

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALFRED HILL SMITH,

Defendant-Appellant.

UNPUBLISHED

August 16, 2002

No. 233469

Jackson Circuit Court

LC No. 00-001473-FH

Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of operating a vehicle under the influence of intoxicating liquor (OUIL) causing a serious impairment of a body function, MCL 257.625(5), entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Prior to trial defendant pleaded nolo contendere to OUIL. The sole issue at trial was whether complainant sustained a serious impairment of a body function as a result of a head-on collision between his vehicle and defendant's vehicle.

The evidence showed that a urinary problem from which complainant suffered prior to the accident became worse after the accident, and he could no longer urinate on his own. A board-certified urologist opined that the accident contributed to the exacerbation of complainant's condition. In addition, the evidence showed that complainant struck his pharynx on the dashboard as a result of the collision, and thereafter lost the ability to speak as strongly as he had prior to the accident. Finally, the evidence showed that prior to the accident complainant had an active lifestyle, but thereafter he had no energy and his activities were substantially restricted; for instance, he was no longer able to mow the grass or assist his wife in remodeling an old house they had purchased before the accident to repair and resell.

The trial court found that the accident resulted in complainant sustaining a serious impairment of a body function. The plaintiff spent five days in the critical care unit of the University of Michigan Hospital as a result of his injuries. The trial court discounted the significance of complainant's urinary problem, finding that it might or might not have been exacerbated by the accident, but found that complainant's loss of the ability to speak much above a whisper and loss of energy leading to a much less active lifestyle constituted a significant impairment of a body function.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

In a bench trial, the court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears the court was aware of the issues and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). We review a trial court's findings of fact for clear error. MCR 2.613(C); *People v Hermiz*, 235 Mich App 248, 255; 597 NW2d 218 (1999), *aff'd* by equal division 462 Mich 71; 611 NW2d 783 (2000).

The elements of the offense of OUIL causing a serious impairment of a body function are: (1) the defendant was operating a motor vehicle; (2) the defendant was operating the vehicle on a highway or other place generally accessible to vehicles; (3) the defendant was under the influence of intoxicating liquor while operating the vehicle; (4) the defendant voluntarily decided to operate the vehicle knowing that he had consumed alcohol and might be intoxicated; and (5) the defendant's intoxicated driving was a substantial cause of a serious impairment of a body function to the victim. CJI2d 15.12.

Defendant argues the evidence produced at trial was insufficient to support his conviction. He contends the uncorroborated lay testimony was not sufficient to establish that complainant's loss of voice and/or energy constituted a serious impairment of a body function. We disagree and affirm defendant's conviction. While it may be that expert testimony would be necessary in some cases in which the defendant is charged with OUIL causing a serious impairment of a body function, no case law holds that expert medical testimony must be presented in every such instance.

The undisputed evidence showed that, as a result of the collision between defendant's vehicle and complainant's vehicle, complainant struck his pharynx on the dashboard, and thereafter lost the ability to speak in a strong voice. The trial court's finding that complainant's loss of voice as well as his loss of an active lifestyle constituted serious impairment of body functions was not clearly erroneous. MCL 257.625(d); *Smith, supra*. The evidence, viewed in a light most favorable to the prosecution, was sufficient to support defendant's conviction of OUIL causing a serious impairment of a body function. *Petrella, supra*.

Affirmed.

/s/ Helene N. White
/s/ Janet T. Neff
/s/ Kathleen Jansen