

CASE CHARGING APPROVAL

Complaint Indictment **XX** Estimated Length of Trial: **5-7** days

Grand Jury Presentment / Direct Complaint: Date and Time: **Mon. 12-08-14 at 11:20 a.m. (upon approval)**

Name of Defendant(s): **HERBERT OXNAM**

CHARGES: COUNTS 1-4: FRAUDULENT SCHEMES AND ARTIFICES, CLASS 2

If drug related: N/A Weight: N/A

Name(s) of Victim(s): **City of Tucson**
[Identify if victim is a child, a vulnerable adult or 60 years old or over]

County: Pima Date of Offense: **May – August, 2013**
Statute of Limitations: 2020

Summary of Case and Evidence Available [as to each Defendant]:

This proposed indictment resulted from public corruption criminal activity discovered during an administrative investigation of the Tucson Fire Department conducted by the Tucson Police Department at the direction of the Tucson City Manager. Once criminal activity surfaced during the administrative investigation, TPD contacted AGO for prosecution support and the investigation transitioned from administrative to criminal.

During the administrative investigation, TPD detectives identified numerous institutional departmental irregularities in (1) how TFD employees conducted/documented shift trades, "stand-by" trades, and emergency leave, and (2) how management failed to maintain accurate time records on COT's authorized roster reporting system. While employees' shift trades/leave practices without question required a level of scheming by TFD employees which could constitute probable cause, TFD's institutional tolerance of shift trades/leave manipulations compounded by tacit managerial approval and/or poor oversight of documentation made criminal prosecution untenable. Additionally, ambiguity of definitions in TFD's operating manual also created a defense to criminal intent. Last, the undersigned prosecutor felt it would be an unjust exercise of prosecutorial discretion to single out one employee for conduct that was widely tolerated in the department. However, the investigation did identify a discrete "double-bill" fraud initiated by suspect TFD paramedic Oxnam *not* subject to the proof deficiencies described above.

Oxnam's "Double Bill" Fraud

To provide coverage when TFD employees called in sick, TFD maintained a "Suppression Extra Duty" list (SED), commonly referred to as the "Pick" list. If an employee called in sick, the person at the top of the "Pick" list would have the

opportunity to accept an overtime shift. The "Pick" list was accessible to TFD employees via the internet or from smart phones so people could see their position in line to get an overtime shift and TFD rotated the list so OT opportunities were fairly distributed.

During administrative interviews, four paramedics admitted that Oxnam paid them either in cash or by check to call in sick when Oxnam's name was at the top of the "Pick" list. In short, Oxnam's scheme caused the City of Tucson to pay out twice on the same shift – sick leave to another TFD paramedic who was not sick *and* overtime to Oxnam. Additionally, Oxnam's benefit from the fraud was two-fold: (1) the obvious benefit of overtime pay in the applicable pay period; and (2) as Oxnam neared retirement, the more subtle benefit of increasing his "high three" (the last three consecutive income years used in calculating his retirement benefit), a practice commonly referred to as "pension spiking". Absent Oxnam's fraud in inducing other paramedics to call in sick, "pension spiking" by simply working as many OT hours as possible would not be criminal.

Witness Interviews: Compelled Administrative and Criminal

Three paramedics provided compelled statements incriminating themselves and Oxnam in the "Double Bill" scheme. A fourth paramedic initially lied to TPD to cover for Oxnam, but then recanted in a second compelled administrative interview. Once the investigation became criminal, these four paramedics were re-interviewed pursuant to immunity grants and all four again admitted accepting payments to take sick leave when Oxnam was at the top of the "Pick" list so that Oxnam could take the overtime shift based on their absence. This scheme caused the City of Tucson to pay out twice on the same shift – sick leave to a TFD employee who was not sick *and* overtime to Oxnam.

Specific Incidents of Fraud

5/25/13

According to paramedic witness Michael Carreon, on 5/25/2013, suspect Oxnam contacted Carreon and informed Carreon that Oxnam was up next on the TFD "Pick" list. Oxnam asked Carreon to take 12 hours of sick leave so TFD would call in Oxnam for OT to cover Carreon's shift. Oxnam paid Carreon \$200 in cash to take sick leave. Detectives corroborated Carreon's statement with Telestaff computerized roster and payroll records showing Carreon took/was paid for 12 hours of sick leave for 5/25/13 and that Oxnam worked/was paid for 12 hours of OT for the same shift. Bank records obtained for both Oxnam and Carreon showed no checks from Oxnam to Carreon during the relevant time period.

7/21/13

According to paramedic witness Frank Pedraza, on 7/21/2013, suspect Oxnam contacted Pedraza and informed Pedraza that Oxnam was up next on the TFD "Pick" list. Oxnam asked Pedraza to take 24 hours of sick leave so TFD would call in Oxnam for OT to cover Pedraza's shift. Oxnam paid Pedraza \$100 in cash to take sick leave. Pedraza told investigators that he distinctly remembered Oxnam leaving the cash for him in the pocket of his fire pants. Detectives corroborated Pedraza's statement with Telestaff computerized roster and payroll records showing Pedraza took/was paid for 24 hours of sick leave for 7/21/13 and that Oxnam worked/was paid for 24 hours of OT for the same shift. Bank records obtained for both Oxnam and Pedraza showed no checks from Oxnam to Pedraza during the relevant time period.

8/04/13

According to paramedic witness Jason Payne, on 8/4/2013, suspect Oxnam initially contacted Payne by text message and asked Payne to take sick leave since Oxnam was at the top of the "Pick" list. Oxnam offered to pay Payne to take sick leave. Payne told detectives he declined, but passed the offer to his partner, Brett Bradshaw. According to paramedic witness Brett Bradshaw, on the same date Bradshaw agreed to call in sick to allow Oxnam to work OT. Bradshaw said Oxnam paid him \$150 via personal check

Because Bradshaw said Oxnam wrote him a personal check, AGO issued a racketeering demand on Tucson Old Pueblo Credit Union where Oxnam maintained his account. Detectives located two checks from Oxnam to Bradshaw: (1) check #3142 for \$140.00 dated 07/23/2013 with "standby station 20 on 07/23" in the memo line; and (2) check #3146 for \$150.00 dated 07/24/2013 with "standby" in the memo line. Neither check corresponded with the 8/04/13 date where Telestaff computerized daily roster records showed Bradshaw taking 12 hours of sick leave and Oxnam working 12 hours of OT.

Based on the discrepancy between the check date and the date Bradshaw called in sick so Oxnam could work OT, detectives reviewed the Telestaff paramedic roster from 7/20/13 to 8/04/13. Bradshaw worked on 7/22, was off 7/23, shift traded on 7/24 (did not work), was off 7/25, worked 7/26, was off 7/27, worked OT on 7/28, was off 7/29 and 7/30, and worked 8/01. Oxnam worked on 7/23, was off 7/24, shift traded on 7/25 (did not work), was off 7/26, took vacation on 7/27, was off 7/28, worked 7/29, was off 7/30, worked 7/31, and was off 8/01. Bradshaw and Oxnam both worked on 8/02, but at separate stations – Bradshaw for his regular shift at Station #1 and Oxnam on an OT shift at Station #20. Neither worked on 8/03/13. Detectives also corroborated Bradshaw's statement with Telestaff computerized roster and payroll records from 8/04/13 showing that Bradshaw took/was paid for 12 hours of sick leave for 8/04/13 and that Oxnam worked/was paid for 12 hours of OT for the same shift.

