

2. The trial court erred in assessing restitution to Appellant, based on money missing from Watson's checking account, depriving Appellant of his constitutional rights; and
3. The punishment is excessive given all the facts and circumstances of this case, and the Court should modify the sentences, pursuant to its statutory authority, if the judgments are affirmed.

After thorough consideration of the propositions raised, the Original Record, the transcripts and briefs of the parties, we find Mr. Kishore's convictions and sentences should be and are hereby affirmed, but the order of restitution is hereby vacated and the determination of restitution is remanded to the district court for the reasons set forth below.

Proposition One does not require relief. Although defense counsel did not learn a key witness obtained a fee for his disclosure of this crime to government officials until the day of trial, such evidence was not material impeachment evidence and, had it been disclosed sooner, cannot reasonably be taken to put the whole case in such a different light as to undermine confidence in the jury's verdict. See *Anderson v. State*, 2006 OK CR 6, ¶ 28, n.36, 130 P.3d 273, 283, n.36 (the prosecution is required to turn over any evidence favorable to an accused which is material to guilt or punishment and includes impeachment evidence); *Kyles v. Whitley*, 514 U.S. 419, 435, 115 S.Ct. 1555, 1566, 131 L.Ed.2d 490 (1995).

Proposition Three also does not require relief. The individual terms of the sentences imposed fall within the appropriate statutory ranges. See 21 O.S.2001, § 421(C) and 21 O.S.2001, § 1451.1(B). Further, Judge Bass-Jones acted within her discretion when she ordered the sentences to run

consecutively. See 22 O.S.2001, § 976; *Riley v. State*, 1997 OK CR 51, ¶ 20, 947 P.2d 530, 534. The sentences imposed do not shock the conscience of the Court. *Rea v. State*, 2001 OK CR 28, ¶ 5, 34 P.3d 148.

In Proposition Two, we find the trial court acted within its statutory authority by ordering restitution. See 22 O.S.2001, § 991f. However, the State did not submit the statutorily required restitution form and the restitution amount was not determined to a reasonable degree of certainty. Both are required by statute. 22 O.S.2001, § 991f. Accordingly, the one hundred thousand dollar (\$100,000.00) order of restitution is hereby **VACATED** and the matter is remanded to the district court for a hearing to determine the proper amount of restitution.

DECISION

The Judgment and Sentences imposed in Oklahoma County District Court, Case No. CF 2003-1331, are hereby **AFFIRMED**, but the order of restitution is **VACATED** and **REMANDED TO THE DISTRICT COURT** for further proceedings consistent with this Summary Opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE TAMMY BASS-JONES, DISTRICT JUDGE

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OPINION BY: C. JOHNSON, J.

CHAPEL, P.J. :	CONCURS
LUMPKIN, V.P.J. :	CONCURS
A. JOHNSON, J.:	RECUSE
LEWIS, J.:	CONCURS

RB