



# OKLAHOMA STATE COURTS NETWORK

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## SPYBUCK v. STATE OF OKLAHOMA

2025 OK CR 7

Case Number: [M-2024-132](#)

Decided: 07/03/2025

THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA



Cite as: 2025 OK CR 7, \_\_ P.3d \_\_

**ROBERT WAYNE SPYBUCK, Appellant,**

**v.**

**THE STATE OF OKLAHOMA, Appellee.**

### OPINION

#### **ROWLAND, JUDGE:**

¶1 Following a non-jury trial, Appellant, appearing *pro se*, was convicted of being in Actual Physical Control of a Vehicle Under the Influence of a Controlled Dangerous Substance ([47 O.S.2021, § 11-902\(A\)\(3\)](#)) in Comanche County District Court Case No. CM-2023-137. The Honorable Susan Zwaan, Special Judge, presided at trial, found Appellant guilty, and sentenced him to one year in the Comanche County Detention Center, all suspended, and assessed a fine of \$300.00. From this judgment and sentence, Appellant appeals.

#### FACTS

¶2 On January 24, 2023, Lawton Police Officer Jesse Alverson responded to a call of a drug overdose in progress at a location in Lawton. Upon arriving at the scene, he was flagged down by a woman from the passenger seat of a dump truck. Officer Alverson approached and saw the woman performing CPR on the Appellant who was unconscious behind the wheel of the dump truck with the keys in the ignition. The woman stated that the Appellant said he "smoked a pill," and the officer observed certain paraphernalia in the truck which he associated with the illegal use of fentanyl.

¶3 Medical personnel arrived and administered Narcan, a medicine used to quickly halt the effects of opioid overdose, and after about twenty minutes Appellant was able to tell them his name, but he still could not remember his address. He consented to a draw of his blood and was taken in handcuffs to the Comanche County Hospital for that purpose. Subsequent testing by an OSBI Forensic Toxicology Criminalist revealed the presence of methamphetamine, amphetamine, fentanyl, and a metabolite of THC which is the active ingredient in marijuana.

¶4 During his bench trial, Appellant was not provided counsel and was forced to represent himself, despite explicitly asking for counsel at the beginning of his trial. "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 then stated to the prosecutor, "You may proceed." During his closing argument, Appellant again requested counsel and quoted at length from the U.S. Supreme Court's decision in *Powell v. Alabama*, 287 U.S. 45, (1932), one of numerous cases stressing the importance of access to legal counsel for one accused of a crime. At the close of the trial, the court found Appellant guilty and sentenced him to one year, suspended, and a \$300.00 fine.

#### ANALYSIS

¶5 In his sole proposition of error, Appellant argues, and the State judiciously concedes, he was denied the right to counsel. We agree.

¶6 The district court's ruling on a request for counsel is reviewed for an abuse of discretion. See *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 a clearly erroneous conclusion and judgment, one clearly against the logic and effect of the facts presented. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

¶7 The fundamental right of the criminally accused to be represented by counsel is guaranteed by the Sixth Amendment to the United States Constitution and article II, section 20 of the Oklahoma Constitution. The Sixth Amendment right was held applicable to the states and incorporated through the Due Process Clause of the Fourteenth Amendment in *Gideon v. Wainwright*, 372 U.S. 335 (1963). See also, *Swanegan v. State*, 1987 OK CR 180, ¶ 4, 743 P.2d 131, 132 ("An accused has the unconditional and absolute right to counsel in any felony or misdemeanor proceeding."). Of course, this right may be waived, *Painter v. State*, 1988 OK CR 224, ¶¶ 9-11, 762 P.2d 990, 992, but there is no evidence in this record nor any claim by the State that Appellant waived his right to counsel. Nor is there any evidence that the trial court made any inquiry into Appellant's financial ability to pay for counsel.

¶8 The fact that Appellant's sentence was suspended in its entirety by the trial court has no effect upon his constitutional right to counsel. A defendant who is given a suspended sentence may one day be forced to serve that sentence of incarceration, and thus the right to counsel is the same as if the sentence were not suspended.

A suspended sentence is a prison term imposed for the offense of conviction. Once the prison term is triggered, the defendant is incarcerated not for the probation violation, but for the underlying offense. The uncounseled conviction at that point "result[s] in imprisonment," *Nichols*, 511 U.S., at 746; it "end[s] up in the actual deprivation of a person's liberty," *Argersinger*, 407 U.S., at 40.

*Alabama v. Shelton*, 535 U.S. 654, 662 (2002).

¶9 In this case Appellant asked for appointed counsel and provided at least some evidence of his claimed indigency, but in the end he was forced to represent himself in a criminal trial. A conviction on such terms cannot stand and Appellant is entitled to a new trial wherein his federal and state constitutional rights to be represented by counsel are observed.

### **DECISION**

¶10 Appellant's misdemeanor conviction in Comanche County District Court Case No. CM-2023-137 is **REVERSED** and the case is **REMANDED** for new trial. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2025), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM COMANCHE COUNTY DISTRICT COURT  
THE HONORABLE SUSAN ZWAAN, SPECIAL JUDGE**

**APPEARANCES AT TRIAL**

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**OPINION BY: ROWLAND, J.**

LUMPKIN, P.J.: Concur  
MUSSEMAN, V.P.J.: Concur  
LEWIS, J: Concur  
HUDSON, J.: Concur

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<u>2012 OK CR 1, 271 P.3d 67,</u>	<u>MATHIS v. STATE</u>	Discussed
<u>2012 OK CR 7, 274 P.3d 161,</u>	<u>NELOMS v. STATE</u>	Discussed
<u>1987 OK CR 180, 743 P.2d 131,</u>	<u>SWANEGAN v. STATE</u>	Discussed
<u>1976 OK CR 293, 556 P.2d 1298,</u>	<u>PARKER v. STATE</u>	Discussed

**Title 47. Motor Vehicles**

Cite	Name	Level
<u>47 O.S. 11-902,</u>	<u>Persons Under the Influence of Alcohol or Other Intoxicating Substance or Combination Thereof</u>	Cited

