

FILED  
 IN COURT OF CRIMINAL APPEALS  
 STATE OF OKLAHOMA  
 APR 26 2001  
 JAMES W. PATTERSON  
 CLERK

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

ROBERT WARREN BETTS, IV	)	
	)	
Appellant,	)	
v.	)	Case No. C-00-1344
	)	
THE STATE OF OKLAHOMA	)	
	)	
Appellee.	)	

**SUMMARY OPINION GRANTING CERTIORARI**

**CHAPEL, JUDGE:**

On January 24, 2000, in the District Court of Caddo County, Betts pleaded guilty in Case No. CF-99-170 to Driving Under the Influence of Drugs in violation of 47 O.S.Supp.1998, § 11-902, after one former DUI conviction; in Case No. CF-99-233, to Assault and Battery upon a Police Officer in violation of 21 O.S.1991, § 649(B) (Count I), and Driving Under the Influence of Intoxicating Liquor in violation of 47 O.S.Supp.1998, § 11-902 (Count II), after one former DUI conviction; in Case No. CM-99-549 to Driving Under Suspension in violation of 47 O.S.Supp.1998, § 6-303 (Count I), and Transportation of Beer in an Open Container in violation of 21 O.S.1991, § 1220 (Count II); and in Case No. CM-99-777 to Unlawful Possession of a Controlled Drug (Lorazepam) in violation of 63 O.S.Supp.1998, § 2-402(B)(2) (Count I), Driving Under Suspension in violation of 47 O.S.Supp.1998, § 6-303 (Count II), Public Drunk in violation of 73 O.S.1991, § 8 (Count III), and Tampering with a Vehicle in violation of 47 O.S.1991, § 4-104(a) (Count IV).

On March 16, 2000, the Honorable David E. Powell sentenced Betts as follows: Case No. CF-99-170 – ten (10) years imprisonment, concurrent to Case No. CF-99-233; Case No. CF-99-233 – ten (10) years imprisonment on Count I and seven (7) years imprisonment on Count II to be served consecutively; Case No. CM-99-549 – one (1) year imprisonment and \$50 fine, concurrent to all other sentences; Case No. CM-99-777 – one (1) year imprisonment on each of Counts I & II, thirty (30) days imprisonment on Count III, and sixty (60) days imprisonment on Count IV, concurrent to all other sentences. Betts filed a motion to withdraw his plea on April 20, 2000. The district court overruled his motion after an April 21, 2000 hearing, and Betts filed a petition for certiorari on October 25, 2000. This Court ordered a Response to Propositions I, III and V, which was filed March 14, 2001.

Betts raises five propositions of error in support of his petition:

- I. The trial court erred in refusing to grant Betts's motion to withdraw his plea of guilty because an inadequate factual basis existed;
- II. The trial court erred in denying Betts's application to withdraw his pleas when it became apparent that Betts was not correctly advised of the ranges of punishment;
- III. Reversible error occurred when the trial court did not fill out form 13.10 as is required by case law and Rule 4.1 to the misdemeanor charge of unlawful possession of a controlled substance;
- IV. Reversible error occurred when the trial court accepted Betts's plea without informing him of the elements of each offense charged; and
- V. The trial court erred by failing to determine restitution within a reasonable certainty.

After thorough consideration of the entire record before us on appeal including the original record, transcripts, briefs and exhibits of the parties, we find Proposition I requires relief as to Case Nos. CF-99-170, CM-99-549, and CM-99-777.<sup>4</sup> The only factual basis in the record is Betts's statement admitting he drove while drinking twice and hit a police officer. The statement says nothing about driving under the influence of drugs, possession of Lorazepam, transporting beer in an open container, or tampering with a vehicle, nor does it address the question of a suspended driver's license. As there is no factual basis to support these charges, the Court cannot find Betts entered his plea to those counts voluntarily and intelligently.<sup>1</sup> The Petition for Writ of Certiorari is **GRANTED** as to these convictions.

We find in Proposition II that Betts was accurately informed of the range of punishment on the charges in Case No. CF-99-233. Given our conclusion in Proposition I, the remainder of Betts's claims in Proposition II are moot. We find Proposition III is moot, as CM-99-777 must be reversed under Proposition I. We find no merit in Proposition IV, as the trial court is not required to inform a defendant of the elements of each charge before accepting a plea.

We find in Proposition V that the trial court failed to ascertain the amount of restitution to a reasonable certainty.<sup>2</sup> We also note the record does not indicate in which case restitution was imposed. It appears restitution

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<sup>1</sup> *Hagar v. State*, 1999 OK CR 35, 990 P.2d 894, 896.

<sup>2</sup> 22 O.S.Supp.1997, § 991a(A)(1)(a); *Honeycutt v. State*, 1992 OK CR 36, 834 P.2d 993, 1000-01.

could have been imposed in either CF-99-233 or CM-99-777. If restitution was imposed in the latter case, it must be vacated, as that conviction must be reversed under Proposition I. We therefore **REMAND** this case on the restitution issue for an evidentiary hearing be held to determine, first, in which case restitution was ordered. If restitution was ordered in CM-99-777, CF-99-170, or CM-99-549, the trial court is directed to vacate that order. If the trial court determines restitution was ordered in CF-99-233, the trial court must ascertain the amount of restitution within a reasonable certainty. We direct the district court to conduct a hearing, provide transcripts, and issue an order setting forth findings of fact and conclusions of law within forty-five (45) days from the date of this order.

### **Decision**

The Judgment and Sentence in Case No. CF-99-233 is **AFFIRMED**. The District Court's decisions in Case Nos. CF-99-170, CM-99-549, and CM-99-777 are **REVERSED**. The case is **REMANDED** to the District Court for an evidentiary hearing consistent with this Opinion.

APPEARANCES AT TRIAL

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AT MOTION TO WITHDRAW PLEA

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**OPINION BY: CHAPEL, J.**

LUMPKIN, P.J.: CONCUR  
JOHNSON, V.P.J.: CONCUR  
STRUBHAR, J.: CONCUR  
LILE, J.: CONCUR IN RESULTS

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