

No. A06-2435

STATE OF MINNESOTA

IN COURT OF APPEALS

Jason Michael Snyder,

Appellant,

vs.

Commissioner of Public Safety,

Respondent.

RESPONDENT'S BRIEF AND APPENDIX

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LEGAL ISSUES

- I. Whether Appellant was in physical control of his motor vehicle at the time Deputy Wirkkula arrived on the scene?

The trial court held in the affirmative.

Minn. R. Civ. P. 52.01;

State v. Woodward, 408 N.W.2d 927 (Minn. Ct. App. 1987);

Tulien v. Commissioner of Public Safety, No. C1-96-2158 (Minn. Ct. App. April 22, 1997) (unpublished opinion);

Devaney v. Commissioner of Public Safety, No. A03-319 (Minn. Ct. App. Jan. 27, 2004) (unpublished opinion).

STATEMENT OF THE CASE AND FACTS

This is an appeal from a decision sustaining the revocation of Appellant's driving privileges under Minn. Stat. §§ 169A.51-.53 (2006), the implied consent law. It arises out of Appellant's arrest for driving while impaired ("DWI") on September 2, 2006, and the subsequent revocation of his driving privileges for driving a motor vehicle with an alcohol concentration of .08 or more. Appellant's implied consent hearing was held on November 13, 2006, before the Honorable Stephen M. Halsey, Judge of Wright County District Court. By a written Order dated November 14, 2006, the trial court sustained the revocation of Appellant's driving privileges. *See* Trial Court Order, reproduced in Respondent's Appendix at RA1-RA3.¹ This appeal is taken from that Order.

On Saturday, September 2, 2006, at 10:45 p.m., Deputy Jeremy Wirkkula of the Wright County Sheriff's Office was called to the Wild Marsh Golf Course to assist the Buffalo Police Department with an investigation into a physical altercation at the clubhouse. T. 6-7.² Upon arriving at the golf course, Deputy Wirkkula pulled up near the clubhouse and spoke with Officer Nordin of the Buffalo Police Department. T. 7, 12. During this conversation, Officer Nordin pointed to Appellant, who was walking through the golf course parking lot with three females, and told Deputy Wirkkula that Appellant was one of the parties involved in the physical altercation. T. 7, 16, 18. Appellant was

¹ "RA" references are to pages of Respondent's Appendix, which is attached hereto.

² "T." references are to pages of the transcript of the implied consent hearing held November 13, 2006, before the Honorable Stephen M. Halsey, Judge of Wright County District Court.

not wearing a shirt while walking through the well-lit parking lot, which allowed Deputy Wirkkula to confirm his visual identification. T. 7, 13, 16. After receiving this information from Officer Nordin, Deputy Wirkkula drove his squad car into the parking lot, following Appellant's path. T. 7. When his squad was approximately 10-15 yards away, Deputy Wirkkula observed Appellant walk to the driver side of a parked motor vehicle while the three females walked around to the passenger side of the vehicle. T. 7, 20. Deputy Wirkkula then observed Appellant use keys to unlock the driver side door and begin to enter the driver's seat of the vehicle by holding onto the driver side door frame with his left hand and placing his right leg inside the passenger compartment. T. 7-8. As the squad car pulled up near Appellant's vehicle, Deputy Wirkkula observed one of the females say something to Appellant, who then immediately stepped out of and away from the vehicle and walked towards the squad car. T. 8, 20-21. As Appellant approached Deputy Wirkkula, he tossed the ignition keys to one of the females standing next to the passenger side of the vehicle. T. 8. While Deputy Wirkkula questioned Appellant about the physical altercation at the clubhouse, he noticed that Appellant was intoxicated. T. 8-9. Upon further investigation, Deputy Wirkkula arrested Appellant for DWI. T. 9.

At the implied consent hearing, the only issue raised by Appellant was whether he was in physical control of his vehicle. T. 4; *see also* Trial Court Order at RA1. The trial court heard testimony from four witnesses: Deputy Wirkkula, Neely Snyder, Corrina Wetterland, and Mary Boyum; Appellant did not testify. *See* Trial Court Order at RA1. Neely Snyder, Appellant's wife, and Corrina Wetterland were two of the females walking

with Appellant in the golf course parking lot. T. 44. Both women testified that Appellant never intended to drive his vehicle because he had made other arrangements for a ride back to the hotel. T. 29, 44. Furthermore, both women testified that Appellant only entered the parking lot and walked to his vehicle in order to get away from the people allegedly attacking him at the clubhouse. T. 27, 43. Mary Boyum, Appellant's mother, testified about her conversation with Deputy Wirkkula after Appellant's arrest. T. 59. According to her testimony, Deputy Wirkkula said that he never observed Appellant enter the motor vehicle in the parking lot. T. 60.

In a written order, the trial court made the following findings of fact:

1. That Deputy Jeremy Wirkkula, acting in his capacity as a Wright County Deputy Sheriff, was called to Wild Marsh Golf Course to assist the Buffalo Police Department on a call involving a physical altercation in Buffalo, Wright County, Minnesota, on September 2, 2006, at 10:45 p.m. Petitioner was present at the golf course and involved in the altercation.
2. That Deputy Wirkkula observed Petitioner walk to the driver's side of a parked motor vehicle in the parking lot of the golf course clubhouse. Petitioner unlocked the driver's door and began to enter the driver's side of the motor vehicle, left hand on the driver's door, right leg inside the automobile. Deputy Wirkkula then observed Petitioner toss the motor vehicle keys to a female passenger who was outside the automobile. Petitioner then approached Deputy Wirkkula.

See Trial Court Order at RA1. In addition, the trial court found the testimony of Deputy Wirkkula credible, but the testimony of Neely Snyder and Corrina Wetterland not credible. *See* Trial Court Order at RA2. The trial court also found the testimony of Appellant's mother, regarding Deputy Wirkkula's statements about whether or not he observed Appellant enter his vehicle, not credible. *See* Trial Court Order at RA2. Based

upon its credibility determinations and factual findings, the trial court determined that “the totality of the circumstances show that [Appellant] was in physical control of the vehicle and without much difficulty could have started the car and injured himself or others.” See Trial Court Order at RA2. Accordingly, the trial court ordered that Appellant’s license revocation be sustained. See Trial Court Order at RA3. From that order, Appellant takes this appeal.

ARGUMENT

I. STANDARD OF REVIEW

When the issue of physical control is raised in an implied consent case, the Commissioner must prove by a fair preponderance of the evidence that the petitioner was in physical control of the motor vehicle. See *Roberts v. Commissioner of Public Safety*, 371 N.W.2d 605, 607 (Minn. Ct. App. 1985). In making a determination on this issue, the trial court must engage in a two-step process. First, the trial court must make credibility determinations and factual findings, which are reviewed by this Court under a clearly erroneous standard. See *Snyder v. Commissioner of Public Safety*, 496 N.W.2d 858, 860 (Minn. Ct. App. 1993). Second, the trial court must examine and apply the law to its factual findings, which this Court reviews *de novo* as a question of law. See *id.*

A trial court’s findings of fact are entitled to the same weight as the verdict of a jury and must be viewed in the light most favorable to the prevailing party. See *Gretsfeld v. Commissioner of Public Safety*, 359 N.W.2d 744, 746 (Minn. Ct. App. 1985); see also *Georgopolis v. George*, 54 N.W.2d 137, 141 (Minn. 1952) (all possible inferences must be drawn in support of the findings). When a trial court hears conflicting testimony, its

findings of fact cannot be reversed “unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Minnesota Rule of Civil Procedure 52.01; *see also Frost v. Commissioner of Public Safety*, 348 N.W.2d 803, 804 (Minn. Ct. App. 1984). Conclusions of law, on the other hand, can be overturned upon a showing that the trial court erroneously construed and applied the law to its factual findings. *See Dehn v. Commissioner of Public Safety*, 394 N.W.2d 272, 273 (Minn. Ct. App. 1986). In this case, Respondent submits that the trial court correctly concluded that Appellant was in physical control of his motor vehicle because its credibility determinations are not clearly erroneous, and its application of the law to the factual findings was proper.³ Accordingly, this Court should affirm the trial court’s decision.

II. THE TRIAL COURT CORRECTLY CONCLUDED THAT APPELLANT WAS IN PHYSICAL CONTROL OF HIS MOTOR VEHICLE AT THE TIME DEPUTY WIRKKULA ARRIVED ON THE SCENE.

The implied consent law applies to “any person who drives, operates, or is in physical control of a motor vehicle.” Minn. Stat. § 169A.51, subd. 1(a) (2006). In this case, the trial court heard conflicting testimony and then made factual findings, resolving all relevant credibility determinations in favor of Respondent and against Appellant. Based on these findings of fact, the trial court concluded that Respondent had

³ Appellant incorrectly cites to the standard of review and legal analysis for a probable cause issue. *See* Appellant’s Brief at 6-7. The issue in this case is not whether Deputy Wirkkula had probable cause to believe that Appellant was in physical control, but instead whether Appellant was in actual physical control of his motor vehicle. *See* T. 4 (“The question is whether or not Mr. Snyder was in physical control of the vehicle.”); Trial Court Order at RA1.

demonstrated by a preponderance of the evidence that Appellant was in physical control of a motor vehicle. On appeal from this conclusion, Appellant raises three arguments. First, Appellant claims that the trial court's credibility determinations and findings of fact are clearly erroneous. Second, Appellant argues that even if the trial court's factual findings are correct, the trial court is legal conclusions are incorrect. Third, Appellant asserts that he could not have been in physical control of his motor vehicle because he relinquished control of the vehicle. As will be discussed more fully below, Respondent submits that Appellant's arguments are unpersuasive. Therefore, the trial court's decision should be affirmed.

A. The Trial Court's Factual Findings and Credibility Determinations Are Not Clearly Erroneous.

As noted above, the trial court specifically found that Deputy Wirkkula observed Appellant walk to his car, unlock and open the driver side door, and begin getting into the driver's seat by placing his right leg into the vehicle. Appellant argues this factual finding is erroneous for two reasons. First, Appellant alleges that Deputy Wirkkula's testimony was contradicted by the testimony of two other witnesses, and second, Deputy Wirkkula's testimony was "incredible" under the circumstances. *See* Appellant's Brief at 8, 10-11. Respondent submits that Appellant's arguments lack merit.

With respect to Appellant's first argument, the simple fact that there is evidence in the record contradicting a trial court's finding of fact is legally insufficient to make a factual finding erroneous. As noted above, under the "clearly erroneous" standard of review, a trial court's findings of fact will not be overturned unless this Court is left "with

a definite and firm conviction that a mistake has been made.” *In the Matter of the Welfare of D.T.J.*, 554 N.W.2d 104, 107 (Minn. Ct. App. 1996) (citations omitted). Such great deference is given to factual findings made by a trial court because the trial courts “have the advantage of hearing live testimony, assessing the relative credibility of the witnesses and acquiring a thorough understanding of the circumstances unique to the matter before them.” *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996) (reversing Court of Appeals and reinstating trial court’s judgment because resolution of case depended largely on credibility of witnesses). In implied consent cases where the issue is whether an individual was actually driving or in physical control of a motor vehicle, this Court has continuously declined to set aside credibility determinations made by the trial courts. *See Engebretson v. Commissioner of Public Safety*, 395 N.W.2d 98, 99 (Minn. Ct. App. 1986) (credibility determinations were “crucial” and this Court refused to substitute its own judgment for that of the trial court); *Dufrane v. Commissioner of Public Safety*, 353 N.W.2d 705, 707 (Minn. Ct. App. 1984) (actual physical control conclusion based on trial court’s assessment that police officer’s testimony was more credible than that of driver’s wife); *Mielke v. Commissioner of Public Safety*, No. A05-95 (Minn. Ct. App. Jan. 3, 2006) (unpublished opinion)⁴ (actual physical control based on trial court’s finding that testimony of petitioner and petitioner’s friend was not credible). In short, Appellant asks this Court to substitute its own judgment for that of the trial court, which is contrary to controlling caselaw.

⁴ Pursuant to Minn. Stat. § 480A.08(3), a copy of this unpublished opinion is reproduced in Respondent’s Appendix at RA4-RA8.

Second, Appellant directly questions the credibility of Deputy Wirkkula's testimony based on the surrounding circumstances that evening. *See* Appellant's Brief at 10-11. This argument fails because it is premised on facts, such as Appellant's allegation that vehicles parked in the golf course parking lot blocked Deputy Wirkkula's view of Appellant using his car keys to open the door to his vehicle, that are not in the record. *See* Appellant's Brief at 10-11. Moreover, Appellant supports his legal argument with facts only testified to by Neely Snyder and Corrina Wettlerand, such as whether or not Appellant actually intended to drive his motor vehicle from the parking lot at the time Deputy Wirkkula arrived on the scene. *See* Appellant's Brief at 10. However, the trial court specifically found the testimony of Neely Snyder and Corrina Wetterland, as a whole, not credible. *See* Trial Court Order at RA2. Therefore, none of the facts they testified to should be considered on appeal.

Respondent submits that like the trial courts in *Engebretson*, *Dufrane*, and *Mielke*, the trial court in this case had the opportunity to assess live testimony and make express credibility determinations rejecting the testimony of Appellant's witnesses. *See Engebretson*, 395 N.W.2d at 99; *Dufrane*, 353 N.W.2d at 707; *Mielke*, slip op. at 4. The record in this case clearly supports the factual findings and credibility determinations made by the trial court. Therefore, this Court should decline to substitute its own judgment and find that the trial court's factual findings and credibility determinations are not clearly erroneous. *See Engebretson*, 395 N.W.2d at 100.

B. Based On The Trial Court's Factual Findings, Appellant Was In Physical Control Of His Motor Vehicle As A Matter Of Law Because He Was In A Position To Exercise Dominion Or Control Over The Vehicle When Deputy Wirkkula Arrived On The Scene.

Within the context of the implied consent law, "physical control" is a comprehensive term intended to cover the broadest possible range of conduct. *See Dept. of Public Safety v. Juncewski*, 308 N.W.2d 316, 319 (Minn. 1981). Such a broad construction "enable[s] the drunken driver to be apprehended before he strikes," which directly addresses "[t]he concern that the intoxicated person 'could have at any time started the automobile and driven away.'" *State v. Starfield*, 481 N.W.2d 834, 837 (Minn. 1992). Accordingly, this Court has generally interpreted "physical control" to mean:

Being in a position to exercise dominion or control over the vehicle. Thus, a person [is] in physical control of a vehicle if he has the means to initiate any movement of that vehicle and he is in close proximity to the operating controls of the vehicle, and this is true whether the vehicle can be driven upon the highway at that point or not.

State v. Woodward, 408 N.W.2d 927, 928 (Minn. Ct. App. 1987). This definition has been applied to a variety of factual circumstances where an intoxicated person is found in or near a parked car "under circumstances where the car, without too much difficulty, might again be started and become a source of danger. . . ." *Starfield*, 481 N.W.2d at 837. Ultimately, a totality of the circumstances must be considered, including factors such as the vehicle's location, where the person is located in relation to the vehicle, who owns the vehicle, whether the vehicle is operable, and the location of the ignition keys. *See id.* at 837-838.

In several cases, this Court has concluded that individuals were in physical control of motor vehicles even though they were not inside the motor vehicle at the time law enforcement arrived on the scene. For example, in *Woodward*, a state trooper observed an individual standing near the rear of a vehicle stopped on the shoulder of a highway; the engine was running but the vehicle had a flat tire. *See* 408 N.W.2d at 927. In speaking with the individual, the trooper noticed signs of intoxication and ultimately arrested her for DWI. *See id.* at 927. Despite the individual's assertion at trial that she had not driven the vehicle to its current location, the trial court concluded that she was in actual physical control of her vehicle. *See id.* at 928. On appeal, this Court affirmed the trial court's finding of physical control, noting that the individual "was found alone, exercising control over her vehicle" and "was fully capable of putting the car in motion." *Id.*

In another similar case, *Tulien v. Commissioner of Public Safety*, No. C1-96-2158 (Minn. Ct. App. April 22, 1997) (unpublished opinion)⁵, a police officer responded to a 911 call, arriving at a residence where a vehicle was parked in the driveway. The hood of the vehicle was still hot and the officer observed two open beers cans sitting inside the front passenger area of the vehicle. *See id.*, slip op. at 2. The officer then found the owner of the vehicle walking through a grove of trees at the north end of the property and arrested her for DWI. *See id.* At trial, the owner of the vehicle testified that she drove

⁵ Pursuant to Minn. Stat. § 480A.08(3), a copy of this unpublished opinion is reproduced in Respondent's Appendix at RA9-RA13.

the vehicle to the residence, consumed alcohol, re-entered the vehicle to drop off the empty beer cans and look for items inside the vehicle, and then walked to a nearby park. *See id.* The trial court concluded that the owner of the vehicle was in physical control of her vehicle at the time she entered it (while intoxicated) to drop off the empty beer cans and retrieve items. *See id.*, slip op. at 3. This Court affirmed the trial court's finding of physical control, noting that the facts in the record clearly supported the conclusion that the owner of the vehicle was in physical control. *See id.*

Finally, in *Devaney v. Commissioner of Public Safety*, No. A03-319 (Minn. Ct. App. Jan. 27, 2004) (unpublished opinion)⁶, a state trooper discovered a stalled vehicle on the highway, which had keys in the ignition but was unoccupied when the trooper arrived on the scene. While calling for a tow truck, the trooper observed the owner of the vehicle walk up with a gas can and put gas in the vehicle. *See id.*, slip op. at 2. The trooper made contact with the owner, who was unable to re-start the vehicle. *See id.* While waiting for the tow truck, the trooper determined that the owner was intoxicated and arrested him for DWI. *See id.* The trial court concluded that the owner was in physical control of his vehicle even though the vehicle was inoperable. *See id.*, slip op. at 4. This Court affirmed the trial court's decision, holding that "a person is in physical control of the vehicle if that person has the means to initiate any movement of that vehicle and is in close proximity to the operating controls of the vehicle." *Id.*, slip op. at 3-4.

⁶ Pursuant to Minn. Stat. § 480A.08(3), a copy of this unpublished opinion is reproduced in Respondent's Appendix at RA14-RA18.

Against this backdrop, the trial court below correctly applied the law to its factual findings when it concluded that Appellant was in physical control of his motor vehicle. Like the motorists in *Woodward*, *Tulien*, and *Devaney*, Appellant was outside of his vehicle at the time Deputy Wirkkula arrived on the scene. Deputy Wirkkula observed Appellant walk to the driver side of his parked motor vehicle while three females walked around to the passenger side of the vehicle. T. 7, 20. Like *Tulien*, Deputy Wirkkula observed Appellant use keys to unlock the driver side door and begin to enter the driver's seat of the vehicle by holding onto the door frame with his left hand and placing his right leg inside the passenger compartment. T. 7-8; see *Tulien*, slip. op. at 3 (owner entered and exited vehicle using keys). These actions show Appellant "in close proximity to the operating controls of the vehicle" with "the means to initiate any movement of that vehicle" *Devaney*, slip op. at 3. Like *Tulien* and *Devaney*, Deputy Wirkkula did not see Appellant start the engine of his vehicle, which this Court did not find dispositive on the issue of physical control. See *id.*, slip op. at 4; *Tulien*, slip op. at 3. Instead, Appellant was seen "exercising control over [his] vehicle." *Woodward*, 408 N.W.2d at 928. Therefore, the trial court correctly concluded that Appellant was in physical control of his motor vehicle, which should be affirmed on appeal.

C. Appellant's Argument That He Relinquished Control Of His Motor Vehicle Is Contrary To The Trial Court's Findings Of Fact.

Appellant asserts that he "appropriately relinquished any perceived control he had of the vehicle when he gave the keys to his wife," therefore, "he was in no position to exercise dominion or control over the vehicle." See Appellant's Brief at 9-10. In support

of this argument, Appellant relies primarily on this Court's decision in *Snyder v. Commissioner of Public Safety*, 496 N.W.2d 858 (Minn. Ct. App. 1993). Respondent submits that Appellant's reliance on *Snyder* is misplaced because *Snyder* is factually distinguishable from this case and its underlying policy reason furthering the use of "designated sober drivers" is not appropriate here.

In *Snyder*, the petitioner drove his vehicle and parked it along the side of a gravel road in order to "talk" with his passenger. *See* 496 N.W.2d at 859. During the next 30 minutes, Snyder consumed several cans of beer and gave his car keys to the passenger with the understanding that she would drive home. *See id.* A few minutes later, a police officer drove up and observed the passenger holding the keys while seated in the front passenger seat of the vehicle and that Snyder was crouched down outside of and behind the vehicle. *See id.* The passenger told the officer she had not driven the car to its location, and Snyder claimed that the passenger was now going to drive. *See id.* Ultimately, Snyder was arrested for DWI. *See id.* at 859. At the conclusion of the implied consent hearing, the trial court rescinded the driver's license revocation, finding that the officer did not have probable cause to believe that Snyder was driving, operating, or in physical control of the motor vehicle while intoxicated. *See id.*

On appeal, this Court determined that the officer did have probable cause to believe that Snyder had driven while intoxicated based on the passenger's position within the vehicle and her statement that she had not driven the vehicle to its location. *See id.* at 860. However, this Court determined that Snyder was not in physical control of his motor vehicle because he handed his keys to the passenger before the officer arrived on

the scene. *See id.* at 860-61. In reaching this conclusion, this Court admonished that “we do not believe physical control is intended to cover situations where an intoxicated person is a passenger, having relinquished control of the vehicle to a designated driver.” *Id.* at 860. Therefore, the trial court’s rescission of the driver’s license revocation was affirmed. *See id.* at 861.

Application of *Snyder* to this case is inappropriate because the two cases are factually distinguishable. In *Snyder*, this Court’s conclusion was based upon clear evidence that “at some point *before* the officer arrived, it is undisputed that Snyder handed his keys to [the passenger] so that she could drive home.” *Id.* at 861 (emphasis added). In the present case, however, the trial court found that Appellant did not give his car keys to another person until *after* he saw Deputy Wirkkula’s squad car pull up behind his vehicle. Therefore, unlike *Snyder*, Appellant did not attempt to relinquish control of his car keys until after Deputy Wirkkula arrived on the scene. Presumably, but for the arrival of Deputy Wirkkula, Appellant would have had the opportunity to completely enter the driver compartment and drive away if he wished.

Based on this factual distinction, the underlying policy reasoning of *Snyder* is not relevant to this case. In *Snyder*, this Court’s conclusion was based entirely on the policy that “[r]elinquishment of control of a vehicle to an unimpaired driver, by one who believes he/she is under the influence and unable to operate the vehicle safely, or the use of designated drivers, are policies to be commended and encouraged.” *Id.* at 861. Application of this policy to the facts of the present case would result in a fundamental change to the policy and this Court’s precedent in physical control cases. Instead of

encouraging the use of designated drivers, application of the policy underlying *Snyder* to the present case would encourage intoxicated individuals to merely get rid of their car keys to another person once an officer arrives in the area, thus forcing a race between when the officer seizes the driver and when the driver gets rid of the keys. Such a result would be undesirable and defy common sense. This Court should decline to extend the policy underlying *Snyder* to this case. Accordingly, the trial court's conclusion that Appellant was in physical control of his vehicle should be affirmed.

CONCLUSION

The trial court correctly concluded that Appellant was in physical control of his motor vehicle at the time Deputy Wirkkula arrived on the scene. Accordingly, the trial court's decision should be affirmed.

Dated: 4/9/07

Respectfully submitted,

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