

methamphetamine manufacturing because Appellant was acquitted of manufacturing and was convicted only of possession of precursors with intent to manufacture.

After a thorough consideration of these propositions and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we have determined that neither reversal of the conviction nor modification of the sentence is warranted under the law and the evidence. However, the order of restitution is vacated and the issue is remanded to the District Court for a proper determination.

In Proposition I, Officer Layton was at the trailer, having been invited to the property by the landowner to investigate suspicious activity. Therefore, he was legitimately on the porch to view the incriminating items sitting out in the open. His search of the porch and nearby shed was proper under the “plain view” exception to the Fourth Amendment warrant requirement. *Fritz v. State*, 1986 OK CR 181, ¶ 9, 730 P.2d 530, 533 citing *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d. 564 (1971). See also *Wackerly v. State*, 2000 OK CR 15, ¶ 16, 12 P.3d 1, 9. Therefore, the trial court did not abuse its discretion in overruling Appellant’s motion to suppress. See *Battiest v. State*, 1988 OK CR 95, ¶ 6, 755 P.2d 688, 690.

In Proposition II, we find the trial court’s rulings sustaining the defense objections to instances of prosecutorial misconduct and the court’s subsequent admonishments to the jury to disregard the remarks cured any error as the prosecutor’s comments do not appear to have determined the verdict. *Turrentine v. State*, 1998 OK CR 33, ¶ 56, 965 P.2d 955, 974. Further, in light

of the relatively light sentence received by Appellant, the prosecutor's comments did not contribute to an excessive sentence.

In Proposition III, we find the trial court failed to comply with the guidelines set forth in *Honeycutt v. State*, 1992 OK CR 36, 834 P.2d 993, 1000, for determining the amount of restitution. Under 22 O.S.2001, § 991a(A)(1), the decision to order restitution is within the trial judge's total discretion. However, this discretion is not without limits. First, the judge must determine whether the restitution can be paid without imposing manifest hardship on the defendant or his immediate family. Second, the extent of the damage to the victim must be determinable with reasonable certainty. The record must reflect a basis for the trial judge's determination of a victim's loss or the decision is arbitrary and violative of Section 991a. *Id.*

Here, the record does not reflect a basis for the trial judge's order for restitution. Therefore, the order of restitution is vacated and the issue of the amount of the victim's loss is remanded to the trial court for proper determination.

DECISION

The Judgment and Sentence is **AFFIRMED**, the order of restitution is **VACATED** and the issue of the amount of the victim's loss is **REMANDED** to the trial court for proper determination in accordance with this opinion.

AN APPEAL FROM THE DISTRICT COURT OF GRADY COUNTY
THE HONORABLE OTEKA ALFORD, ASSOCIATE DISTRICT JUDGE

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OPINION BY: LUMPKIN, V.P.J.
CHAPEL, P.J.: CONCUR
C. JOHNSON, J.: CONCUR
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