

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

United States v. Zunie

444 F.3d 1230 (10th Cir. 2006) · No. No. 04-2256 · Decided April 19, 2006

SUMMARY

The Tenth Circuit affirmed Randall Zunie's conviction for assault resulting in serious bodily injury under 18 U.S.C. §§ 113(a)(6) and 1153, holding that purpose, knowledge, or recklessness can satisfy the required mens rea. The court also upheld the sentence and concluded that any Booker error was harmless. It remanded for the district court to establish a restitution payment schedule that considers the statutory financial factors.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	LUCERO, Circuit Judge; Carlos F. Lucero; Wade Brorby McWilliams; Timothy M. Tymkovich
JURISDICTION	Federal
DECIDED	April 19, 2006
DOCKET	No. 04-2256
DISPOSITION	remanded
PROCEDURAL POSTURE	Zunie appealed his jury conviction for assault resulting in serious bodily injury under 18 U.S.C. §§ 113(a)(6) and 1153, his sentence, and the restitution order. The district court denied his motion for judgment of acquittal, imposed the statutory maximum prison sentence, and ordered restitution of \$1,794,469 payable in full immediately.
STANDARD OF REVIEW	Sufficiency of the evidence was reviewed de novo, viewing direct and circumstantial evidence and reasonable inferences in the light most favorable to the government. Sentencing-guideline legal questions were reviewed de novo, factual findings for clear error, and the district court's application of the Guidelines to the facts with due deference. Because the sentence predated Booker, the court reviewed the degree of departure for reasonableness. Booker error was reviewed for harmlessness.
PRECEDENTIAL VALUE	Published precedential opinion of the United States Court of Appeals for the Tenth Circuit.

PARTIES

Randall Zunie v. United States of America

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QUESTIONS PRESENTED

1. Whether sufficient evidence supported Zunie's conviction for assault resulting in serious bodily injury when the evidence showed reckless, but not purposeful or knowing, conduct.
2. Whether the district court's fifteen-level upward sentencing departure was unreasonable.
3. Whether any constitutional or nonconstitutional Booker error in imposing the sentence was harmless.
4. Whether the district court properly calculated restitution without considering Zunie's ability to pay.
5. Whether the district court was required to establish a restitution payment schedule considering Zunie's financial resources, projected earnings, and financial obligations.

HOLDINGS

1. A finding that the defendant acted purposely, knowingly, or recklessly supports a conviction for assault resulting in serious bodily injury under 18 U.S.C. § 113(a)(6); negligence alone is insufficient.
2. The evidence was sufficient for a reasonable jury to find beyond a reasonable doubt that Zunie acted recklessly, and the conviction therefore stands.
3. The district court's fifteen-level upward departure was not unreasonable.
4. Any constitutional or nonconstitutional Booker error was harmless.
5. The district court properly ordered restitution in the full amount of the victims' losses without considering Zunie's indigence when calculating the amount, but it erred by failing to specify an appropriate payment schedule.

KEY QUOTATIONS

“We hold that a finding of purpose, knowledge, or recklessness supports a conviction for assault resulting in serious bodily injury, in violation of 18 U.S.C. § 113(a)(6).” (444 F.3d at 1234)

“Therefore, by disregarding Zunie's ability to pay when calculating the total amount of restitution, the district court acted properly.” (444 F.3d at 1236)

“We therefore remand for the district court to set an appropriate payment schedule in light of the statutory factors.” (444 F.3d at 1237)

FACTUAL BACKGROUND

Zunie drove an intoxicated one-ton truck more than 70 miles per hour on a 45-mile-per-hour road, swerved between lanes, forced several vehicles off the road, crossed into oncoming traffic, and collided head-on with another vehicle. A four-year-old passenger suffered catastrophic and permanent injuries, while the other occupants also sustained serious injuries. The collision occurred on the Zuni Reservation, and both Zunie and the victims were Zuni Indians.

PROCEDURAL HISTORY

After a jury trial, Zunie was convicted in federal district court of assault resulting in serious bodily injury arising from a vehicle collision on the Zuni Reservation. The district court denied his postverdict motion for judgment of acquittal, imposed a 120-month sentence after upward departures, and ordered restitution. The Tenth Circuit affirmed the conviction and sentence but remanded for the district court to establish an appropriate restitution payment schedule.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The district court must set an appropriate restitution payment schedule in light of 18 U.S.C. § 3664(f)(2), considering Zunie's financial resources and other assets, projected earnings and other income, and financial obligations. The conviction and sentence were affirmed.

CASES CITED

- United States v. McKissick, 204 F.3d 1282, 1289 (10th Cir. 2000)
- United States v. Benally, 146 F.3d 1232, 1237 (10th Cir. 1998)
- United States v. Bailey, 444 U.S. 394, 403-04 (1980)
- United States v. Blair, 54 F.3d 639, 642 (10th Cir. 1995)
- United States v. Lewis, 780 F.2d 1140, 1142-43 (4th Cir. 1986)
- United States v. Loera, 923 F.2d 725, 728 (9th Cir. 1991)
- United States v. Ashley, 255 F.3d 907, 911 (8th Cir. 2001)
- United States v. Doe, 398 F.3d 1254, 1257 (10th Cir. 2005)
- United States v. Martinez, 418 F.3d 1130, 1133 n.3 (10th Cir. 2005)
- United States v. Okane, 52 F.3d 828, 833 (10th Cir. 1995)
- United States v. Flinn, 987 F.2d 1497, 1501 (10th Cir. 1993)
- United States v. Gonzalez-Huerta, 403 F.3d 727, 731-32 (10th Cir. 2005) (en banc)
- Blakely v. Washington, 542 U.S. 296 (2004)
- United States v. Labastida-Segura, 396 F.3d 1140, 1142-43 (10th Cir. 2005)
- United States v. Riccardi, 405 F.3d 852, 876 (10th Cir. 2005)
- United States v. Paxton, 422 F.3d 1203, 1207 (10th Cir. 2005)

- United States v. Reano, 298 F.3d 1208, 1210 (10th Cir. 2002)
- Leocal v. Ashcroft, 543 U.S. 1, 7-8 (2004)
- United States v. Pappert, 112 F.3d 1073, 1076 (10th Cir. 1997)
- United States v. McPhilomy, 270 F.3d 1302, 1310 (10th Cir. 2001)
- United States v. Williams, 128 F.3d 1239, 1242 (8th Cir. 1997)

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