

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 2, 2006**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2005AP812-CR  
2005AP813-CR**

**Cir. Ct. Nos. 2002CF101  
2002CF102**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**APPEAL NO. 2005AP812-CR**

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MARY E. GRUBER,**

**DEFENDANT-APPELLANT.**

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**APPEAL NO. 2005AP813-CR**

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**WILLIAM J. GRUBER,**

**DEFENDANT-APPELLANT.**

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APPEAL from judgments of the circuit court for Adams County:  
JAMES EVENSON, Judge. *Affirmed.*

Before Dykman, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. William and Mary Gruber appeal judgments convicting each of them of being party to the crime of making a fraudulent insurance claim. They raise related claims that the trial court improperly shifted the burden of proof to them and that the evidence was insufficient to support the verdicts. We reject their arguments and affirm for the reasons discussed below.

### **BACKGROUND**

¶2 After a fire at the Grubers' recently purchased house, they filed a Proof of Loss form with their insurer claiming \$63,422.55 for the replacement value of their destroyed personal property. The State eventually charged William with arson and both the Grubers of being parties to insurance fraud.

¶3 At trial, the State presented several witnesses who testified that the direct flame damage from the fire was heaviest around the stove and the rooms above the kitchen, and that items in other areas of the house had only smoke or heat damage and were still recognizable. Debris from the kitchen and material that had fallen through from above was pushed out into the living room or onto the front lawn. The testimony that most items were still recognizable was directly supported by numerous photographs.

¶4 Todd Laudert of the Adams County Sheriff's Department testified that he walked through the house several times after the fire, including once while

executing a search warrant to look for certain items on the Proof of Loss form. He saw very little personal property, and did not find a canister vacuum, grandfather clock, stereo speakers, or guitar amplifiers. He did find an undamaged Marshall amplifier and two guitars in an outbuilding.

¶5 Mark Krueger, a fire investigator, testified there was a small amount of debris pushed from the kitchen to the living room, including an air conditioner, and that furniture from the kitchen had been moved outdoors. He did not observe much of anything in the house as far as personal belongings or furniture.

¶6 Steven Briggs, an insurance investigator, testified that he walked through the house with the Grubers to look for items listed on their Proof of Loss inventory. He did not find a crock-pot, VCR, Barbie dolls, Les Paul custom guitar, guitar amplifiers, canister vacuum, guns, or two coolers.

¶7 Spencer Frieze, an insurance adjuster, testified that there appeared to be many more items listed on the Proof of Loss form than he observed in the house. He believed the actual value of the damaged items was “not even close” to the claimed value of about \$63,000, and that the submitted claim was not a reasonable replacement cost for everything in the house. He acknowledged that it is common for property owners to overvalue their property, but not common to list items that are not there. He also noted that the silverware listed by the Grubers could be cleaned and an “oak entertainment center” the Grubers valued at \$1000 was actually just a laminate shelving unit probably not worth more than \$50.

¶8 The jury acquitted William of arson but convicted both Grubers on the insurance fraud counts. The Grubers appeal, claiming there was insufficient evidence to support the verdicts and that the burden of proof was improperly shifted to them.

## STANDARD OF REVIEW

¶9 Although the Grubers attempt to characterize their second issue as a shifting of the burden of proof, the record shows that the trial court properly instructed the jury that the State needed to prove each of the required elements beyond a reasonable doubt. We therefore view the Grubers' burden of proof argument as a variation of their argument that the evidence was insufficient to support the verdicts—in other words, that the evidence presented failed to satisfy the State's burden of proof.

¶10 When reviewing the sufficiency of the evidence to support a conviction, this court will sustain the verdict “unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Zimmerman*, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (citation omitted). Thus, we will sustain a verdict that is supported by any credible evidence, even if we might consider contradictory evidence to be more persuasive, leaving the credibility of the witnesses and drawing of inferences to the jury. *Richards v. Mendivil*, 200 Wis. 2d 665, 671-72, 548 N.W.2d 85 (Ct. App. 1996).

## DISCUSSION

¶11 In order to obtain a felony conviction for filing a fraudulent insurance claim, the State needed to prove that: (1) the Grubers presented an insurance claim in excess of \$2500; (2) the claim was false or fraudulent; and (3) the Grubers knew the claim was false or fraudulent. WIS. STAT. § 943.395

(2003-04);<sup>1</sup> WIS JI—CRIMINAL 1494. The term “claim” refers to the aggregate submission for payment, not the valuation of any constituent items. *State v. Briggs*, 214 Wis. 2d 281, 287, 571 N.W.2d 881 (Ct. App. 1997). “It is sufficient that any portion of the claim, as evidenced by the item or items on the proof of loss, is false. There is no requirement that the false portion meet any specific dollar amount.” *Id.* An item included on a proof of loss form may be false if it is nonexistent or if its value has been inflated, and the jury does not need to agree on which item or items were false. *Id.* at 291.

¶12 Here, the State contended that the value of some items on the Grubers’ Proof of Loss, such as a \$1500 gumball machine from Taiwan and a \$1000 shelving unit, had been inflated, while other items, such as a \$1900 vacuum cleaner and a \$3500 Les Paul custom guitar, were not found in the house after the fire. With regard to valuation, the State presented an insurance adjuster’s testimony that the actual value of the items lost in the fire was “not even close” to the aggregate amount claimed. That evidence alone was enough to support the verdicts if believed by the jury. In addition, the State presented testimony from multiple witnesses that certain items listed on the Proof of Loss form could not be located in the house after the fire.

¶13 Contrary to the Grubers’ contention, the State’s presentation of its case did not require the Grubers to prove at trial that the missing items had existed. Rather, the State presented substantial evidence that the fire was localized and contained to the extent that the remains of big and/or metal items, such as the

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

vacuum cleaner, should have been plainly visible, as was an air conditioner from the second floor that had fallen through the kitchen ceiling and ended up in the rubble pile. The jury could further evaluate the likelihood that some of the missing items should have been easily recognizable without sifting through the rubble based on its own examination of the multiple photographs placed in evidence. In addition, the jury had the opportunity to listen to both William and Mary testify, and it was entitled to reject their explanations about the existence of certain items on the Proof of Loss form as not credible. In sum, we are satisfied that the evidence was sufficient to satisfy the State's burden of proof and support the verdict.

*By the Court.*—Judgments affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

