d 429 (2005), the defendant gave false statements to the police regarding the disappearance of an individual. The defendant was questioned several times during the course of the investigation. After being informed of his Miranda rights, the defendant waived his right to remain silent and gave several voluntary statements. Initially, he told police officers that he saw another individual murder the missing person. Upon investigation, however, the officers determined this statement was false and that this individual could not have committed the murder. The defendant then gave another statement in which he asserted that he shot the person himself and, with the help of another individual, disposed of the body in a creek. This statement resulted in a search of the creek area and the arrest of the other individual. The statement was shown to be false when the body was later recovered elsewhere and did not bear any gunshot wounds. The defendant later told police officers that his own father had committed the murder, which resulted in his father's arrest. On yet another occasion, the defendant had suggested to police officers that the body of the victim might be found in a certain pond. This statement resulted in the pond being drained, but the body was not found there. On appeal, the defendant conceded that he gave false statements to police officers that sent them "on numerous wild goose chases," but he argued that his statements did not constitute a "filing" within the meaning of the statute. Id., 201 S.W.3d at 431. The court held the false statements made in response to questioning by the police constituted a violation of Ark. Code Ann. §5-54-122(b), which provides: "[a] person commits the offense of filing a false report if he or she files a report with any law enforcement agency or prosecuting attorney's office of any alleged criminal wrongdoing on the part of another person knowing that the report is false. . . ." Id., 201 S.W.3d at 432.

There are other statutes as well which specifically address false police reports, as we have not attempted a systematic review of other states' statutes. See, *e.g.*, Ala. Code §13A-10-9(a) ["A person commits the crime of false reporting to law enforcement authorities if he knowingly makes a false report or causes the transmission of a false report to law enforcement authorities of a crime or relating to a crime"]; see also People v. Trimble, 181 Ill. App.3d 355, 537 N.E.2d 363 (1989) [defendant falsely told police his car was stolen]; People v. Lay, 336 Mich. 77, 57 N.W.2d 453 (1953) [the defendant was convicted, under the predecessor of the Michigan law, of making a "fictitious report of the commission of any crime" after falsely telling the police that he had put poison in a bottle of home-delivered milk to catch the person who had been stealing his milk]; State v. Matilla, 339 N.W.2d 54 (Minn., 1983) [defendant falsely reported being burglarized]; State v. Kachanis, 119 R.I. 439, 440, 379 A.2d 915 (1977) [defendant falsely reported his car stolen].

Also relevant to your request letter, we note that, depending on the specific facts, giving a false statement or information in a police report would likely fall within the ambit of perjury under §16-9-10 (A) (2). This provision states:

> [i]t is unlawful for a person to wilfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

A person who violates §16-9-10 (A) (2) is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not less than one hundred dollars, or both. Section 16-9-10 (B) (2).

Perjury is committed pursuant to subsection (A) (2) if a person (1) willfully (2) gives false, misleading or incomplete information (3) on a document, record, report, or form required by South Carolina laws.

The South Carolina Court of Appeals addressed the giving of a false or misleading statement to law enforcement under subsection (A) (2) in State v. Stanley, 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005). In Stanley, a police officer approached a vehicle involved in a crash after a high speed chase. The driver ran from the scene, but the defendant was ordered on the ground, handcuffed, and arrested. The officer observed a bag of what appeared to be crack cocaine on the ground after he rolled the defendant over. Money was seized from the defendant's person, and drug paraphernalia was found inside the vehicle. The driver was later apprehended and charged for speeding, failure to stop, and driving without a license. At the police station, the driver gave a signed statement in which he claimed the defendant was going to "sell somebody something" and told him to "go" when they saw the police officer. At trial, however, the driver hesitated when asked if that was his signature on the statement. He then admitted he signed the statement, but denied any prior mention that the defendant was going to sell anything. He denied telling the police that the drugs belonged to the defendant. In fact, he claimed the drugs belonged to him. At this point, the trial judge sent the jury out and instructed that the driver be arrested, because he admitted at trial he was either guilty of drug trafficking, or he committed perjury. On appeal, the defendant argued the trial judge's handling of the driver's testimony and bringing him back at trial to contradict himself prejudiced his right to a fair trial. Id., 615 S.E.2d at 457-59. He further argued the driver's testimony at trial was not perjury, because the police statement was not made under oath. Id., 615 S.E.2d at 460. The court rejected the claim that an oath was required, holding that since the driver's initial trial testimony directly contradicted his prior testimony given in a police statement, he was guilty of "perjury" under subsection (A) (2) if the information given to the police officer was false; if the information in the statement was true, the driver thereby perjured himself on the stand by contradicting it under subsection (A) (1).[1] Id.

We also note §16-9-30, which provides that:

> [i]t is unlawful for a person to wilfully and knowingly swear falsely in taking any oath required by law that is administered by a person directed or permitted by law to administer such oath.
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> A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

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[1]Section 16-9-10 (A)(1) states: "[i]t is unlawful for a person to wilfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State."

A person commits the offense of false swearing when he or she (1) willfully and knowingly (2) while under oath administered by a person authorized to do so (3) swears to a false statement. A person violating these provisions is guilty of a felony and, upon conviction must be fined in the discretion of the court or imprisoned not more than five years, or both.

It is stated in 60 Am. Jur.2d Perjury §2 (1996) that:

> [f]alse swearing is defined as knowingly and intentionally giving a false statement under oath, swearing corruptly, or willfully and knowingly deposing falsely in a sworn statement concerning some fact before an officer authorized to administer an oath.

To support this charge, it must be shown that the statement sworn to was a false statement. State v. Bolyn, 143 S.C. 63, 141 S.E. 165 (1928). Further, as with perjury under §16-9-10 (A) (1), false swearing requires the willful making of a statement under oath. "Unlike the offense of perjury, however, the offense of false swearing does not require the false statement be material to the issue in a judicial proceeding." Miller W. Shealy, Jr. and Margaret M. Lawton, South Carolina Crimes: Elements and Defenses 204 (2009) [citing State v. Byrd, 28 S.C. 18, 4 S.E. 793 (1888). Most important to your question, we note that "[w]hile perjury [under §16-9-10 (A) (1)] can be based solely on an oath given in a judicial proceeding or as required by law, in false swearing the oath may be made to a voluntary statement or affidavit." Miller W. Shealy, Jr. and Margaret M. Lawton, supra [citing Byrd, 4 S.E. at 796]. "[I]t is not necessary that the purpose of the oath was to influence or mislead anyone." 60 Am. Jur.2d Perjury §2. In Gammage v. State, 119 Ga. 380, 46 S.E. 409 (1904), the court addressed whether an indictment supported offense of false swearing, where the accused falsely swore in an affidavit to a specified account, that the person against whom the account was made out was indebted to him the amount of the same. The court held the indictment was not required to allege that the affidavit was material, or that it was made for the purpose of influencing or misleading anyone, or under circumstances that would influence or mislead anyone.

Making a false report to a law enforcement officer has several other possible remedies. For example, pursuant to §16-17-725 (A):

> [i]t is unlawful for a person to knowingly make a false complaint to a law enforcement officer concerning the alleged commission of a crime by another. .

A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for not more than thirty days. Section 16-17-725 (C).

A person commits this offense if he or she (1) knowingly (2) makes a false complaint to a law enforcement officer (3) concerning the alleged commission of a crime by another.

There are no South Carolina appellate court decisions addressing this offense, but we note previous opinions of this office advising that §16-17-725 is inapplicable to a situation where the person misrepresents his own identity to a law enforcement officer if the investigation involves the same person.

The prohibited action would appear to deal only with the alleged commission of an offense "by another." See Ops. S.C. Atty. Gen., February 26, 2996; August 24, 1992.

Additionally, at common law, any act interfering with an officer in his or her line of duty would constitute the common law crime of obstructing justice. Ops. S.C. Atty. Gen., February 23, 2011; March 17, 1972; see also State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748, 750 (1979) [at common law, any act "which prevents, obstructs, impedes, or hinders the administration of justice" constitutes obstruction of justice]. A conviction under the common law carries a maximum sentence of ten years imprisonment or a fine, or both.[2] Op. S.C. Atty. Gen., December 18, 1990; see Cogdell, 257 S.E.2d at 750.

Finally, we have previously recognized that law enforcement officers retain a wide degree of discretion in carrying out their duties of enforcing the laws of this state, and whether a person should be arrested is a matter that rests within the discretion of the officer. Ops. S.C. Atty. Gen., March 5, 1990, June 4, 1969. In an opinion of this office dated May 21, 2002, we stated that as to a law enforcement officer's discretion when determining whether to make an arrest:

> [a] probable cause analysis "includes a realistic assessment of the situation from a law enforcement officer's perspective . . . Further, in determining the presence of probable cause for arrest, the probability cannot be technical, but must be factual and practical considerations of everyday life on which reasonable and cautious men, not legal technicians, act . . . The officer's determination of probable cause involves broad discretion in gathering facts and evaluating existing conditions....

In another opinion of this office dated July 2, 1996, we stated that:

> The general duties of police officers, sheriffs and peace officers are set forth at 80 C.J.S., Sheriffs and Constables, §42.[3] There, it is stated that
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> > [a]t common law and under statutes declaratory thereof, sheriffs and deputy sheriffs and undersheriffs are peace officers. The duties of a sheriff are in large measure the same as are imposed on police officers; he necessarily exercises police powers, and must enforce the laws enacted for the protection of the lives, persons, property, health and morals of the people. Accordingly, a sheriff must enforce the criminal law. He is under a legal duty to investigate crimes, to suppress them, and, and in a proper case, to arrest and prosecute persons who commit them.

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[2]Although §16-9-380 notes that article 4 "codifies various common law crimes and supersedes them," common law obstruction of justice is still an offense and may be prosecuted as such." State v. Lyles-Gray, 328 S.C. 458, 492 S.E.2d 802, 805 (Ct. App. 1997); see also State v. Prince, 316 S.C. 57, 66, 447 S.E.2d 177, 182 (1993) (recognizing that "common law offenses are not abrogated simply because there is a statutory offense proscribing similar conduct. . . . Rather, it is presumed that no change in common law is intended unless the Legislature explicitly indicates such an intention by language in the statute"].

[3]This language now appears in 80 C.J.S. Sheriffs and Constables §74 (2000).

> It is also his right and duty to arrest all persons, with their abetters, who oppose the execution of process. As a peace officer it is the sheriff's duty to act as a conservator of the peace within his county, using, however, such force as may be necessary to preserve the peace. So it is his duty to prevent breaches of the peace and assaults and batteries, to suppress an affray, a riot, an insurrection, or an unlawful assembly, and to arrest one provoking an assault.
>
> In the discharge of his duty to prevent and suppress breaches of the peace and other offenses, the sheriff is bound to use all the means provided by law to accomplish such end, and he cannot shut his eyes to what is common knowledge in the community, or purposely avoid information, easily acquired, which will make it his duty to act. He is under a duty to be active and vigilant, to exercise initiative, to be reasonable alert with respect to possible violations of law, and to use all proper efforts to secure obedience to the law.

Moreover, it is well-recognized that, by definition, police officers must retain a wide degree of discretion in carrying out their duties of enforcing the laws. In Hildebrand v. Cox, 369 N.W.2d 411, 415 (Ia. 1985), the Court stated that "[p]olice officers necessarily exercise broad discretion . . . in determining the manner in which they will enforce laws." In Bodzin v. City of Dallas, 768 F.2d 722, 726 (5th Cir. 1985), the Court observed that "the executive task of law enforcement carries a range of discretion ultimately exercised by police officers daily on their beat." And in Sebring v. Parcell's, Inc., 512 N.E.2d 394, 397 (Ill. 1987), it was stated that

> . . . efficient law enforcement necessarily involves a grant of broad discretion to police officers in determining whether to restrain, detain or arrest an individual. This discretion is required by the facts that there are often matters deserving of a police officer's attention at the same time, and it is often impractical for police officers to consult with their superiors in order to arrange their priorities.

The opinion concluded by stating:

> . . . I would advise that [the law enforcement officers] continue to exercise sound discretion and good judgment as each situation arises. As I mentioned earlier, police officers and agencies are afforded by law broad discretion to carry out their arduous daily tasks of enforcing the law. This being the case, you will have to evaluate each particular situation as it arises and gauge whether there is a likelihood of trouble or a violation of the law.

In an opinion dated July 17, 2008, we addressed whether a deputy sheriff moonlighting with his wife's business to provide drug dog sweeps of schools was obligated to act under color of law as a law

enforcement officer when he was confronted with an obvious unlawful act, or could he "simply 'inform' his client of the presence of illegal drugs, abdicate his sworn law enforcement duties, and just walk away leaving it up to the client to decide what further action to take, if any." We noted prior opinions of this office and the case law supporting law enforcement officers' discretion in carrying out their duties as to making an arrest of individuals, but we emphasized this discretion must be read in association with their discretion in matters such as determining probable cause to make an arrest. We further advised that, although there is discretion to determine facts or to make further investigation, "such should not be read as authorizing an officer's systematically ignoring criminal activity." We noted in the opinion that:

> [a]s stated in Wuethrich v. Delia, 341 A.2d 365 at 370 (N.J. 1975),
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> > [p]olice officers have the right, indeed the duty, to investigate seemingly criminal behavior or activity . . . When an officer recognizes apparent criminal activity, he has the right to detain the persons involved in such activities and to make inquiries of them. (emphasis added).
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> In United States v. Trullo, 809 F.2d 108 (1st Cir. 1987), the First Circuit Court of Appeals recognized that while an officer does not have "unfettered discretion" in conducting searches and seizures, he does have a duty to use his judgment in such regard. See also: Op. Atty. Gen. dated May 20, 1996 (S.C. Code Ann. §23-13-70 requires deputy sheriffs to "patrol the entire county" when they serve as deputies. Such enactment obligates deputies "to prevent or detect, arrest and prosecute . . . (for crimes) . . . detrimental to the peace, good order, and the morals of the community."); S.C. Code Ann. 23-13-20 which prescribes the oath of office of a deputy sheriff obligates the officer to be "alert and vigilant to enforce the criminal laws of the State and to detect and bring to punishment every violator of them...." Therefore, in the opinion of this office, a deputy does not have the discretion to simply walk away from what appears to be criminal activity and this lack of discretion would apply to an officer at all times. A deputy cannot simply assert, as in the situation addressed in your letter, that he is acting only in a private capacity and, therefore, ignore what appears to be criminal activity meriting further investigation and possible arrest.

Conclusion

An individual who makes what he or she knows to be a false report to law enforcement officials, and whose conduct consequently requires those officials to expend valuable amounts of time and resources in a futile effort to verify those reports, is obstructing the due course of justice. Such conduct cannot be considered as a mere prank or harmless gesture. Rather, making a false report causes direct injury to the general public by causing law enforcement officials to squander public resources which ought to be devoted to genuine public needs. Diverting such resources from legitimate areas of criminal investigation directly impedes the orderly administration of justice. Such disruptions should not go unchecked.

Consistent with the above, we conclude that an individual who makes what he or she knows to be a false report to law enforcement officials falls within the ambit of §16-17-722. We also refer you to the offenses of perjury under §16-9-10 (A) (2), and false swearing pursuant to §16-9-30. Finally, there exists the offenses of making a false complaint to a law enforcement officer pursuant to §16-17-725 (A), and obstruction of justice. By stating these possible offenses, however, we do not suggest to exclude any others depending upon the complete facts and circumstances in any given case. Of course, this advice should not be construed as applying to any particular set of facts or circumstances.

Additionally, we recognize the day-to-day decisions as to whom to arrest are made primarily by law enforcement officers, and that police officers and agencies are afforded by law broad discretion to carry out their arduous daily tasks of enforcing the law. This being the case, law enforcement officers should evaluate each particular situation as it arises and gauge whether there is a likelihood of a violation of the law. Law enforcement officers should be vigilant to enforce the criminal laws of this state, and to detect and bring criminals to justice. Op. S.C. Atty. Gen., July 2, 1996. This office further adheres to its long-standing policy that the judgment call as to whether to prosecute a particular individual is warranted or is on sound legal ground in a particular case is a matter within the discretion of the local prosecutor. Ops. S.C. Atty. Gen., April 6, 2011; October 29, 2004; April 20, 2004; February 3, 1997.The prosecutor is the person on the scene who can weigh the strength or weakness of an individual case. Op. S.C. Atty. Gen., August 14, 1995. Thus, while this office has provided to you the relevant law in this area, we must defer to the prosecutor's ultimate judgment as to whether or not to prosecute an individual in question in a given case under particular circumstances.

If you have any further questions, please advise.

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

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