

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
October 25, 2012

v

MICHAEL RODRIGUEZ,

Defendant-Appellee.

No. 307991
Saginaw Circuit Court
LC No. 11-036198-FH

Before: SHAPIRO, P.J., and GLEICHER and RONAYNE KRAUSE, JJ.

PER CURIAM.

The prosecution appeals by delayed leave granted from a circuit court order granting defendant’s motion to quash and reducing a charge of operating a motor vehicle while intoxicated causing serious impairment of a body function (OWI-SI), MCL 257.625(5), to operating while intoxicated (OWI), MCL 257.625(1). The motion to quash was based on the trial court’s conclusion that the term “serious impairment of a body function” as used in MCL 257.625(5) should be interpreted pursuant to MCL 500.3135(7) of the No-Fault Act and that sufficient proofs were not offered at the preliminary hearing to meet the standard set forth in that Act. Because the meaning of the term “serious impairment of a body function” for purposes of OWI-SI is set forth in MCL 257.58c, not MCL 500.3135(7), and because there were sufficient proofs to satisfy the probable cause standard, we reverse and remand for reinstatement of the original charge.

Defendant was charged with OWI-SI following an automobile accident in which a passenger in his vehicle was injured. According to testimony at the preliminary examination, the accident caused multiple fractures including a fracture to the passenger’s leg that required surgery to properly reduce the fracture and to internally affix a metal plate to the bone. She was on crutches for several weeks and in a walking cast for several weeks thereafter.

It is unlawful to operate a vehicle on a highway or other place open to the public “if the person is operating while intoxicated.” MCL 257.625(1). If a person operates a vehicle while intoxicated “and by the operation of that motor vehicle causes a serious impairment of a body function of another person,” the offense is a five-year felony. MCL 257.625(5). The OWI statute does not define the term “serious impairment of a body function.”

In the civil context, a person is subject to tort liability for noneconomic loss caused by his ownership, maintenance, or use of a motor vehicle if the injured person suffered “serious

impairment of body function.” MCL 500.3135(1). For purposes of the tort liability statute, the phrase “serious impairment of body function” is defined as “an objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life.” MCL 500.3135(7). The phrase “serious impairment of body function” that appears in MCL 500.3135 is very similar to the phrase “serious impairment of a body function” that appears in the OWI statute, MCL 257.625(5), and defendant argues that they should be similarly defined. However, “[w]here a statute supplies its own glossary, courts may not import any other interpretation but must apply the meaning of the terms as expressly defined.” *People v Schultz*, 246 Mich App 695, 703; 635 NW2d 491 (2001). The OWI statute appears in Chapter VI of the Michigan Vehicle Code. The words and phrases as defined in Chapter I of the Michigan Vehicle Code, “when used in this act shall, for the purposes of this act, have the meanings respectively ascribed to them in this chapter.” MCL 257.1. Chapter I defines the phrase “serious impairment of a body function.” MCL 257.58c. Specifically, MCL 257.58c provides:

“Serious impairment of a body function” includes, but is not limited to, 1 or more of the following:

- (a) Loss of a limb or loss of use of a limb.
- (b) Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- (c) Loss of an eye or ear or loss of use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.
- (j) Loss of an organ.

Evidence was admitted that the injured passenger suffered multiple injuries, including a leg fracture requiring surgery and fixation of a metal plate to the bone. Whether or not a jury ultimately concludes that this is a “serious bone fracture,” it is surely sufficient to establish probable cause that this element of the offense can be proven under subsection (h). We also conclude that evidence sufficient to establish probable cause was also offered as to subsection (d), “substantial impairment of a body function.” Even if we were to impose the standards set out in the No-Fault Act for this threshold, we would find that probable cause was established given the evidence that the victim had a plate surgically implanted in her leg and that

she was unable to make use of her leg and foot for several weeks. *McCormick v Carrier*, 487 Mich 180; 795 NW2d 611 (2010).

The prosecution also argues that the chief judge improperly assigned the case in the circuit court to Judge Boyd who had conducted the preliminary examination in his role as district judge. This argument was not raised in the trial court by objection to the order of reassignment or by a motion to disqualify Judge Boyd. *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007). Moreover, while the prosecution refers us to MCR 8.111(C), it does not explain how that rule was violated. It is not even apparent that MCR 8.111(C) governs the reassignment in this case where Judge Boyd was serving as a visiting judge pursuant to an order issued by SCAO, which authorized Judge Boyd to act as a circuit court judge “[t]o assist with the docket in any non-disqualification matters as directed by” the chief judge, as permitted by MCR 8.110(C)(3)(g).

The gravamen of the argument is that the case should not have been reassigned to Judge Boyd as an acting circuit judge because, after presiding over defendant’s preliminary examination, he should have been disqualified from hearing the case. MCR 2.003 governs the disqualification of judges and sets forth various grounds for disqualification, including situations where the judge “is biased or prejudiced for or against a party or attorney” or “has personal knowledge of disputed evidentiary facts concerning the proceedings.” MCR 2.003(C)(1)(a) and (c), and situations where the judge, “based on objective and reasonable perceptions, . . . has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.” MCR 2.003(C)(1)(b)(ii). However, the fact that a judge has acquired knowledge of disputed evidentiary facts through previous legal proceedings does not ordinarily provide a basis for disqualification. See *Kloian v Schwartz*, 272 Mich App 232, 245; 725 NW2d 671 (2006). A judge may also be disqualified if “the appearance of bias is too high to be constitutionally tolerated.” *Van Buren Twp v Garter Belt, Inc*, 258 Mich App 594, 599; 673 NW2d 111 (2003). The prosecution does not address the various grounds for disqualification in MCR 2.003 and does not argue that disqualification was constitutionally required. Thus, it has not shown that Judge Boyd should have been disqualified from hearing defendant’s case. Accordingly, we find no basis to direct the chief judge to reassign the case.¹

¹ While we find no basis to order reassignment in this case, we agree with the prosecutor that assigning the judge hearing the preliminary examination to serve as trial judge can unnecessarily create potential issues requiring appellate review. This practice should therefore be avoided in the interest of judicial efficiency if for no other reason.

Reversed and remanded for reinstatement of the original felony charge of operating while intoxicated causing serious impairment of a body function.² We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Elizabeth L. Gleicher
/s/ Amy Ronayne Krause

² As defendant concedes, double jeopardy would not prevent defendant's prosecution for OWI-SI in these circumstances. See *People v Howard*, 212 Mich App 366, 370; 538 NW2d 44 (1995) (“[w]hen a plea and sentencing occur on a reduced charge, and the basis for the reduction is later overturned on appeal, jeopardy does not attach”), and MCR 6.312 (“[i]f a plea is . . . vacated by . . . an appellate court, the case may proceed to trial on any charges that had been brought or that could have been brought against the defendant if the plea had not been entered”).