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

SUNDEEP KISHORE,	)
Appellant,	) NOT FOR PUBLICATION
V.	Case No. F 2005-659
THE STATE OF OKLAHOMA,	IN COURT OF CRIMINAL APPEAL STATE OF OKLAHOMA
Appellee.	)
	AUG - 2 2008
SUMMAR	Y OPINION MICHAEL S. RICHIE CLERK

## C. JOHNSON, JUDGE:

Appellant, Sundeep Kishore, was convicted by a jury in Oklahoma County District Court, Case No. CF 2003-1331, of Conspiracy to Commit Murder, in violation of 21 O.S.2001, § 421 (Count 1), and of Embezzlement, in violation of 21 O.S.2001, § 1451.1 (Counts 2, 3, 5-9). Jury trial was held on April 26<sup>th</sup> – May 3<sup>rd</sup>, 2005, before the Honorable Tammy Bass-Jones, District Judge. The jury set punishment on Count 1 at ten (10) years imprisonment; five (5) years imprisonment on Counts 7 and 8; and, two (2) years imprisonment each on Counts 2, 3, 5, 6, and 9. Formal sentencing was held on June 30, 2005, and Judge Bass-Jones sentenced Appellant in accordance with the jury's verdicts and ordered the sentences to be served consecutively. The trial court also ordered Appellant to pay One Hundred Thousand Dollars (\$100,000.00) in restitution. Thereafter, Appellant perfected this appeal.

Mr. Kishore raises three (3) propositions of error:

1. Appellant was denied a fair trial when the State failed to disclose prior to trial that one of the State's key witnesses was a paid FBI informant;

- 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

APPEARANCES AT TRIAL

MICHAEL TREVINO
JOE RUFFIN
ASST. PUBLIC DEFENDERS
320 ROBERT S. KERR
611 COUNTY OFFICE BUILDING
OKLAHOMA CITY, OK 73102
ATTORNEY FOR DEFENDANT

APPEARANCES ON APPEAL

KIM CHANDLER BAZE
ASST. PUBLIC DEFENDER
320 ROBERT S. KERR
611 COUNTY OFFICE BUILDING
OKLAHOMA CITY, OK 73102
ATTORNEY FOR APPELLANT

KEN STONER
MARTHA McMURRY
ASST. DISTRICT ATTORNEYS
320 ROBERT S KERR
ROOM 505
OKLAHOMA CITY, OK 73102
ATTORNEYS FOR THE STATE

W.A. DREW EDMONDSON ATTORNEY GENERAL OF OKLAHOMA JAY SCHNIEDERJAN ASST. ATTORNEY GENERAL 112 STATE CAPITOL BUILDING OKLAHOMA CITY, OK 73105 ATTORNEYS FOR STATE

## OPINION BY: C. JOHNSON, J.

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

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