

SUPREME COURT OF MONTANA

State v. Borsberry, 332 Mont. 271

136 P.3d 993 (2006) · No. No. 05-401 · Decided June 6, 2006

SUMMARY

The Supreme Court of Montana affirmed Timothy Borsberry's conviction for felony insurance fraud and the order requiring him to pay restitution to Allstate Insurance Company. The court held that sufficient evidence supported the finding that Borsberry provided incomplete information in support of his insurance claim, despite acquittals on related charges, and that Allstate suffered a compensable pecuniary loss. The court also held that the district court did not abuse its discretion in declining to order production of an Allstate document at sentencing.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Brian Morris; Karla M. Gray; John Warner; W. William Leaphart; Jim Rice; Patricia Cotter; James C. Nelson
JURISDICTION	Montana
DECIDED	June 6, 2006
DOCKET	No. 05-401
DISPOSITION	affirmed
PROCEDURAL POSTURE	Borsberry appealed his conviction for felony insurance fraud and the restitution component of his sentence after a jury trial in the First Judicial District Court, Lewis and Clark County.
STANDARD OF REVIEW	The court reviews sufficiency of the evidence by asking whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements beyond a reasonable doubt. A criminal sentence is reviewed for legality only, meaning whether it falls within statutory parameters. Evidentiary rulings are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential
PARTIES	Timothy Borsberry v. State of Montana

TOPICS

criminal procedure

insurance

restitution criminal

sentencing

standard of review

PRACTICE AREAS

criminal law

insurance fraud

restitution

appellate procedure

QUESTIONS PRESENTED

1. Whether sufficient evidence supported Borsberry's conviction for insurance fraud based on his incomplete or misleading statement to Allstate.
2. Whether the jury's acquittals on related charges required the insurance-fraud conviction to be vacated or retried because the verdicts were allegedly inconsistent.
3. Whether the District Court properly ordered Borsberry to pay \$22,997.52 in restitution to Allstate.
4. Whether the District Court abused its discretion by refusing to order production of a document concerning Allstate's decision to void the policy.

HOLDINGS

1. The State presented sufficient evidence for a rational jury to find Borsberry guilty of insurance fraud.
2. The acquittals on criminal endangerment and providing false reports did not invalidate the insurance-fraud conviction; Montana does not require consistency among criminal verdicts.
3. The District Court properly ordered Borsberry to pay Allstate \$22,997.52 in restitution.
4. The District Court did not abuse its discretion by finding the document concerning Allstate's policy voidance irrelevant to restitution and refusing to order its production.

KEY QUOTATIONS

"The most that can be said ... is that the verdict shows that either in the acquittal or the conviction the jury did not speak their real conclusions, but that does not show that they were not convinced of the defendant's guilt." (136 P.3d at 996)

FACTUAL BACKGROUND

Borsberry crashed his Mustang after driving with Jeremy Houchin on Interstate 15. Borsberry told Allstate that an unidentified black car cut him off and caused the accident, but he did not disclose his earlier conversation with Houchin or the alleged speed contest. Allstate paid \$22,997.52 in medical and property-damage claims under a reservation of rights. Witness testimony supported the State's theory that Borsberry and Houchin had discussed racing and were traveling at high speeds before Borsberry lost control.

PROCEDURAL HISTORY

The State charged Borsberry with criminal endangerment, insurance fraud or attempted insurance fraud, and providing false reports to law enforcement. The jury acquitted him of criminal endangerment and providing false reports but convicted him of insurance fraud. The District Court denied his motion for a new trial or to change

the verdict, imposed a deferred sentence not exceeding six years, and ordered \$22,997.52 in restitution to Allstate. The Supreme Court of Montana affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Kelley, 2005 MT 200, 328 Mont. 187, 119 P.3d 67
- State v. Denham, 2005 MT 26, 326 Mont. 24, 107 P.3d 1263
- State v. Gixti, 2005 MT 296, 329 Mont. 330, 124 P.3d 177
- United States v. Powell, 469 U.S. 57 (1984)
- State v. Bailey, 2003 MT 150, 316 Mont. 211, 70 P.3d 1231
- State v. Shields, 2005 MT 249, 328 Mont. 509, 122 P.3d 421
- State v. Brewer, 1999 MT 269, 296 Mont. 453, 989 P.2d 407
- Tyler v. Fireman's Fund Ins. Co., 255 Mont. 174, 841 P.2d 538 (1992)