

*This opinion is nonprecedential except as provided by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
A22-1247**

Ronald Kenneth Maas, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed March 20, 2023
Affirmed
Larson, Judge**

Faribault County District Court
File No. 22-CV-22-111

Thomas K. Hagen, Kohlmeyer Hagen Law Office, Chtd., Mankato, Minnesota (for appellant)

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

Considered and decided by Reilly, Presiding Judge; Reyes, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Ronald Kenneth Maas challenges the district court's order denying his petition to rescind his driver's license revocation. Appellant argues the district court erred when it determined probable cause existed that he exercised physical control over a motor vehicle while impaired. We affirm.

FACTS

On February 11, 2022, around midnight, a Faribault County deputy observed a 2007 Dodge Durango (the Durango) in a snow-filled ditch. Upon approaching the Durango, the deputy noticed it was unoccupied, locked, and turned off. Through the Durango's window, the deputy observed a plastic cup in the center console containing an amber liquid. The deputy recognized the plastic cup as a type bars and other establishments use to sell alcohol. The deputy left the Durango and did not interact with anyone.

Approximately two hours later, the deputy passed the Durango again. This time, the deputy noticed a man, later identified as appellant, next to the Durango. The deputy observed appellant on the passenger side attempting to dig the Durango's wheels out of the snow. Appellant waved to the deputy seeking assistance. The deputy activated the emergency lights and parked near the Durango. The deputy did not observe anyone other than appellant within or near the Durango. At this time, the Durango was running with the keys in the ignition.

The deputy asked appellant how the Durango ended up in the ditch. Appellant admitted he drove the Durango into the ditch but provided an explanation the deputy found inconsistent with the Durango's current position. Appellant also told the deputy the Durango belonged to him and that he had been drinking before driving into the ditch.

The deputy asked appellant about the plastic cup in the center console. Appellant told the deputy he had recently placed the plastic cup in the center console. When the deputy informed appellant that his story conflicted with her own observations, appellant appeared confused. Appellant also mentioned he had been drinking beer in the back of the

Durango after it went in the ditch and the deputy observed numerous empty beer cans in the Durango's trunk.

As the conversation progressed, the deputy noticed appellant exhibited signs of intoxication. The deputy smelled a slight odor of alcohol emanating from appellant. The deputy observed appellant had watery and bloodshot eyes. Additionally, the deputy perceived appellant had slightly slurred his speech.

Appellant agreed to perform standardized field sobriety tests. The deputy testified that appellant exhibited several indicators of impairment.¹ When asked, appellant refused to submit to a preliminary breath test. The deputy arrested appellant based on probable cause that appellant exercised physical control of the Durango while intoxicated. Appellant's driver's license was subsequently revoked.²

Appellant filed a petition requesting an implied-consent hearing.³ Appellant sought an order rescinding his license revocation. The district court held an implied-consent hearing and heard testimony solely from the deputy.

¹ The deputy administered the horizontal-gaze-nystagmus field sobriety test. The deputy testified that appellant exhibited all six indicators of impairment during the test.

² The record does not contain the statutory basis for appellant's license revocation. But the implied-consent hearing and the current appeal focus on "whether there is probable cause to believe [appellant] was driving, operating, or in physical control of a motor vehicle in violation of section 169A.20 (driving while impaired)." Both grounds for revoking a license under the implied-consent statute require the same probable-cause showing, so we need not examine the specific statutory basis for appellant's license revocation. *See* Minn. Stat. § 169A.52, subds. 3 (license revocation for test refusal), 4 (license revocation for test failure) (2022).

³ A hearing to challenge the revocation of a driver's license under the implied-consent statute is civil in nature, not criminal. *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 919-20 (Minn. App. 2010).

Following the hearing, the district court determined that “probable cause exists that [appellant] exercised physical control over a motor vehicle while under the influence of alcohol.” In reaching this conclusion, the district court relied on the following factual findings: (1) “[appellant]’s vehicle was running, and he was in the process of trying to dig it out of the snow”; (2) “by [appellant]’s own admission, he had been consuming alcohol”; (3) appellant showed “physical symptoms of intoxication (e.g., watery and bloodshot eyes, slurring of speech and odor of alcohol)”; (4) the deputy observed a “plastic cup filled with amber liquid in the Durango’s center console”; and (5) the deputy observed “numerous empty beer cans littering the trunk of the Durango.” The district court denied appellant’s petition to rescind his license revocation.

This appeal follows.

DECISION

Appellant argues the district court erred when it denied his petition to rescind his license revocation. Appellant asserts that (1) he did not exercise “physical control” over the Durango and (2) the deputy did not have probable cause to believe that appellant was driving while impaired.

The implied-consent statute authorizes a law-enforcement officer to administer field sobriety tests if the officer has probable cause to believe that an individual “was driving, operating, or in *physical control* of a motor vehicle” while impaired. Minn. Stat. § 169A.51, subd. 1(b) (2022) (emphasis added). An officer has probable cause to believe a person is in physical control of a vehicle while impaired 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 [observer] in believing that the person was in physical control.” *Shane v. Comm’r of Pub. Safety*, 587 N.W.2d 639, 641 (Minn. 1998) (quotation omitted). Courts should give “great deference” to an officer’s probable-cause determination. *State v. Olson*, 342 N.W.2d 638, 640-41 (Minn. App. 1984) (quotation omitted).

“A determination of probable cause is a mixed question of fact and law; once the facts have been found, the court must apply the law to determine if probable cause exists.” *Otto v. Comm’r of Pub. Safety*, 924 N.W.2d 658, 662 (Minn. App. 2019). We review the district court’s findings of fact for clear error. *Jasper v. Comm’r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002). We will conclude that findings of fact are clearly erroneous only when we are “left with a definite and firm conviction that a mistake has been committed.” *Id.* (quotation omitted). We review questions of law de novo. *Harrison*, 781 N.W.2d at 920.

I.

Appellant first argues the district court erred when it determined that he exercised physical control over the Durango. We are not persuaded.

We give the term “physical control . . . the broadest possible effect” to “enable the drunken driver to be apprehended before he strikes” and to “deter individuals who have been drinking from getting into their vehicles, except as passengers.” *Shane*, 587 N.W.2d at 641 (quotations omitted). Thus, “physical control” encompasses more than “drive” or “operate.” *State v. Starfield*, 481 N.W.2d 834, 836 (Minn. 1992). But “mere presence in or about the vehicle is insufficient [to show] physical control; it is the overall situation that

is determinative.” *Id.* at 838. Courts consider several factors when determining whether a driver exercised physical control over a vehicle, including: “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.” *State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010).

Appellant asserts that he did not exercise physical control because the deputy never observed appellant seated in the Durango. But a person does not need to be seated behind the steering wheel to exercise physical control over the vehicle. For example, in *State v. Woodward*, 408 N.W.2d 927, 927-28 (Minn. App. 1987), we concluded a motorist standing alone outside the rear of her vehicle was in “physical control” when the engine was running with the key in the ignition. We noted that “a person is in physical control of a vehicle if [they have] the means to initiate any movement of that vehicle and [they are] in close proximity to the operating controls of the vehicle.” *Id.* (quoting *State v. Duemke*, 352 N.W.2d 427, 429-30 (Minn. App. 1984)).

Appellant also argues that he did not exercise physical control because the Durango was inoperable. But we have repeatedly held that a person may exercise “physical control” over a temporarily disabled vehicle. *Flamang v. Comm’r of Pub. Safety*, 516 N.W.2d 577, 580-81 (Minn. App. 1994), *rev. denied* (Minn. July 27, 1994); *see also Woodward*, 408 N.W.2d at 927-28 (concluding appellant exercised physical control even though the vehicle had a flat tire); *Abeln v. Comm’r of Pub. Safety*, 413 N.W.2d 546, 547-48 (Minn. App. 1987) (concluding appellant exercised physical control over a vehicle with a dead battery); *Duemke*, 352 N.W.2d at 429, 432 (concluding the sleeping appellant stuck in a snow-filled

ditch exercised physical control over the vehicle). “Inoperability or, more precisely, the nature and duration of any inoperability, is simply a factor or circumstance to be evaluated with all the surrounding facts and circumstances . . . in determining whether the situation gives rise to physical control.” *Starfield*, 481 N.W.2d at 839.

The facts in this case are similar to *Starfield*. There, the supreme court held that Starfield exercised physical control over a vehicle when an officer found Starfield alone behind the steering wheel in a vehicle that was stuck in a snow-filled ditch that could not be moved without a tow truck. *Id.* When deputies arrived, Starfield’s vehicle was not running, but the keys were in her pocket. *Id.* at 835. In determining that Starfield exercised physical control over the vehicle, the supreme court explained that “physical control is meant to cover situations where an inebriated person is found in a parked vehicle under circumstances where the car, without too much difficulty, might again be started and become a source of danger to the operator, to others, or to property.” *Id.* at 837.

Here, the record reflects an even clearer example of physical control, especially when considering the factors outlined in *Fleck*. *See* 777 N.W.2d at 236. The deputy found appellant, by himself, digging the Durango out of the snow. When the deputy arrived, the Durango was running with the keys in the ignition. Additionally, appellant admitted the Durango belonged to him and that he drove the Durango into the snow-filled ditch. In this case, the “overall situation” supports the district court’s decision that appellant exercised physical control over the Durango. *Starfield*, 481 N.W.2d at 838; *Fleck*, 777 N.W.2d at 236.

For these reasons the district court did not err when it determined appellant exercised physical control over the Durango.

II.

Appellant also argues the district court erred in determining the deputy had probable cause to believe he “was driving while impaired.” To clarify, the district court did not find appellant “was driving while impaired.” Instead, the district court found “probable cause exists that [appellant] *exercised physical control* over a motor vehicle while under the influence of alcohol.”

As discussed above, the district court did not err when it determined appellant exercised physical control over the Durango. *See Starfield*, 481 N.W.2d at 839; *Fleck*, 777 N.W.2d at 237. We now turn to whether probable cause existed that appellant exercised physical control while impaired.

To determine whether probable cause exists to believe a person is impaired, a court must examine the “totality of the circumstances and the rational inferences that can be drawn from those particular facts.” *State v. Taylor*, 965 N.W.2d 747, 758 (Minn. 2021). “One objective indicator of intoxication can constitute reasonable and probable grounds to believe a person is under the influence.” *Otto*, 924 N.W.2d at 661 (quotation omitted). Common indicia of intoxication include bloodshot and watery eyes, the odor of alcohol, slurred speech, the admission of drinking, an uncooperative attitude, and failing or having difficulty with field sobriety tests. *See id.* (citations omitted); *Reeves v. Comm’r of Pub. Safety*, 751 N.W.2d 117, 120 (Minn. App. 2008).

Here, the deputy observed signs and circumstances which gave her probable cause to believe appellant was impaired while in physical control over the Durango. The record shows that appellant: (1) admitted he had consumed alcohol; (2) exhibited symptoms of intoxication; (3) placed a plastic cup with amber liquid in the Durango's center console; and (4) consumed beer and scattered beer cans around the Durango's trunk. Additionally, when the deputy administered the field sobriety test, appellant exhibited several indicators of intoxication. These circumstances provided probable cause to believe appellant was under the influence. *Otto*, 924 N.W.2d at 662 (“An admission of drinking, coupled with other indicators of intoxication, is generally sufficient probable cause to arrest [for driving under the influence].”).

The circumstances the deputy observed upon arriving at the Durango, combined with appellant's own admissions, support the district court's determination that the deputy had probable cause to believe appellant exercised physical control over the Durango while impaired. *Starfield*, 481 N.W.2d at 837; *Fleck*, 777 N.W.2d at 237; *Taylor*, 965 N.W.2d at 758. For these reasons, the district court appropriately denied appellant's petition.

Affirmed.