

SUPREME COURT OF VERMONT

State v. Morse

197 Vt. 495 (2014) · No. 2013-045 · Decided July 25, 2014

SUMMARY

The Vermont Supreme Court affirmed a restitution order requiring Phillip Morse to pay \$2,427.36 for damage to a vehicle arising from a collision. The court held that the State's failure to affirmatively prove the defendant lacked insurance was harmless, that a written finding of uninsured loss was sufficient, and that hearsay repair estimates may be admitted in restitution proceedings if reliable. The court also upheld the use of repair costs to calculate restitution and rejected the defendant's unpreserved plain-error challenge.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Reiber, C.J.; Dooley, J.; Skoglund, J.; Robinson, J.; Crawford, J.
JURISDICTION	Vermont
DECIDED	July 25, 2014
DOCKET	2013-045
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed a restitution order entered after his guilty pleas and sentencing, challenging the proof of uninsured loss, the sufficiency of the court's uninsured-loss finding, admission of a repair estimate as hearsay, and the method used to calculate restitution.
STANDARD OF REVIEW	Evidentiary rulings are reviewed for abuse of discretion. Unpreserved issues are ordinarily waived, and plain-error review, if applicable, requires an obvious error affecting substantial rights, resulting in prejudice and affecting the fairness of the proceedings.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Phillip Morse v. State of Vermont

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the State failed to prove that the victim's loss was uninsured because it did not affirmatively establish that defendant lacked insurance.
2. Whether the trial court sufficiently found that the victim suffered an uninsured loss.
3. Whether the trial court erred by admitting a repair estimate as hearsay in the restitution proceeding.
4. Whether restitution had to be calculated using the difference in the vehicle's fair market value before and after the accident rather than repair cost.

HOLDINGS

1. Any failure by the State to affirmatively establish that defendant lacked insurance was harmless because defendant did not demonstrate or allege that his insurance would have reduced the restitution award; any insurer payment would operate as a credit against the restitution obligation.
2. A written restitution order specifically finding that the victim incurred an uninsured material loss was sufficient, even though the court's earlier oral findings did not mention insurance.
3. The Vermont Rules of Evidence do not apply to restitution proceedings, and hearsay may be admitted to establish a victim's loss if it satisfies reliability requirements.
4. Using the reasonable cost of repairing the damaged vehicle was permissible; restitution was not required to be calculated exclusively by the difference between the vehicle's fair market value before and after the accident.

KEY QUOTATIONS

"Therefore, we hold that in restitution proceedings the rules of evidence do not apply and hearsay may be admitted." (¶ 18)

"While the difference in fair market value is a reasonable means to assess damages, other measures are also reasonable." (¶ 21)

FACTUAL BACKGROUND

Morse swerved his truck into a car driven by his ex-girlfriend, damaging the vehicle's passenger-side doors. The vehicle owner testified that the damage was caused by the collision, that there was no collision insurance covering it, and that a repair estimate placed the cost at \$2,427.36. The trial court credited the owner's testimony, found the estimate a fair and reasonable repair cost, and ordered restitution.

PROCEDURAL HISTORY

Morse pleaded guilty to grossly negligent operation and reckless endangerment after an automobile collision and was sentenced to two-to-five years; other charges were dismissed. Following a restitution hearing, the Superior

Court ordered him to pay \$2,427.36 for damage to the victim's mother's vehicle. The Vermont Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Hughes, 2010 VT 72, ¶ 11, 188 Vt. 595, 5 A.3d 926
- State v. VanDusen, 166 Vt. 240, 245, 691 A.2d 1053, 1055 (1997)
- United States v. Zangari, 677 F.3d 86, 96 (2d Cir. 2012)
- Hanson-Metayer v. Hanson-Metayer, 2013 VT 29, ¶¶ 45-46, 193 Vt. 490, 70 A.3d 1036
- State v. Burke, 2012 VT 50, ¶ 23, 192 Vt. 99, 54 A.3d 500
- Towle v. St. Albans Publishing Co., 122 Vt. 134, 139, 165 A.2d 363, 366 (1960)
- State v. Gallagher, 150 Vt. 341, 350, 554 A.2d 221, 226-27 (1988)
- United States v. Gushlak, 728 F.3d 184, 197 n.10 (2d Cir. 2013)
- United States v. Yeung, 672 F.3d 594, 606 (9th Cir. 2012)
- United States v. Sunrhodes, 831 F.2d 1537, 1543 (10th Cir. 1987)
- State v. Miller, Nos. 12-1448, 12-1449, 2014 WL 1714970, at *1 (Iowa Ct. App. Apr. 30, 2014)
- Commonwealth v. Casanova, 843 N.E.2d 699, 705 (Mass. App. Ct. 2006)
- People v. Matzke, 842 N.W.2d 557, 559-60 (Mich. Ct. App. 2013)
- State v. Aragon, 2014 MT 89, ¶¶ 12-13, 321 P.3d 841
- State v. Riley, 2009-Ohio-3227, ¶ 28, 920 N.E.2d 388 (Ct. App.)
- Sigler v. Commonwealth, 739 S.E.2d 272, 275 (Va. Ct. App. 2013)
- State v. Kisor, 844 P.2d 1038, 1044 (Wash. Ct. App. 1993)
- Conway v. State, 115 So. 3d 1058, 1059 (Fla. Dist. Ct. App. 2013)
- State v. Curtis, 140 Vt. 621, 622, 443 A.2d 454, 455 (1982) (per curiam)
- State v. Tetrault, 2012 VT 51, ¶¶ 9, 12-13, 192 Vt. 616, 54 A.3d 146
- State v. Herrick, 2011 VT 94, ¶ 18, 190 Vt. 292, 30 A.3d 1285
- State v. May, 166 Vt. 41, 43-45, 689 A.2d 1075, 1077-78 (1996)
- Roberts v. United States, 134 S. Ct. 1854 (2014)
- State v. Simmons, 2011 VT 69, ¶ 12, 190 Vt. 141, 27 A.3d 1065
- Pope v. Town of Windsor, 140 Vt. 283, 286, 438 A.2d 388, 390 (1981)