

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0580**

State of Minnesota,
Respondent,

vs.

Walter Hermel Mendez Cabrera,
Appellant.

**Filed December 23, 2024
Affirmed
Bjorkman, Judge**

Anoka County District Court
File No. 02-CR-23-1044

David Brodie, Coon Rapids City Attorney, Sami Corlew, Assistant City Attorney, Coon Rapids, Minnesota (for respondent)

Robert H. Ambrose, Benjamin W. Koll, Ambrose Law Firm, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Bjorkman, Judge; and Halbrooks, Judge.*

SYLLABUS

When a person is alone in a vehicle, the fact that they are not in the driver's seat does not preclude a finding that they are in physical control of the vehicle for purposes of Minn. Stat. § 169A.20 (2022).

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

OPINION

BJORKMAN, Judge

Appellant challenges his conviction of driving while impaired (DWI), arguing that the evidence is insufficient to prove that he was in physical control of his vehicle because his friend testified that he drove the vehicle to the place it was parked and police found appellant asleep in the passenger seat. We affirm.

FACTS

Shortly before 7:00 a.m. on February 20, 2023, an officer with the Fridley Police Department responded to a 911 call about a vehicle parked off the roadway next to a gas station on University Avenue. When he arrived at the scene, the officer saw a red pickup truck parked in the snow near the entrance to the gas station parking lot; the truck's engine was running and its lights were on. When he approached the vehicle, the officer saw a man, later identified as appellant Walter Hermel Mendez Cabrera, sleeping in the front passenger seat. Mendez Cabrera was alone in the truck. He did not respond when the officer knocked on the window but awoke when the officer opened the door. The officer asked Mendez Cabrera multiple times how the vehicle got there, and he eventually responded that he drove it there and then "everything happened." When asked what he meant by "everything happened," Mendez Cabrera shrugged. The officer confirmed that Mendez Cabrera was the registered owner of the truck and had the key fob in his pocket. Mendez Cabrera never told the officer that someone else drove the truck.

As they spoke, the officer noticed that Mendez Cabrera exhibited indicia of intoxication, including slurred speech and bloodshot eyes, and Mendez Cabrera

acknowledged that he had consumed alcohol. After Mendez Cabrera refused to perform field sobriety tests, the officer arrested him and transported him to the police station for a breath test. When the officer explained the breath test to Mendez Cabrera through an interpreter, Mendez Cabrera said that he did not understand why he was being asked for a breath test and did not think he needed an attorney because he was “not driving.” But he submitted to the test, which revealed an alcohol concentration of 0.12.

Mendez Cabrera was charged with two counts of third-degree DWI (under the influence of alcohol and alcohol concentration of 0.08 or more). At his jury trial, the officer, and the officer who administered the breath test, testified consistent with the facts above. The state also presented the video recordings from the officer’s squad-car dash camera and his body-worn camera. In his defense, Mendez Cabrera presented the testimony of a friend who said that he drove the truck for Mendez Cabrera earlier that morning because Mendez Cabrera was impaired. The friend explained that the truck slid by the gas station and got stuck in the snow. Because he had to get to work, and Mendez Cabrera did not wake up, the friend left him in the truck at about 5:20 a.m. The jury found Mendez Cabrera guilty of both offenses; the district court convicted him of DWI (under the influence of alcohol), dismissed the remaining count, and imposed a 364-day jail sentence, with all but 30 days stayed.

Mendez Cabrera appeals.

ISSUE

Does sufficient evidence support Mendez Cabrera’s DWI conviction?

ANALYSIS

When considering a challenge to the sufficiency of the evidence, we carefully review the record “to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict.” *Lapenotiere v. State*, 916 N.W.2d 351, 360-61 (Minn. 2018) (quotation omitted). “The jury is in the best position to weigh credibility and . . . determine[] which witnesses to believe and how much weight to give to their testimony.” *State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010). In deference to the jury, we assume that it “believed the state’s witnesses and disbelieved any contradictory evidence.” *State v. Webster*, 894 N.W.2d 782, 785 (Minn. 2017) (quotation omitted).

As the district court instructed the jury, the state needed to prove that Mendez Cabrera (1) drove, operated, or was in “physical control” of a motor vehicle; and (2) was under the influence of alcohol when he did so. Minn. Stat. § 169A.20, subd. 1(1). Mendez Cabrera does not dispute that the state proved the second element but contends insufficient evidence proves that he was in physical control of his truck on the morning in question. He emphasizes his friend’s testimony that the friend—not Mendez Cabrera—drove the truck into the snow and the officer’s testimony that he found Mendez Cabrera in the passenger seat rather than the driver’s seat. We are not persuaded for two reasons.

First, Mendez Cabrera’s focus on physical control overlooks evidence that he drove the truck.¹ The officer testified that Mendez Cabrera told him that he drove the truck to its

¹ For the first time during oral argument, Mendez Cabrera directly challenged the sufficiency of the evidence that he drove the truck. A party generally forfeits arguments

location by the gas station; the officer's body-worn camera video reflects this statement. While it is a single statement and Mendez Cabrera presented contrary evidence through his friend's testimony, we assume that the jury took Mendez Cabrera at his word and disbelieved his friend. *See Webster*, 894 N.W.2d at 785. That assumption is not only mandated by caselaw but is particularly compelling as well because Mendez Cabrera never told the officer that someone else drove the truck.

Second, sufficient evidence supports a finding that Mendez Cabrera was in physical control of the truck. The physical-control provision of the DWI statute enables law enforcement to apprehend a "drunken driver . . . before [they] strike[]." *State v. Starfield*, 481 N.W.2d 834, 837 (Minn. 1992) (quotation omitted). To achieve that goal, the term "physical control" is given "the broadest possible effect." *State v. Junczewski*, 308 N.W.2d 316, 319 (Minn. 1981). Accordingly, the offense "cover[s] situations where an inebriated person is found in a parked vehicle under circumstances where the [vehicle], without too much difficulty, might again be started and become a source of danger to the operator, to others, or to property." *Starfield*, 481 N.W.2d at 837.

A person is generally considered to be in physical control of a vehicle if they have "the means to initiate any movement of that vehicle, and [are] in close proximity to the operating controls of the vehicle." *Fleck*, 777 N.W.2d at 236 (citing *Starfield*, 481 N.W.2d at 837). The person's mere presence "in or about" the vehicle is insufficient; rather,

that they do not present in their briefs. *State v. Vasko*, 889 N.W.2d 551, 555-56 (Minn. 2017). But because the issues of physical control and driving are closely related, we consider the merits of Mendez Cabrera's argument.

physical control depends on “the overall situation.” *Id.* In assessing the overall situation, we consider a number of factors, 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.”² *Id.* Under this broad standard, a person may be in physical control even if they are asleep in the vehicle, *id.* at 237, they are outside the vehicle, *State v. Woodward*, 408 N.W.2d 927, 927-28 (Minn. App. 1987), or the vehicle is temporarily inoperable, *Starfield*, 481 N.W.2d at 838.

Mendez Cabrera urges us to instead apply a “heightened standard of physical control” because he was found in the passenger seat, not the driver seat. He relies on *Shane v. Comm’r of Pub. Safety*, in which the supreme court held that a “known passenger” may be found in physical control of a vehicle only if there is evidence that they have or are “about to take some action that makes the motor vehicle a source of danger to themselves, to others, or to property.” 587 N.W.2d 639, 641 (Minn. 1998) (addressing the probable-cause standard). This reliance is misplaced. In *Shane*, there were two people in a parked, running vehicle. *Id.* at 640. Police removed the driver and ordered Shane to stay in the vehicle. *Id.* After noting that a passenger in such circumstances “is always” going to be in physical control of the vehicle under *Starfield* and that being an intoxicated passenger is

² Mendez Cabrera suggests that, because a determination of physical control looks to all of the circumstances, we should apply the heightened standard of review applicable to reviewing the sufficiency of circumstantial evidence. *See State v. Harris*, 895 N.W.2d 592, 600-01 (Minn. 2017) (describing circumstantial-evidence standard). But that standard does not apply where, as here, “the direct evidence on the circumstances of defendant when he was found is sufficient to permit the jury to conclude that he was in physical control of the vehicle.” *State v. Duemke*, 352 N.W.2d 427, 430 (Minn. App. 1984).

not a crime, the supreme court adopted the “known passenger” standard. *Id.* at 641. This case presents different circumstances because Mendez Cabrera was the only person in the truck. Where, as here, “only one person is found in or about a stopped car,” we apply the broader *Starfield* standard—whether the vehicle occupant could “without too much difficulty” start the vehicle and “become a source of danger to the operator, to others, or to property.” *Starfield*, 481 N.W.2d at 837-38.

Viewing the record under this standard, we are convinced that ample evidence supports a finding that Mendez Cabrera was in physical control of the truck. He was found alone inside the truck with no one else nearby. He owned the truck and had the key fob in his pocket. The truck not only was undisputedly operable but was running, with its lights on. And it was parked just off of a public roadway. Given these facts, Mendez Cabrera’s position in the passenger seat rather than the driver’s seat posed no practicable barrier to him initiating movement of the vehicle. In sum, sufficient evidence establishes that he was in physical control of the truck.

DECISION

The fact that a sole vehicle occupant is not in the driver’s seat does not preclude a finding that they are in physical control of the vehicle for purposes of Minn. Stat. § 169A.20. Because the evidence was sufficient to prove beyond a reasonable doubt that Mendez Cabrera drove his truck to the location where the officer found him and was in physical control of the truck when the officer found him, and he does not dispute that he was under the influence of alcohol at all relevant times, we affirm.

Affirmed.