

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

BYRIN CARR,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

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Not For Publication

No. M-2016-268

**FILED**  
**IN COURT OF CRIMINAL APPEALS**  
**STATE OF OKLAHOMA**

APR 27 2017

**MICHAEL S. RICHIE**  
**CLERK**

**SUMMARY OPINION**

**SMITH, JUDGE:**

Following a jury trial on March 11, 2016, Appellant was found guilty of Count 1 - Threatening to Perform an Act of Violence and Count 2 - Resisting an Officer in Garfield County District Case No. CM-2015-1173. Appellant was convicted and sentenced to six months imprisonment for Count 1 and one year imprisonment, along with a Five Hundred Dollar fine, for Count II. Appellant appeals from the Judgment and Sentence imposed.

In Appellant's first proposition of error he argues his waiver of counsel was not knowing and voluntary. Specifically, he argues his waiver was not clear and unequivocal and maintains the trial court erred when it failed to warn Appellant of the dangers of self-representation. After reviewing the record on appeal we agree the trial court erred by failing to warn Appellant of the dangers of self-representation.

This Court must determine if the trial court abused its discretion when reviewing the Appellant's waiver of counsel. *Mathis v. State*, 2012 OK CR 1, ¶

18, 271 P.3d 67, 75. Appellant must have knowingly and voluntarily entered a waiver of his right to counsel, on the record, before representing himself in his Garfield County jury trial. *Lineberry v. State*, 1983 OK CR 115, ¶ 4, 668 P.2d 1144, 1145. Reviewing the totality of the circumstances in this case there is insufficient evidence to show Appellant's waiver of counsel was knowing and voluntary. *Braun v. State*, 1995 OK CR 42, ¶ 12, 909 P.2d 983, 988.

Anything less than a record establishing that the trial court informed the Appellant of the dangers and disadvantages of representing himself is insufficient to constitute a valid waiver of counsel. *Braun v. State*, 1995 OK CR 42, ¶ 10, 909 P.2d 783, 788. A record is mandatory. *Id.* Before this Court will allow Appellant to suffer the consequences of his decision to waive his right to counsel it must be satisfied the Appellant knew what he was doing when he waived counsel. *Coleman v. State*, 1980 OK CR 75, ¶ 8-9, 617 P.2d 243, 246. The appeal record contains no evidence of warnings to Appellant of any dangers or disadvantages associated with representing himself or that this decision would likely work to his detriment. *Mathis*, 2012 OK CR 1, ¶ 15, 271 P.3d at 74. Any doubts regarding this waiver of counsel must be resolved in the Appellant's favor. *Swanegan v. State*, 1987 OK CR 180, ¶ 6, 743 P.2d 131, 132. Based on the facts and circumstances in this case we cannot find the Appellant knowingly, intelligently and voluntarily waived his constitutional right to counsel. *Lineberry v. State*, 1983 OK CR 115, ¶ 4, 668 P.2d 1144, 1146.

Finding merit to Appellant's first proposition of error, we do not find it necessary to address Appellant's remaining proposition of error.

### **DECISION**

The Judgment and Sentence of the trial court is **REVERSED** and **REMANDED** for a new trial. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF GARFIELD COUNTY  
HONORABLE TOM L. NEWBY, ASSOCIATE DISTRICT JUDGE

#### **APPEARANCES AT TRIAL**

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#### **OPINION BY: SMITH, J.**

LUMPKIN, P.J.: CONCUR  
LEWIS, V.P.J.: CONCUR  
JOHNSON, J.: CONCUR  
HUDSON, J.: CONCUR