This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1498

Charles Wayne Weyhrauch, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed April 21, 2025
Affirmed
Connolly, Judge

Sherburne County District Court
File No. 71-CV-23-1348

Charles W. Weyhrauch, Big Lake, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Ryan Pesch, Zoe Graham, Assistant Attorney Generals, St. Paul, Minnesota (for respondent)

Considered and decided by Wheelock, Presiding Judge; Worke, Judge; and Connolly, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

On appeal from the district court's order sustaining the revocation of his driver's license, appellant argues that the district court erred in determining that (1) appellant exercised physical control of his motor vehicle while he was impaired, (2) the deputy had probable cause to believe that appellant was driving while under the influence of alcohol,

and (3) appellant did not meet his burden to prove the affirmative defense of postdriving consumption. We affirm.

FACTS

In October 2023, respondent Commissioner of Public Safety revoked pro se appellant Charles Weyhrauch's driver's license after he was arrested for driving while impaired (DWI). Appellant subsequently petitioned to rescind the revocation of his license under Minn. Stat. §§ 169A.50-.53 (2022), arguing that he did not exercise physical control over the vehicle, that there was no temporal connection between his drinking and driving, and that he consumed the alcohol after he drove the vehicle.

At the implied-consent hearing, a deputy sheriff testified that he was patrolling in the dark during a torrential downpour on September 24, 2023, when he spotted a vehicle in the ditch accompanied by a man at approximately 7:41 p.m. The vehicle was located perpendicular to the road and the front-end of the vehicle had sustained damage. The man, later identified as appellant, was standing near the vehicle to inspect the damage. Despite the adverse weather, the deputy testified that he was able to maintain safe driving capabilities at a lower rate of speed.

The deputy initially asked appellant what happened, and appellant stated that his daughter was driving the vehicle when it went into the ditch. However, the deputy testified that he observed no one else at the scene and appellant subsequently admitted to the deputy that he had been driving the vehicle. Corroborated by his body-worn-camera video, the deputy testified that appellant told him that appellant was coming from a sport's bar and that he used the emergency brake during a turn because he was trying "to drift." Although

appellant did not state when the accident occurred, the deputy testified that he believed the accident occurred moments before his arrival because there was mud on the vehicle, tracks of mud on the roadway, and no reported calls to law enforcement concerning the vehicle.

The deputy testified that he noticed an odor of alcohol emanating from appellant and that he was having a difficult time standing and speaking. Appellant told the deputy that he was only "going right there . . . . 300 feet away," referring to his home nearby. At this time, the deputy performed a preliminary breath test, which recorded an alcohol concentration of 0.17. Appellant was then arrested for DWI and transported to the county jail.

At the jail, a Datamaster BMT-G Test was administered to determine appellant's alcohol concentration. The results of that test showed an alcohol concentration of 0.15. Appellant never told the arresting deputy or the deputy who administered the Datamaster breath test that he had consumed the alcohol postdriving.

After appellant was transported from the scene, the deputy performed an inventory search of the vehicle, during which he observed an empty beer can near the floorboard of the passenger seat, a stick of incense still burning, male clothing, and the keys to the vehicle.[1] At this time, appellant's wife and daughter drove by the scene. The daughter approached the deputy to inquire about what happened, appearing visibly upset. The deputy attempted to give the daughter her father's personal belongings, to which she stated, "we're . . . probably not going to be seeing him soon" because "he was supposed to be

[1] Appellant testified that the key was never in the vehicle, that he returned to the vehicle to lock his car without the key.

sober." The daughter told the deputy that this was his third "slip-up." Before the deputy left the scene, his wife asked the deputy where the key to the vehicle was, and the deputy told her that the key was in the vehicle. The deputy testified that he left the key inside the vehicle for the tow truck driver consistent with standard practice.[2]

Appellant testified at the hearing and claimed for the first time that he had crashed his car at approximately 2:30 p.m. because of mechanical failure. Appellant testified that he was trying to correct his course from a lack of power steering by using the emergency brake. Appellant testified that he attempted to get the vehicle out of the ditch himself with no luck, and that his wife happened upon him in the ditch on her way home. Appellant and his wife testified that, around 4:00 or 5:00 p.m., they returned to the car with the key to try to get the car out of the ditch, but again to no avail.

Appellant testified that he drank about three to four beers in his garage between 2:30 and 4:00 p.m., and another six beers between 4:00 and 7:00 p.m. Appellant testified that, after drinking in his garage, he returned to the car alone at 7:30 p.m. to lock the vehicle, apparently without the keys. Appellant testified that he did not know what he was doing when the deputy observed him inspecting his vehicle for damage. His wife and daughter generally corroborated appellant's version of events, stating that the wife and appellant went to the sport's bar earlier in the day for brunch and that they knew that the crash occurred earlier in the day when they showed up and conversed with the deputy on the scene.

[2] Appellant's wife and daughter testified that they had to drive home to retrieve the key for the tow truck driver.

On rebuttal, the deputy testified that, although he originally stated that the key was in the ignition of the vehicle, he now remembers that the car had a push-to-start key. The deputy testified that when he opened the driver's side door during his inventory search, there was an "alarm notification that a key [was] inserted and the vehicle [was] operational." Thus, the deputy believed that the key was inside the vehicle based on the car's "alarm tone" when he opened the doors.

The district court determined that the deputy's testimony was "generally credible," the transferring deputy's testimony was credible, but the testimony of appellant, wife, and daughter was "minimally credible." Accordingly, the district court found that the deputy had probable cause to believe that appellant was in physical control of the vehicle, that appellant was impaired while he was in physical control of the vehicle, and that appellant failed to prove the affirmative defense of postdriving consumption. Thus, the district court denied appellant's request to rescind the order revoking his driver's license. This appeal follows.

DECISION

I. The district court did not err by concluding that appellant was in physical control of the vehicle while he was impaired.

When an appellant asserts that he was not in physical control of the vehicle, the respondent must prove by a preponderance of the evidence that appellant was in physical control of the vehicle. *Sens v. Comm'r of Pub. Safety*, 399 N.W.2d 602, 604 (Minn. App. 1987). To establish a fact under the preponderance-of-the-evidence standard, it must be

"more probable that the fact exists than the contrary exists." *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 4 (Minn. 2004).

"Whether a person is in physical control of a motor vehicle for purposes of the implied-consent law is a mixed question of law and fact." *Snyder v. Comm'r of Pub. Safety*, 744 N.W.2d 19, 21-22 (Minn. App. 2008). The district court's findings of fact will not be set aside unless clearly erroneous and due regard is given to the district court to judge the credibility of witnesses. *Id.* at 22. "Findings of fact are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Schulz v. Comm'r of Pub. Safety*, 760 N.W.2d 331, 333 (Minn. App. 2009) (quotation omitted). After the facts are established, physical control is a question of law, which we review de novo. *Snyder*, 744 N.W.2d at 22. "Conclusions of law will be overturned only upon a determination that the [district] court has erroneously construed and applied the law to the facts of the case." *Dehn v. Comm'r of Pub. Safety*, 394 N.W.2d 272, 273 (Minn. App. 1986).

Laws prohibiting persons from driving while intoxicated should be liberally construed in favor of public interest. *State v. Juncewski*, 308 N.W.2d 316, 319 (Minn. 1981). "The term 'physical control' is more comprehensive than either the term to 'drive' or to 'operate.'" *State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010). "[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, however, is not meant to cover individuals who have "relinquished control of the vehicle to a designated driver." *Id.* "Mere presence in or about a vehicle is

insufficient to show physical control; it is the overall situation that is determinative." *Id.* The Minnesota Supreme Court considers the following factors to determine whether a person is in physical control of a vehicle: "the person's location in proximity to the vehicle; the location of the keys; whether the person was a passenger in the vehicle; who owned the vehicle; and the vehicle's operability." *Id.*

Appellant argues that he was not in physical control of the vehicle because he was not inside of the vehicle and did not have the key to the vehicle when the deputy arrived on scene. We are not persuaded. In *Dufrane v. Comm'r of Pub. Safety*, the appellant was found sitting behind the steering wheel of a parked car. 353 N.W.2d 705, 706 (Minn. App. 1984). The appellant's wife testified that she drove the appellant to where he was found and left him there after removing the key to the ignition from his set of keys. *Id.* at 707. However, at the hearing, the wife did not dispute the officer's testimony that the appellant told the officer that he had driven the car that evening. *Id.* The officer in that case did not testify as to where the key was. *Id.* This court determined that the location of the key was not dispositive; the appellant's presence in the car and the officer's testimony that the appellant admitted to driving earlier "constitute[d] reasonable and probable grounds to believe [the] appellant was in physical control of the motor vehicle." *Id.* at 708.

Similarly, here, the deputy testified that the key was in the vehicle because of a chiming noise the car made, despite his initial, mistaken testimony that it was a key-in-ignition key. However, even if the key was not present, the facts are analogous to *Dufrane* with the exception that appellant was found outside his vehicle. Appellant was within the

proximity of the vehicle and inspecting the front-end of the vehicle for damage when the deputy arrived.

Moreover, a person does not need to be seated behind the steering wheel to be in "physical control" of a vehicle. *See State v. Woodard*, 408 N.W.2d 927, 928 (Minn. App. 1987) (concluding that a motorist alone and outside near the rear of a vehicle was in "physical control" when the engine was running with the key in the ignition). Here, although the engine was not running, appellant was standing alone next to the vehicle in a torrential downpour, inconsistent with relinquishing control of the vehicle to another person or solely being a passenger of the vehicle. More importantly, appellant admitted to the deputy that he had been driving the vehicle home from a sport's bar. And the record reflects that there were fresh tracks of mud showing that appellant had recently entered the ditch, and that appellant was not dressed appropriately as if he were returning to lock his vehicle in a torrential downpour. In addition, appellant admitted to attempting to "drift" his car on his way home from a sport's bar after he initially tried to place the blame on his daughter for driving the vehicle. Finally, following the arrest, the deputy observed burning incense in the vehicle, an empty beer can, and daughter and wife's surprised reactions to the arrest when they arrived on scene. On this record, we conclude that the district court did not err in determining that appellant was in physical control of the vehicle while under the influence of alcohol.

II. The district court did not err by concluding that the deputy had probable cause to believe that appellant was driving while under the influence.

A probable-cause determination is a mixed question of fact and law. *Johnson v. Comm'r of Pub. Safety*, 366 N.W.2d 347, 350 (Minn. App. 1985). "Once the facts have been found the court must apply the law to determine if probable cause exists." *Id.* (quotation omitted). To review for a probable-cause determination, we consider whether the police officer had a "substantial basis for concluding that probable cause existed at the time of invoking the implied consent law." *Groe v. Comm'r of Pub. Safety*, 615 N.W.2d 837, 840 (Minn. App. 2000) (quotation omitted), *rev. denied* (Minn. Sept. 13, 2000). Thus, we examine the totality of the circumstances, from the officer's point of view, giving deference to the officer's experience and judgment. *Eggersgluss v. Comm'r of Pub. Safety*, 393 N.W.2d 183, 185 (Minn. 1986); *Delong v. Comm'r of Pub. Safety*, 386 N.W.2d 296, 298 (Minn. App. 1986), *rev. denied* (Minn. June 13, 1986).

"Probable cause exists where all the facts and circumstances would warrant a cautious person to believe that the suspect was driving or operating a vehicle while under the influence." *Johnson*, 366 N.W.2d at 350. However, an officer does not need to know the *exact time* an accident occurred. *Delong*, 386 N.W.2d at 298. Similarly, an officer does not need to observe the individual driving or operating the vehicle. *State v. Harris*, 202 N.W.2d 878, 880-81 (Minn. 1972). But "there must be a time frame established showing a connection between drinking and driving." *Delong*, 386 N.W.2d at 298. In *Johnson*, a driver's admission supported an officer's probable-cause determination when there was no evidence anyone else had driven. 366 N.W.2d at 350.

Appellant argues that the district court erred by concluding that the respondent proved that the deputy had probable cause to believe that appellant was driving while under the influence because there was no sufficient temporal connection between appellant's driving and his intoxication. To support his position, appellant relies on *Dietrich v. Comm'r of Pub. Safety*, 363 N.W.2d 801 (Minn. App. 1985). In *Dietrich*, the appellant hit a trailer while driving, fled the scene, but was identified by a witness, and later located by officers intoxicated in his home. *Id.* at 802. The officer did not testify about the time of the accident. *Id.* This court agreed that the evidence failed to establish a connection between the crash and the driver's intoxication. *Id.*

Respondent argues that this case has been repeatedly distinguished, and as *Graham v. Comm'r of Pub. Safety*, states, "*Dietrich* does not establish a rule of law that the officer must explicitly testify as to the time of an accident." 374 N.W.2d 809, 811 (Minn. App. 1985). We agree that *Dietrich* is distinguishable. Here, the deputy testified that he was patrolling at 7:41 p.m. and saw the vehicle on the side of the road. Additionally, the deputy testified that he spoke to appellant who admitted that he was driving from a sport's bar. The breath test was administered shortly thereafter. The deputy could observe from the totality of the circumstances that appellant had recently been in physical control of the vehicle while impaired because he was still present at the scene inspecting his vehicle for damage, unlike the appellant in *Dietrich*. *See* 363 N.W.2d at 802. As such, *Dietrich* does not mandate a reversal.

The same record noted above that supports the district court's determination that appellant was in physical control of the vehicle supports a finding of probable cause. The

fresh tracks of mud indicate that appellant had recently entered the ditch, appellant admitted to attempting to "drift" his car on his way home from a bar after he initially tried to place the blame on his daughter for driving the vehicle, and appellant was found inspecting his vehicle for damage. Appellant's initial lie regarding who was operating the vehicle before the crash shows a "consciousness of guilt." *See Eggersgluss*, 393 N.W.2d at 185. Under the totality of the circumstances, the district court did not err by determining that the deputy had probable cause to believe that appellant was driving the vehicle while under the influence.

III. The district court did not err by concluding that appellant did not meet his burden to prove the affirmative defense of postdriving consumption.

The affirmative defense of postdriving consumption raises factual issues, and thus we review the district court's factual determinations for clear error. *Dutcher v. Comm'r of Pub. Safety*, 406 N.W.2d 333, 336 (Minn. App. 1987). Postdriving consumption of alcohol is an affirmative defense to license revocation under the implied-consent statute. Minn. Stat. § 169A.46, subd. 1 (2022); *Dutcher*, 406 N.W.2d at 336. The affirmative defense requires appellant to establish by a preponderance of the evidence that: (1) he consumed alcohol after the time of violation and before the administration of the evidentiary test; and (2) this postdriving consumption caused his alcohol concentration to exceed the legal threshold at the time of testing. Minn. Stat. § 169A.46, subd. 1; *Dutcher*, 406 N.W.2d at 336.

Appellant argues that the district court erred in concluding that he failed to prove the affirmative defense of postdriving consumption.[3] We disagree. In *State v. Shepard*, the supreme court recognized that, "[p]resumably, if the drinking had occurred after the accident, the driver would have said so since that fact would have helped her." 481 N.W.2d 560, 563 (Minn. 1992) (quotation omitted).

Here, appellant admitted to the deputy that he had been driving, but never mentioned that he was impaired from consumption only following the accident. Moreover, neither his wife nor daughter told the deputy that appellant had consumed the alcohol after the accident. Rather, the first time that appellant asserted that his alcohol concentration was due to postdriving consumption was at the hearing absent other evidence. Although appellant testified that he consumed the alcohol following the crash, the district court did not find his testimony to be credible, and we defer to that determination. *See State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980) (concluding that it is the exclusive function of the fact-finder to weigh credibility). As such, the district court did not clearly err by determining that appellant did not meet his burden of proof when asserting the defense of postdriving consumption. We, therefore, conclude that the district court did not err in denying appellant's petition to rescind his license revocation.

Affirmed.

[3] Appellant does not dispute the accuracy of his breath test at the station that measured his alcohol concentration to be 0.15.