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IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

ROBERT SPYBUCK, Appellant, v. THE STATE OF OKLAHOMA, Appellee.	)	Case No. M-2024-132

BRIEF OF APPELLANT

Jeremy Stillwell
Appellate Defense Counsel
Oklahoma Bar No. 21371

Appellate Division West
Oklahoma Indigent Defense System
111 N. Peters
Norman, OK 73069
(405)801-2727

ATTORNEY FOR APPELLANT

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IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

ROBERT SPYBUCK,	)	
	)	
Appellant,	)	
v.	)	
	)	Case No. M-2024-132
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	
	)	

BRIEF OF APPELLANT

Robert Spybuck was the defendant in the district court and will be referred to by name or as Appellant. Appellee will be referred to as the state or as the prosecution. Numbers in parentheses refer to page citations in the original record (O.R.) and the transcripts of the September 13 and October 24, 2023, trial (Tr.I-II). Similarly, they will refer to the parties' exhibits (State #)(Def. #).

STATEMENT OF THE CASE

Appellant was charged by Information filed January 25, 2023, in Comanche County District Court Case Number CM-2023-137 with "A.P.C. CDS," in violation of 47 O.S.2021, § 11-902(A)(3). (O.R. 1) On that same day he was also ordered to appear at a jury sounding docket on April 5, 2023. (O.R. 4) Notation marks on the court minute from that proceeding indicated Appellant had been present in person, rather than through counsel, and that he said he was "READY FOR JURY TRIAL," as opposed to waiving trial by jury. In space provided directly below that information on the form was written the following:

"NJTC 7/5/23 @ 1:15 PM Judge Zwaan Room #405." (O.R. 8)

A few days after that July 5, 2023, nonjury-trial conference, Appellant's nonjury trial was set for August 23, 2023. (O.R. 12) But on that day, the state requested a continuance because it had not yet received blood test results, and the court reset the trial to September 13, 2023. (O.R. 13)

Then on that day, after hearing from three of the state's witnesses, the court continued the proceedings until September 20, 2023, so the state could produce its fourth witnesses. (O.R. 24; Tr.I 20) That second part, however, was later reset to October 24, 2023. (O.R. 25) And at its conclusion, the trial court found Appellant guilty and imposed a one-year suspended sentence, a $300 fine and other costs, and ordered him to complete other drug and alcohol related obligations. (O.R. 26; Tr.II 23)

Mr. Spybuck appeals the judgment and sentence in this case.

STATEMENT OF THE FACTS

Jesse Alverson agreed that on January 24, 2023, he went to Southeast Tower Road in Lawton because of an "overdose in progress." Alverson, then a Lawton Police Department officer, at the time heard about an overdose in progress at Southeast Tower Road in Lawton, Oklahoma. (Tr.II 3-4)

The state asked Alverson what happened when he arrived at 1508 Southeast Tower Road. (Tr.II 4) Alverson said he found Buffalo Bob's RV Park, and immediately south of that was "a drive." He said there was a "residence on the right side of that drive, but as you go down [it], detached from that

residence" was an asphalt business "in the back" with vehicles and equipment. (Tr. 5) Alverson likely meant that the route to the business, Daley Asphalt, involved taking a path that intersects Tower Road between the RV park and its point of access, as well as a residence and the entrance or driveway to that residence. That would make sense of Alverson's answers to questioning from the state involving references to Tower Road, as well as the image depicted in Defendant's Exhibit No. 2.

Alverson said as he was about to leave the area, a woman flagged him down from one of the dump trucks. Alverson said the woman was attempting CPR on Appellant who was in the driver's seat of that truck. (Tr.II 5-6) He said the woman also told him that Appellant had "smoked a pill." (Tr.II 6)

Alverson said medical professionals who arrived pulled Appellant out of the vehicle to the ground where they resuscitated him and placed him in the back of an ambulance. He said after some time, Appellant's speech patterns became more intelligible. (Tr.II 7) According to Alverson, he read the implied consent warning and Appellant agreed to take the test. (Tr.II 8) He said he then took Appellant to Comanche County Memorial Hospital where registered nurse Kim Brock drew Appellant's blood, which Alverson then mailed to the OSBI. (Tr.II 9-11) Brock testified about the blood draw and the related affidavit, which was admitted as an exhibit, on the first day of trial along with the state's remaining witnesses. (Tr.I 8-11; State 1)

One of those witnesses was Alli Timmons, a senior criminalist in the

Oklahoma State Bureau of Investigation's Forensic Toxicology Unit. (Tr.I 12) Timmons testified about a criminalistic examination report she had prepared, which was admitted into evidence. Timmons said she found the blood to contain "amphetamine, methamphetamine, a metabolite of THC called THCA, fentanyl, norfentanyl, and 4-ANPP." (Tr.I 17; State 2)

The other witness, Lawton Police Department officer Loui Pohawpatchoko, testified about starting and moving the truck in which Appellant had been. (Tr.I 4-6)

On both days of trial, Appellant represented himself, as he did throughout all proceedings up to and including his first attempt to appeal. (Tr.I 3; Tr.II 3; O.R.33-44)

PROPOSITION

APPELLANT WAS DENIED HIS RIGHT TO DUE PROCESS WHEN THE COURT IGNORED HIS OBJECTIONS AND REQUESTS REGARDING A VIOLATION OF HIS RIGHT TO COUNSEL AND TO HAVE COUNSEL APPOINTED AND CONVICTING HIM IN A TRIAL IN WHICH APPELLANT WAS FORCED TO REPRESENT HIMSELF.

Standard of Review: A trial court's decision regarding a waiver of counsel is reviewed for an abuse of discretion. *Mathis v. State*, 2012 OK CR 1, ¶ 18, 271 P.3d 67, 75; *Parker v. State*, 1976 OK CR 293, ¶ 9, 556 P.2d 1298, 1301. The right to counsel, however, is so basic to a fair trial that a violation of that right can never be treated as harmless error. *Penson v. Ohio*, 488 U.S. 75, 88 (1988).

Argument and Authority: Appellant was without counsel throughout the case, according to the record. (O.R. 8, 11-12, 13, 24-26) In fact, there is no mention in the record that Appellant waived his right to counsel nor that the court appointed, or directed Appellant to obtain, counsel. What does appear is a "5 DAY NOTICE DEMAND FOR NONPAYMENT OF RENT" filed on March 5, 2023, with the date of March 4, 2023, and the name "Robert" at the heading and an address referenced that matches the one listed on the Information, a uniform violations complaint form in this case. (O.R. 1, 9) That rent termination notice is followed by a handwritten letter in which the author states that, while she and Appellant's friends were able to combine funds and pay his bond, they were unable to help him any further. (O.R. 10)

On the first day of Appellant's trial, after the state responded it was ready

and the court asked if Appellant was ready, Appellant immediately said, "Once again, I request counsel. I'm just saying I'm forced to do this alone but I filed two Pauper Affidavits on the issue I understand, for the best I could be I'm ready." The court's next words were directed at the state: "You may proceed." (Tr.I 3)

At the beginning of the continued part of the trial, after making announcements for the record, the court simply said, "The State is represented by Brent Parmer, and the defendant is present." Following the prosecutor's confirmation that the state was ready, the court directed the state to call its witness without any inquiry of Appellant. (Tr.II 3)

Appellant raised the issue of proceeding without the assistance of counsel once again during closing arguments. Reading from *Powell v. Alabama*, 287 U.S. 45 (1932), Appellant said:

> [T]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science law. If charged with crime, he is incapable generally of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without aid of counsel, he may be put on trial without a proper charge and convicted upon incompetent evidence or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, thought he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.
>
> (Tr.II 21)

Appellant then said he requested a dismissal on the case. "Actually I was

just hoping . . . to get this quashed, the arrest and all. This cost me my job. I got an eviction notice yesterday. If need be to continue on, I request a third pauper's affidavit for my appeal because this is not right." (Tr.II 21-22)

The court's response was, "Yes, sir." Appellant then said, "That's it," and, without comment, the judge said, "Do you have any argument, Mr. Palmer?" (Tr.II 22) The state, saying it did, focused its arguments solely on matters related to the elements of the case. After neglecting any opportunity to address the lack of counsel throughout the two-day trial, which even included a more-than-a-month break, the state continued to disregard the issue, following the court's lead, and acting as though it didn't exist, even when Appellant had just made it a prominent part of his closing.

Shortly after that, the court convicted Appellant. And despite his objections and specifically making a request to the court for appointed counsel for appellate purposes should that need arise, the court was silent on the issue. In its concluding remarks, the court omitted any notice of any rights or information about procedures on appeal, before the judge's final words: "If he needs a payment plan, we'll do a Rule 8. Close the record." (Tr. 24)

A person charged with a misdemeanor has an unconditional and absolute right to a lawyer equal to those who are charged with a felony in state court. *Mahorney v City of Tulsa*, 1975 OK CR 218, ¶ 4, 542 P.2d 965, 966. While the right to counsel may be waived, it must be done knowingly and voluntarily, and a waiver is not to be lightly presumed. *Painter v. State*, 1988

OK CR 224, ¶ 10, 762 P.2d 990, 992. The trial judge must indulge every reasonable presumption against waiver. *Id.*

From the record, it is evident Appellant did not waive his right to counsel nor is there any indication he had ever intended to. Presuming against waiver here is easy: Appellant clearly stated he did not wish to waive his right to counsel. Additionally, the two documents regarding Appellant's rent and assistance from friends' support corroborate his financial inability to hire an attorney and his desire for court-appointed counsel.

It is difficult to say the judge abused her discretion when she denied Appellant the assistance of counsel because, from the record, she appeared to be unaware there was even a decision that needed to be made. There is nothing suggesting Appellant implicitly waived the right or otherwise. And there is no reason to consider whether Appellant knowingly, voluntarily, and intelligently made a choice to be represented by counsel in his case and at trial. Nevertheless, a trial court's decision regarding a waiver of counsel is reviewed for an abuse of discretion. *Mathis v. State*, 2012 OK CR 1, ¶ 18, 271 P.3d 67, 75; *Parker v. State*, 1976 OK CR 293, ¶ 9, 556 P.2d 1298, 1301. An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue. It has also been described as a clearly erroneous conclusion and judgment that is clearly against the logic and effect of the facts presented. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170; *State v. Farthing*, 2014 OK CR 4, ¶ 4, 328 P.3d

1208, 1209.

There is no question based on the record that an unreasonable or arbitrary action was taken and that it was taken without consideration of the facts or law even when those facts or law were sufficiently and directly being presented, albeit by no other person in the courtroom than the one who, in theory, should be the least qualified to do so and the first to be able to rely on the justice system—since he is the defendant in the case.

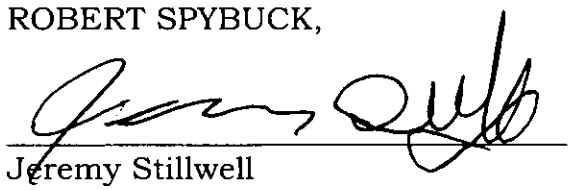
Because Appellant was denied his right to counsel at trial, this Court should reverse and dismiss the conviction in this case. Under these circumstances, any other relief would be inadequate to remedy or offset the harm done. If the solution to the error for a case like this is to reverse and remand it for a new trial, even the attainment of an acquittal by then hardly represents fundamental fairness. Appellant respectfully requests this Court reverse Appellant's conviction and remand the case with orders to dismiss, or in the alternative, favorably modify Appellant's sentence.

CONCLUSION

For the reasons and authorities cited above, Appellant respectfully requests that the Judgment and Sentence of the District Court be reversed and the case remanded with instructions to dismiss. In the alternative, Appellant would ask that the sentences be favorably modified.

Respectfully submitted,

ROBERT SPYBUCK,

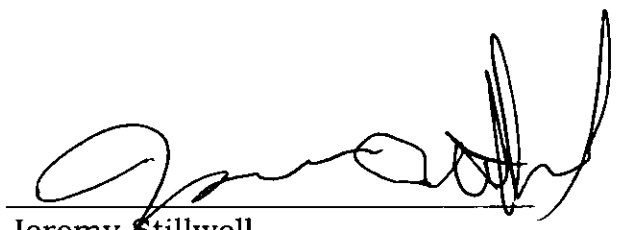
By: 

Jeremy Stillwell
Bar Association No. 21371
Appellate Division West
Oklahoma Indigent Defense System
111 N. Peters, Ste. 100
Norman, Oklahoma 73069
(405)801-2727
ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

This is to certify that on August 26, 2024, a true and correct copy of the foregoing Brief of Appellant was served upon the Attorney General by leaving a copy with the Clerk of the Court of Criminal Appeals for submission to the Attorney General, and was caused to be mailed, via United States Postal Service, postage pre-paid, to others listed below.

Robert Spybuck
(Private Address)



Jeremy Stillwell