

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CHARLES EDWARD WEIMER,)

Appellant,)

v.)

THE STATE OF OKLAHOMA,)

Appellee.)

NOT FOR PUBLICATION

Case No. F-2014-698

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT 28 2015

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

JOHNSON, JUDGE:

Appellant Charles Edward Weimer was tried by jury in the District Court of Comanche County, Case No. CF-2012-39, and convicted of First Degree Murder (Child Abuse), in violation of 21 O.S.2011, § 701.7(C). The jury assessed punishment at life imprisonment. The Honorable Emmit Tayloe, who presided at trial, sentenced Weimer accordingly and ordered him to pay restitution in the amount of \$6,395.00.¹ Weimer appeals, raising the following issues:

- (1) whether evidence produced by the Office of the Chief Medical Examiner and evidence which relied upon the Medical Examiner's report should have been suppressed because it was acquired in violation of the Forensic Laboratory Accreditation Act;
- (2) whether he was deprived of his right to present a defense and his right to confront and cross-examine the witnesses against him;
- (3) whether the admission of gruesome autopsy photographs at trial deprived him of his right to a fundamentally fair trial;

¹ Under 21 O.S.2011, § 13.1, Weimer must serve 85% of the sentence imposed before he is eligible for parole.

- (4) whether the trial court abused its discretion in denying defense counsel's motion to allow the jury to view the scene;
- (5) whether the trial court's order of restitution was supported by the evidence; and
- (6) whether the cumulative effect of the errors at trial resulted in a fundamentally unfair trial.

We find reversal is not required and affirm the Judgment of the district court. The order of restitution is vacated and the case is remanded to the district court for a hearing on restitution.

1.

The fact that the Medical Examiner's office was not accredited did not render either Dr. Yacoub's testimony or Dr. Steumky's testimony made in reliance upon the Medical Examiner's report inadmissible. *See Bosse v. State*, 2015 OK CR 14, ¶¶ 72-73. The trial court did not abuse its discretion when it denied the motions to quash and suppress. *Jackson v. State*, 2006 OK CR 45, ¶ 48, 146 P.3d 1149, 1165.

2.

The trial court's ruling prohibiting defense counsel from introducing evidence that the Medical Examiner's office was not accredited based upon relevancy denied Weimer neither his right to present a defense nor his right to confrontation. *See Gore v. State*, 2005 OK CR 14, ¶ 21, 119 P.3d 1268, 1275 (in the exercise of the right to present a defense the accused must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence); *Delaware v. Van*

Arsdall, 475 U.S. 673, 679, 106 S.Ct. 1431, 1435, 89 L.Ed.2d 674 (1986)(while the Confrontation Clause guarantees an opportunity for effective cross-examination, it does not preclude the trial court from imposing reasonable limitations on cross-examination such as cross-examination into issues which would confuse the jury or those that are only marginally relevant). *See also Bosse*, __ OK CR __, ¶ __.

3.

We find no abuse of discretion in the trial court's decision to admit the two autopsy photographs at issue because they were relevant and their probative value was not substantially outweighed by the danger of unfair prejudice. *See Mitchell v. State*, 2010 OK CR 14, ¶ 59, 235 P.3d 640, 655; *Cole v. State*, 2007 OK CR 27, ¶¶ 30, 32, 164 P.3d 1089, 1096-97.

4.

The trial court did not abuse its discretion in denying the defense motion to have the jury view the scene. *See Postelle v. State*, 2011 OK CR 30, ¶ 24, 267 P.3d 114, 129; *Suggs v. State*, 1973 OK CR 236, ¶ 13-15, 509 P.2d 1374, 1377; 22 O.S.2011, § 851.

5.

Weimer argues that the trial court's order of restitution was error as there was no evidence presented showing the actual loss. This Court reviews the calculation of a restitution award for an abuse of discretion. *Honeycutt v. State*, 1992 OK CR 36, ¶ 28, 834 P.2d 993, 1000.

Title 22 O.S.2011, § 991a(A)(1)(a) provides that restitution may be ordered only to the extent that the damage to the victim is determined with “reasonable certainty.” A “reasonable certainty” must be more than an approximation, estimate, or guess. *Honeycutt*, 1992 OK CR 36, ¶ 31, 834 P.2d at 1000. Inherent in the definition of reasonable certainty is the requirement of proof of the loss. *Id.* Unless the record reflects a basis for the trial judge's determination of loss, the decision is arbitrary and violates section 991a. *Id.*, ¶ 33, 1000.

The record shows that the trial court assessed restitution based upon the amount stated in the Pre-Sentence Investigation report. Title 22 O.S.2001, § 982(D) prohibits this Court from considering the contents of this report. Section 982(D) provides in relevant part that “[t]he presentence investigation reports specified in this section shall not be referred to, or be considered, in any appeal proceedings.” Because nothing in the record before this Court supports the district court’s assessment of restitution, we find that the district court abused its discretion in determining restitution and we remand the case to the district court for a proper hearing on the amount of actual economic loss suffered as a result of the crime committed by Weimer. *See Logsdon v. State*, 2010 OK CR 7, ¶ 13, 231 P.3d 1156, 1163-64; *Taylor v. State*, 2002 OK CR 13, ¶ 5, 45 P.3d 103, 105; *Honeycutt*, 1992 OK CR 36, ¶¶ 24-39, 834 P.2d 993, 1000-1001.

6.

There are no errors, considered individually or cumulatively, that merit relief in this case. *Jones v. State*, 2009 OK CR 1, ¶ 104, 201 P.3d 869, 894; *DeRosa v. State*, 2004 OK CR 19, ¶ 100, 89 P.3d 1124, 1157. This claim is denied.

DECISION

The Judgment and Sentence of the district court is **AFFIRMED**. The district court's restitution order is **VACATED** and the case is **REMANDED** to the district court for a proper determination on the issue of loss in accordance with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2015), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF COMANCHE COUNTY
THE HONORABLE EMMIT TAYLOE, DISTRICT JUDGE

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OPINION BY: JOHNSON, J.
SMITH, P.J.: Concur
LUMPKIN, V.P.J.: Concur
LEWIS, J.: Concur in Results
HUDSON, J.: Concur

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LEWIS, J., CONCURRING IN RESULT:

I concur in result but I cannot concur with the majority's conclusion in Proposition 2. In my opinion, it was error for the trial court to prohibit defense counsel from introducing evidence that the Medical Examiner's office was not accredited. Because I find it was harmless beyond a reasonable doubt, I concur in the result.