

NO. A06-2435

State of Minnesota
In Court of Appeals

Jason Michael Snyder,

Appellant,

vs.

Commissioner of Public Safety,

Respondent.

APPELLANT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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Minn. Stat. sec. 169A.51.

STATEMENT OF THE ISSUES

- I. Did the Trial Court Err in Sustaining the Revocation of Appellant's Driver's License Where the Commissioner of Public Safety Failed to Prove by a Preponderance of the Evidence That Appellant Was In Physical Control of the Vehicle at the Time of His Arrest?**

STATEMENT OF THE CASE

This appeal arises from the Respondent's revocation of Jason Michael on Snyder's driving privileges pursuant to Minn. Stat. § 169A.52, Subd. 3. Mr. Snyder challenged the revocation at an implied consent hearing held on February 13, 2006, before the Honorable Stephen M. Hasley, Judge of District Court, Tenth Judicial District. At the hearing, Mr. Snyder argued that the evidence was insufficient to prove by a preponderance of the evidence that he was in physical control of the vehicle at the time of the arrest. The district court ruled against Mr. Snyder and sustained the revocation.

STATEMENT OF THE FACTS

The trial court heard testimony from four witnesses: Neely Snyder, Appellant's wife, Corrina Wetterland, an acquaintance of Appellant, Mary Boynum, Appellant's mother and Deputy Jeremy Wirkkula. The Trial court made the following findings of fact based on the two witnesses it found to be credible, Deputy Wirkkula and Mary Boynum: On September 2, Deputy Jeremy Wirkkula was called to the Wild Marsh Golf Center in response to a physical altercation. (See Trial Court Findings 1). Appellant Jeremy Snyder was present and involved in the altercation. *Id.* Deputy Wirkkula observed Appellant walk to the driver's side of a parked motor vehicle in the parking lot of the golf clubhouse. *Id.* Deputy Wirkkula testified that he observed Appellant unlock the driver's door, and begin to enter the vehicle with his left hand on the driver's door and his right leg inside the vehicle. *Id.* Mary Boynum testified that she discussed the situation with Deputy Wirkkula. Trial Court Findings 2. During that conversation, Deputy Wirkkula told Mary Boynum that he never actually saw Appellant enter the vehicle. *Id.* Deputy Wirkkula then observed Appellant give the keys to a female who was outside the vehicle. *Id.* at 1. Appellant approached Deputy Wirkkula and was subsequently arrested for driving while impaired. *Id.*

Neely Snyder testified that she and her husband, Appellant, attended the wedding at the Wild Marsh Golf Course. T. 26. She had driven their vehicle to

the wedding, but it was not her intention to drive home. T. 26-27. They intended to ride in a limousine provided by the wedding party to the Super 8 motel where they would be staying the night. T. 28. She had made arrangements with a bridesmaid to drive her and Appellant back to the Golf Club in the morning to get the vehicle. T. 28. At the wedding, Appellant, was attacked by three people. T. 28. Neely, Appellant, Corrina Wetterland, and Corrina's sister walked towards their car after the attack to remove themselves from the violent situation. T. 28, 30. They were standing near the trunk of the car, waiting for the limousine to pick them up. T. 31. Appellant handed her the keys to the vehicle. T. 33. At no time did Appellant enter or attempt to enter the vehicle. T. 34. They saw Deputy Wirkkula's vehicle pull up to the clubhouse. T. 32. Appellant approached Deputy Wirkkula to report that he had been assaulted (T. 32-33) and was subsequently arrested. T. 37.

Corrina Wetterland also testified at the hearing. She attended the wedding and had driven herself. T. 44. She was also to ride in the limousine to the Super 8 motel where she had rented a room. T. 44. She testified that she observed Appellant being attacked inside the wedding. T. 43. She, her sister, Appellant and his wife were walking towards the vehicle to get away from the fight when she saw Deputy Wirkkula. T. 42, 49. She and the others were standing off of the

passenger's side of the vehicle when Deputy Wirkkula pulled up. T. 45. No one, including Appellant ever entered the vehicle or opened any of its doors. T. 50.

Mary Boynum testified about conversations she had with Deputy Wirkkula surrounding her son's arrest. Deputy Wirkkula told her when he arrived at the scene he saw Appellant standing "away from the car." T. 60. She asked him whether he had seen Appellant in the car, to which he said "no." T. 61-62. She asked him if the keys were in the ignition of the vehicle, in Appellant's hands or pockets, all to which he said "no." T. 62.

Based on the trial courts Findings of Fact, it sustained the revocation of Appellant's driver's license, finding that he was in "physical control" of the vehicle.

ARGUMENT

I. THE TRIAL COURT ERRED IN SUSTAINING THE REVOCTION OF MR. SYNDER'S DRIVER'S LICENSE BECAUSE THE COMMISSIONER FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE WAS IN PHYSICAL CONTROL OF THE VEHICLE AT THE TIME OF HIS ARREST .

A. Standard of Appellate Review

A probable cause determination is a question of both fact and law. Clow v. Comm'r, 362 N.W.2d 360, 363 (Minn. Ct. App. 1985), pet. for rev. denied, (Minn. 1985). Once the facts are found, the trial court must apply the law in order to determine whether probable cause exists. *Id.* A trial court's findings of fact will be reversed only if clearly erroneous. Dufrane v. Comm'r, 353 N.W.2d 705, 707 (Minn. Ct. App. 1984).

B. Legal Standard and Analysis

It is a crime for any person to drive, operate, or be in physical control of a motor vehicle when the person is under the influence of alcohol. Minn. Stat. sec. 169A.20. A person's driver's license may be revoked where an officer has "probable cause to believe the person was driving, operating or in physical control of a motor vehicle in violation of Minn. Stat. sec. 169A.20." Minn. Stat. sec. 169A.51.

Police have probable cause to believe a person is in “physical control” of a vehicle “when, based on the totality of the circumstances, there is a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing that the person was in physical control.” Shane v. Comm’r, 587 N.W.2d 639, ___ (Minn. 1998). “Physical control” is defined as being in a position to exercise dominion or control over the vehicle. State v. Duemke, 353 N.W.2d 427, 432 (Minn. Ct. App. 1984). “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.” *Id.* “Physical control” is meant to include situations where an “inebriated person is found in a parked vehicle that, without too much difficulty, might again be started and become a source of danger to the driver, to others, or to property.” Flamang v. Comm’r, 516 N.W.2d 577 (Minn. Ct. App. 1994). Mere presence in or about the vehicle is not enough for physical control, it is the overall situation that is determinative. State v. Starfield, 481 N.W.2d 834, 838 (Minn. 1992).

The court may consider a number of factors in determining whether a person was in physical control of a vehicle, including the persons location in proximity to the vehicle, the location of the keys, whether the defendant was a passenger in the vehicle, who owned the vehicle, and the vehicle’s operability. State v. Moe, 498 N.W.2d 755 (Minn. Ct. App. 1993). The location of the keys, while not

dispositive, is an important factor to consider in determining whether a person was in physical control of the vehicle.¹ Dufrane v. Comm'r, 353 N.W.2d 705, 707 (Minn. Ct. App. 1984). Physical control law, however, is not intended to cover situations where an intoxicated person is a passenger, having relinquished control of the vehicle to a designated driver. Snyder v. Comm'r of Public Safety, 496 N.W.2d 858, 860 (Minn. Ct. App. 1993).

In the present case, the trial court erred in finding that the Commissioner of Public Safety had proven by a preponderance of the evidence that Mr. Snyder was in physical control of the vehicle. Deputy Wirkkula testified that he observed Appellant unlock the driver's side of the vehicle and begin to enter it. This fact, however, is contradicted by Neely Snyder and Corrina Wetterland. According to these witnesses, Appellant was standing outside a vehicle and gave the keys to his wife. This is clearly not physical control because the vehicle was not running and he did not have the means to initiate any movement of the vehicle.

Even under Deputy Wirkkula's version, as the trial court adopted, Appellant was not in physical control of the vehicle. Even if Appellant unlocked the car door and had his right leg in the car, he did not have the means to initiate any movement of that vehicle because at that point. State v. Duemke, 353 N.W.2d at 432. He was

¹Most Minnesota cases on physical control involve situations where the person is actually inside the vehicle. State v. Woodward, 408 N.W.2d 927 (Minn. Ct. App. 1987), however, involved a person who was standing outside the vehicle and was found to be in physical control. This case is substantially different from Woodward. In Woodward, the defendant was standing at the rear of the vehicle but the engine was running, even though the vehicle had a flat tire. In the present case, the engine was not running nor were the keys in the ignition.

not found inside the parked vehicle as the law intended would constitute physical control. The keys were not in the ignition. In fact, the keys were in Appellant's left hand which was not in the vehicle but resting on the driver's side door outside the vehicle. T. 8. He did not have access to the ignition as he only had one leg and no arms or hands inside the vehicle. Nor did he have access to any of the other operating controls of the vehicle. He had no ability to start or operate the vehicle. He was in no way about to become a source of danger to himself, to others or to property.

Furthermore, Appellant appropriately relinquished any perceived control he had of the vehicle when he gave the keys to his wife. If adopting either fact pattern, the present case is most similar to Snyder v. Comm'r of Public Safety, 496 N.W.2d 858 (Minn. Ct. App. 1993), where the Minnesota Court of Appeals affirmed the trial court's decision to rescind the revocation of the petitioner's driver's license. In Snyder, the suspect had driven his vehicle to a gravel road while not under the influence of alcohol. On the gravel road, he consumed four to five beers before the officer arrived. He had given the keys to the other person in the car with the understanding that this person would do any further driving that evening. When the police arrived he was outside the vehicle. The trial court held there was not probable cause to believe he was in "physical control" of the vehicle because he had relinquished control to the other person when he gave her the keys.

As in Snyder, Appellant relinquished any control he may have had when he gave the keys to his wife. He was in no position to exercise dominion or control over the vehicle, because he gave the keys to his wife. His wife had exclusive dominion and control of the vehicle. Appellant did exactly what the court sanctioned in Snyder. He arranged a “designated driver” of sorts by arranging transportation to the hotel in a limousine. He “walked away” from further physical confrontation and violence occurring at the wedding. He relinquished control of the vehicle to a person who was not intoxicated. In fact, he approached Deputy Wirkkula himself to report that he had been assaulted. T. 9.

When analyzing the officer’s testimony and his credibility one must review the mechanics of where he was and what he said he saw. He admitted to parking his squad 10 to 15 yards from where Appellant had parked his car. T. 20 ln. 5. He placed an “X” on a an aerial photograph of the parking lot and clubhouse of the Wild Marsh Golf Course where he said he parked his squad. T. 17 ln 21. (See exhibit 1 attached). At the time Officer Wirkkula parked his squad car, he said he could already see that the driver’s side door was open with Appellant standing near it with the keys in his left hand resting on the door. T.21. There were other cars in the parking lot, it was 10:25p.m., raining, the officer was admittedly 45 feet away and the Petitioner’s car was approximately seven spaces in from the North end of the parking lot. This means from his vantage point, the officer would have had to

see through the other parked cars, through the darkness, and in the rain from approximately 45 feet away see that Appellant had the keys in his left hand and had open the door, all while operating and getting out of his squad car. This seems incredible.

Notwithstanding the Officer's incredible testimony, the Trial court relied on State v. Woodward, 408 N.W.2d 927 to support the notion that "physical control can be determined...even if the driver is standing outside of the motor vehicle and the vehicle had a flat tire". This is a flawed analysis because in Woodward the keys were in the ignition, the engine was running, the car was on the side of a roadway after a flat tire, Woodward was the only person at the scene and did not claim she was not driving. She admitted to drinking at work and admitted to being on her way home from work.

In Shane v. Comm'r of Pub. Safety, 567 N.W.2d 639, the passenger was still in the car while the driver was being questioned by police. From the passenger seat, with the engine running, he pressed the gas pedal. Again, not analogous to the present case.

In State v. Junczewski, 308 N.W.2d 319, driver was behind the wheel with the key in the ignition.

If fact in all of the cases relied on by the District Court, the keys were in the ignition, the engine was either running or the driver was behind the wheel.

This case does not fit with the intent of the physical control law. The intent of the “physical control” law is meant to include situations where an “inebriated person is found in a parked vehicle that, without too much difficulty, might again be started and become a source of danger to the driver, to others, or to property.” Flamang v. Comm’r of Public Safety, 516 N.W.2d 577 (Minn. Ct. App. 1994).

This is not such a case. The Commissioner of Public Safety failed to prove by a preponderance of the evidence that he was in physical control of the vehicle. Therefore, the trial court’s sustaining of the revocation of his driver’s license was clearly erroneous and the revocation must be rescinded.

CONCLUSION

The trial court’s sustaining of the revocation of his driver’s license was clearly erroneous and the revocation must be rescinded.

APPENDIX

Aerial Photograph of Wild Marsh Golf Court.....A- I
Findings of Fact, Conclusions of Law and Order.....A-II

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