

Coyle

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF OKLAHOMA SITTING IN AND FOR OKLAHOMA COUNTY

THE STATE OF OKLAHOMA,

)
)
)

CF-2020-6011

Plaintiff,

vs.

FILED IN DISTRICT COURT
OKLAHOMA COUNTY Case No.

DAVID OSTROWE



DEC 17 2020

RICK WARREN
COURT CLERK

Defendant(s).

06 _____

INFORMATION

I, MIKE HUNTER, the undersigned Attorney General for the State of Oklahoma, in the name and by the authority of the State of Oklahoma, informs the District Court as follows:

Count 1: On or about September 10, 2020, in Oklahoma County, Oklahoma, **DAVID OSTROWE**, did commit the crime of **Attempted Bribery of an Officer** by, knowingly and unlawfully attempting to commit the crime of Bribery of an Official, by directing Oklahoma Tax Commissioners Steve Burrage and Charles Prater to waive the interest and penalties of JCG Futures, LLC which were owed to the State of Oklahoma and if not compliant with this directive, appropriations to the Oklahoma Tax Commission would be withheld, all performed with the intent to influence an official action but said attempt was prevented or intercepted in the perpetration thereof, contrary to the provisions of 21 O.S. §42 of the Oklahoma Statutes, and against the peace and dignity of the State of Oklahoma.

Respectfully Submitted,
MIKE HUNTER
ATTORNEY GENERAL

By: Joy Pittman
Joy Pittman Thorp OBA # 19545
Senior Deputy Attorney General
15 W 6th Street, Suite 1000
Tulsa, OK 74119
(918) 581-2885

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,
Plaintiff,

vs.

OSTROWE, DAVID CHARLES
DOB: 07/01/1968, W/M
SSN:

Defendant

AFFIDAVIT OF PROBABLE CAUSE

The undersigned upon oath deposes and states as follows, to-wit:

I, Tom Helm, am a CLEET certified peace officer employed as an Agent with the Oklahoma Attorney General's Office (OAG), State of Oklahoma. I am assigned to the Multicounty Grand Jury Unit.

The statements in this Affidavit are based on information obtained during the investigation through interviews, investigative activities, and consultation with other law enforcement officers. Since this affidavit is being submitted for the limited purpose of having charges filed, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe **DAVID CHARLES OSTROWE** committed the following crime(s):

Attempted Bribery by a Public Official, 21 O.S. § 42

1. The Oklahoma Office of Attorney General is investigating David Charles OSTROWE for his role in Bribery by a Public Official. David Charles OSTROWE is the Secretary of Digital Transformation and Administration for the State of Oklahoma. The Secretary of Digital Transformation is a Cabinet Secretary, pursuant to Title 74 §10.3. The Oklahoma Tax Commission is a department that falls within the purview of the Secretary of Digital Transformation and Administration. OSTROWE is an advisor to the Oklahoma Tax Commission regarding any policy changes or problems as directed by the Governor. OSTROWE has no direct managerial authority over the Oklahoma Tax Commission.
2. The Oklahoma Tax Commission has the responsibility of the collection and administration of taxes, licenses and fees for the State of Oklahoma. Under the direction of the state legislature, the Tax Commission manages not only the collection of taxes and fees, but also the distribution

and apportionment of revenues to various state funds. Additionally, the Tax Commission distributes certain ear-marked funds to counties, school districts and municipalities throughout the state. Some of these ear-marked funds include collections from sales and use taxes as well as county lodging taxes.

3. Each of the three members of the Oklahoma Tax Commission is appointed, to a six-year term, by the Governor and confirmed by the State Senate. By statute, one of the three commissioners must be registered to a different political party than the others. Currently, the Commission is comprised of Chairman Charles Prater (Republican), Vice Chairman Clark Jolley (Republican) and Secretary-Member Steve Burrage (Democrat). The Commissioners are responsible for the supervision of the administration and enforcement of state tax laws and the collection of a majority of all state-levied taxes and fees. Tax Commissioners rule on protests and requests for abatement of penalties and interest brought by taxpayers, requiring a two-thirds vote to pass.
4. On September 10, 2020, Commissioner Burrage received a text message from David OSTROWE. The message stated, "JCG Futures LLC applied for waivers of penalties. I'll call you later with the details." Burrage responded, "Okay."
5. OSTROWE then called Burrage at about 7:52 hours. Burrage detailed the call from OSTROWE, as follows:
 - OSTROWE told Burrage that JCG Futures LLC is a company that Senator Smalley is affiliated with and JCG had penalties and interest assessed by the Oklahoma Tax Commission for late payment of taxes.
 - Burrage asked if the taxes were sales tax or payroll tax and OSTROWE said he thought they were for one or the other. OSTROWE said the penalties and interest needed to be waived.
 - OSTROWE told Burrage that Commissioner Jolley had been contacted and Commissioner Jolley would abstain from the vote.
 - OSTROWE said he did not have to contact Commissioner Prater because Commissioner Prater had been contacted by Senator Roger Thompson.
 - OSTROWE stated that Senator Thompson would punish The Oklahoma Tax Commission if the penalties' and interest were not waived for JCG Futures LLC.
6. Commissioner Burrage stated that he believed the message from OSTROWE was a threat and that OSTROWE was trying to leverage legislative funding for the Tax Commission in order to obtain a favorable decision for JCG Futures LLC.
7. Commissioner Burrage stated that there is an unwritten policy within the Tax Commissioners that they would not normally waive fees or penalties for taxes in full. In particular, as a general rule, they do not waive the penalties or fees for taxes that are in a trust, i.e., sales tax or employment taxes.
8. On September 10, 2020, Commissioner Prater received text messages from David OSTROWE stating, "JCG futures LLC. Applied for waiver for penalties. I'll call you shortly for details."

9. After receiving the text messages, OSTROWE called Prater and asked if he had seen the company name in the text message. OSTROWE explained the company involves a former senator, Jason Smalley, and he is coming before the Tax Commissioners on a tax matter and he needs his penalties and interest abated.
10. Prater told OSTROWE that he should not be calling him (Prater) about the matter and it is something they should not be discussing. Prater asked OSTROWE where he received the information regarding JCG Futures LLC and OSTROWE stated that Smalley is a friend of Senator Roger Thompson and, according to OSTROWE, Thompson wanted the penalties and interest abated or he would cut the budget for the Oklahoma Tax Commission. Prater told OSTROWE he was going to have to recuse himself from this matter as a result of this conversation. With this, OSTROWE told Prater that Jolley was already going to recuse. Prater stated that he was bothered that OSTROWE had asked another Tax Commissioner about this same issue.
11. Prater believed that the communications and message from OSTROWE was a threat to the Oklahoma Tax Commission, delivered so the Tax Commissioners would provide a favorable judgment to JCG Future, LLC in the tax matter scheduled before the Oklahoma Tax Commission.
12. Commissioner Prater stated he was approached by OSTROWE in September or October of 2020 in which OSTROWE asked Prater if he (Prater) would be willing to change his political affiliation. Prater, a Republican, stated that he believed the request was to allow OSTROWE to seek the vacant position on the Tax Commission when Commissioner Burrage's term expires in January. If Prater were to change his political affiliation, this would meet statutory requirements for OSTROWE (registered Republican at the time) to be nominated to the Oklahoma Tax Commission. Prater further stated that he believed OSTROWE's motive for attempting to influence the JCG Futures matter was that a favorable outcome would help him clear the Senate confirmation process, should he be nominated. After Prater's refusal to change political parties, OSTROWE changed political affiliation from Republican to Independent.
13. Commissioner Prater stated he met with Governor Stitt to inform him of the attempts by OSTROWE to influence the Tax Commissioner's decision. According to Prater, after discussing the matter with the Governor, the two agreed OSTROWE's actions should be investigated. When Prater asked if the Governor wished to call for the investigation or if he (Prater) should, Governor Stitt, after consideration, requested Prater ask that the matter be investigated by the Attorney General's Office.
14. On September 10, 2020, Commissioner Jolley received text messages from OSTROWE in which OSTROWE stated that he had spoken with the other 2 commissioners about the Senator Smalley issue and that they understood an unfavorable ruling may be punished by Senator Thompson, the chair of the Senate Appropriations Committee.
15. Commissioner Jolley stated the request for relief detailed in OSTROWE's message ("zero plus tax due") was outside of the standard relief and would not be appropriate. Jolley believed the request made by Secretary OSTROWE was inappropriate because Tax Commissioners serve a

quasi-judicial role in hearings before the Tax Commission and the appropriate course of action for a taxpayer, should they disagree with the decision of the Tax Commission, would be through the defined process of appeal through the Oklahoma Supreme Court. Jolley continued that he has previously heard feedback from people within state government when they disagreed with a decision made by the Tax Commissioners, but he has never before received influence to render a specific decision by Secretary OSTROWE.

16. I interviewed Oklahoma State Senator Roger Thompson regarding the matter. Senator Thompson told me he was asked by Jason Smalley to assist him in navigating the procedures of the Oklahoma Tax Commission in his attempt to reduce the amount of penalties and interest on a tax matter. Senator Thompson said he reached out to Secretary OSTROWE to see if he could provide assistance to Smalley. Senator Thompson stated he never placed any conditions on the request, made a threat, or sought any specific outcome. Senator Thompson further explained his response to Smalley's request and discussion with Secretary OSTROWE was what he would do for any constituent to assist with matters before the Oklahoma Tax Commission.

17. Senator Thompson stated that, on or about November 17, 2020, he encountered OSTROWE at a legislative function in Oklahoma City. Senator Thompson confronted OSTROWE and said that he (OSTROWE) knows that Senator Thompson never stated that he would withhold funding to the Tax Commission. OSTROWE acknowledged that Senator Thompson never made the statement.

18. Senator Thompson stated he was approached by OSTROWE on December 16, 2020 where OSTROWE told Thompson that he (OSTROWE) was not going to speak with investigators because nothing good comes out of those conversations. Senator Thompson told OSTROWE that he (Thompson) had nothing to worry about because he (Thompson) never said any of the things that were allegedly used by OSTROWE. OSTROWE again acknowledged to Senator Thompson that Thompson never made any such threat. OSTROWE claimed that he had never made any statements alleging a threat to any of the Tax Commissioners, continuing that "this was all from Charlie Prater." OSTROWE said that he did say that that "it may be in our best interest," to waive the penalties in fees but he (OSTROWE) never made a specific threat. Senator Thompson told OSTROWE that he had not ever said that either, and OSTROWE agreed. OSTROWE again blamed Commissioner Prater, telling Senator Thompson, "It's all about Prater. Prater is making this up. He is the one lying to him because he wants to be bulletproof in the Tax Commission." Senator Thompson said that the use of his name in the matter has affected him in working with the Tax Commission and created an uncomfortable position when he is trying to provide tax relief to businesses affected by the pandemic.

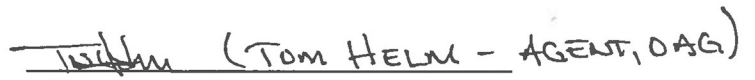
19. I interviewed Jason Smalley. Smalley explained that JCG Futures, LLC was a restaurant and event center at the time he was assessed interest and penalties for underpayment of taxes. Smalley said that a reporting error resulted in the underpayment of taxes and acknowledged that he was responsible for the taxes owed. Smalley said he paid the delinquent tax, but believed the assessment of penalties and interest were excessive and had been compounded due to delays outside of his control, specifically that COVID-19 caused some of the delay.

Smalley approached Senator Thompson as a friend and asked if he could provide assistance with the Tax Commission. Smalley said he did not ask for any specific outcome.

The undersigned prays that the court issue a finding of fact that probable cause exists to believe that the following crime(s):

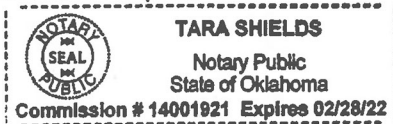
Attempted Bribery by a Public Official, 21 O.S. §42


was (were) committed, and that there is probable cause to believe that **DAVID CHARLES OSTROWE** committed said crime(s). All of these events happened in Oklahoma County, State of Oklahoma.


Affiant

Subscribed and sworn to me this 17th day of December, 2020.

My commission Expires




NOTARY PUBLIC

FINDING OF PROBABLE CAUSE

The undersigned Judge of this court, upon sworn testimony and/or affidavit, hereby determines there to be probable case to detain the defendant.

Dated this 17th day of December, 2020.


JUDGE OF THE DISTRICT COURT

WITNESSES ENDORSED FOR THE STATE OF OKLAHOMA

Commissioner Steve Burrage
2501 North Lincoln Boulevard
Oklahoma City, OK 73194

Commissioner Charles Prater
2501 North Lincoln Boulevard
Oklahoma City, OK 73194

Commissioner Clark Jolley
2501 North Lincoln Boulevard
Oklahoma City, OK 73194

Carolyn Stipe
2501 North Lincoln Boulevard
Oklahoma City, OK 73194

Records Custodian
Oklahoma Tax Commission
2501 North Lincoln Boulevard
Oklahoma City, OK 73194

Jason Smalley
924 West 2nd Street
Stroud, Oklahoma 74079

Senator Roger Thompson
2300 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

Records Custodian
Apple, Inc.

Agent Tom Helm
15 West 6th Street, Suite 1000
Tulsa, Oklahoma 74119

IN THE DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

CRIMINAL COVER SHEET

STATE OF OKLAHOMA,
Plaintiff
vs
DAVID CHARLES OSTROWE
Defendant

CF X (Felony)
CM _____ (Misdemeanor)
JDL _____ (Juvenile Delinquent)
JS _____ (Juvenile/Supervision)
JT _____ (Juvenile/Treatment)
JD _____ (Juvenile/Deprived)
JDHT _____ (Juvenile/Mental)
JDLH _____

DEFENDANT INFORMATION

Last Name: OSTROWE First Name: DAVID Middle Name: CHARLES

Address: _____

City: _____ State: OK ZIP: _____

Address Type: _____

Phone: Home# _____

Phone: Cell# _____

Phone: Work# _____

Email: _____

Date/Birth: _____

Driver License #: _____ Driver License State: _____ SS#: _____

Race: W Gender: X M ___ F ___ Language/Dialect: _____

Additional Defendants: ___Y ___N Total Number of Defendants: _____

ATTORNEY INFORMATION

(If licensed in Oklahoma, fill in address information, only if it has changed since registering with the Oklahoma Bar Association.)
(Attach additional cover sheets for additional attorneys.)

Last Name: Thorp First Name: Joy Middle Name: _____

Address: 313 N.E. 21ST Street

City: Oklahoma City State: OK

ZIP: 73105

Bar Number (Required) 19545

Telephone: _____

Email: _____

OFFENSES

COUNT(S)	OFFENSES CHARGED	OKLA. STAT. CITATION	NCIC CODE
1	Attempted Bribery of an Officer	21 O.S. § 42	

Signature: Assistant Attorney General: _____



Elliott

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,

Plaintiff,

vs.

DAVID OSTROWE



Defendant(s).

FILED IN DISTRICT COURT Case No.
OKLAHOMA COUNTY

DEC 17 2020

RICK WARREN
COURT CLERK

06 _____

CF-2020-6012

INDICTMENT

FOR:

COUNT 1: ATTEMPTED BRIBERY OF AN OFFICER, 21 O.S. §42.

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF OKLAHOMA:

By the order of the Supreme Court of Oklahoma, the Eighteenth Multicounty Grand Jury was convened with its principal site to be in Oklahoma City, Oklahoma County, Oklahoma, to serve from March 3, 2020, for eighteen (18) months, or until the designated presiding judge determines the Eighteenth Multicounty Grand Jury has reached reasonable completion of its investigations, but, in any event, no more than twenty-four (24) months from the commencement of its term. That said Multicounty Grand Jury of the State of Oklahoma, being composed of good and lawful men and women, legally drawn and summoned according to law, and then and there examined, impaneled, sworn, and charged according to law to diligently inquire into, and true presentment make, of all public offenses against the State of Oklahoma committed and triable within the State of Oklahoma, upon their oath, and in the name and by the authority of the State of Oklahoma, do present and find:

COUNT 1: ATTEMPTED BRIBERY OF AN OFFICER, 21 O.S. §42.

On or about September 10, 2020, in Oklahoma County, Oklahoma, **DAVID OSTROWE**, did commit the crime of **Attempted Bribery of an Official** by, knowingly and unlawfully attempting to commit the crime of Bribery of an Official, by directing Oklahoma Tax Commissioners Steve Burrage and Charles Prater to waive the interest and penalties of JCG Futures, LLC which were owed to the State of Oklahoma and if not compliant with this directive, appropriations to the Oklahoma Tax Commission would be withheld, all performed with the intent to influence an official action but said attempt was prevented or intercepted in the perpetration thereof, contrary to the provisions of 21 O.S. §42 of the Oklahoma Statutes, and against the peace and dignity of the State of Oklahoma.

TRUE BILL (X)

NO BILL ()



FOREMAN
OKLAHOMA MULTICOUNTY GRAND JURY

Penalties:

21 O.S. § 382. Any person who violates this section is guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding ten (10) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00) and imprisonment in jail not exceeding one (1) year.

21 O.S. §42. If the offense so attempted be punishable by imprisonment in the penitentiary for four (4) years or more, or by imprisonment in a county jail, the person guilty of such attempt is punishable by imprisonment in the penitentiary, or in a county jail, as the case may be, for a term not exceeding one-half (1/2) the longest term of imprisonment prescribed upon conviction for the offense so attempted.

WITNESSES (Before the Grand Jury):

1. Tom Helm, Oklahoma Attorney General, 15 West 6th Street, Suite 1000, Tulsa, Oklahoma 74119.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA DEC 17 2020

RICK WARREN
COURT CLERK

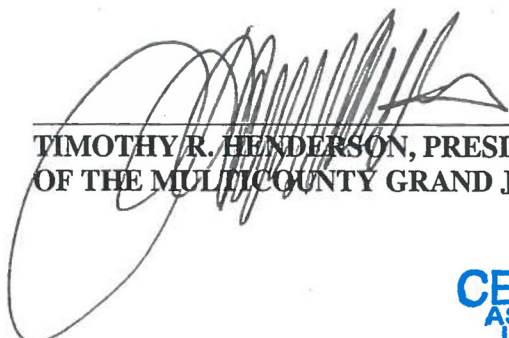
IN RE: MULTICOUNTY GRAND JURY,)
)
Supreme Court No. SCAD-2020-1)

06 _____
District Court Case No: GJ-2020-1

**ORDER DETERMINING VENUE, REQUIRING TRANSMITTAL OF INDICTMENT
TO COUNTY OF VENUE, AND AUTHORIZING DISTRICT COURT TO OPEN FOR
PURPOSE OF ISSUANCE OF WARRANT**

NOW on this 17th day of December, 2020, the Court having been present, in open court,
an indictment returned by the Oklahoma Multicounty Grand Jury, the Court finds and orders as
follows:

1. Said indictment having been examined by the Court, the Court pursuant to the provisions of 22 O.S. Section 358, finds and orders that venue and jurisdiction shall be in Oklahoma County, State of Oklahoma.
2. That said indictment shall be transmitted by the Attorney General, or one of his Assistant Attorneys General, to the District Court Clerk of Oklahoma County, who, thereafter, upon receipt shall notify the District Judge of Oklahoma County of the filing of the same;
3. That the District Judge of Oklahoma County shall proceed according to the provisions of Title 22 O.S. Section 386.



TIMOTHY R. HENDERSON, PRESIDING JUDGE
OF THE MULTICOUNTY GRAND JURY

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

DEC 17 2020

RICK WARREN COURT CLERK
Oklahoma County

