

MEMORANDUM

To: John J. Jones, Esq.
From: Paula the Paralegal
Re: Josiah Truman – Physical Control
Date: March 23, 2023

ISSUE

Whether Josiah Truman had “physical control” of his automobile when he was intoxicated and passed out in the driver’s seat of his car that was parked in a public parking lot with the motor running under Tenn. Code Ann. § 55-10-401?

BRIEF ANSWER

Yes. Tennessee has adopted a test to consider the entire situation surrounding DUI cases. The totality of circumstances test takes more than one fact into consideration. Truman’s intoxicated condition and being in the driver’s seat with the motor running when the automobile was parked in a public parking lot all indicate that he was in physical control.

STATEMENT OF FACTS

Truman was arrested on January 25, 2023, for driving while under the influence of alcohol. Police officers found Truman passed out in the driver's seat of his automobile. The automobile was running and was parked in the middle of Hooter’s parking lot at 3:15 am.

DISCUSSION

By statute in Tennessee:

It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park, or apartment house complex, or any other premises that is generally frequented by the public at large, while: (1) Under the influence of any intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system, or combination thereof that impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of oneself that the driver would otherwise possess[.]

Tenn. Code Ann. § 55-10-401 (West, Westlaw through 2022 2d Reg. Sess.)

Truman met the requirements of being on the premises generally frequented by the public and intoxication. Therefore, the question is whether he had “physical control” of an automobile.

In State v. Carter, 889 S.W.2d 231 (Tenn. Crim. App. 1994), the court held that Carter did not have “physical control” of her vehicle. Her conviction of driving under the influence was reversed, and the case was dismissed. The court held that under the totality of the circumstances, the evidence to convict the defendant of driving under the influence was insufficient. It could not be proven that she was driving the automobile. There was no evidence to support that the vehicle could be driven under its own power. Carter was behind the wheel in a parking lot attempting to start her vehicle by turning the ignition switch. Carter had not been drinking but was taking prescription medications and appeared to be unsteady on her feet. A mechanic, who examined the vehicle at the scene, testified that the battery was dead and that the vehicle could not be jump started. The only way the automobile could be started was to

thoroughly clean or replace the carburetor. Id. at 233. Truman's automobile was in operation while Carter's vehicle was inoperable. Based on precedent in Carter, Truman is in physical control because his engine was running.

In State v. Turner, 953 S.W.2d 213 (Tenn. Crim. App. 1996), the court held that intent is irrelevant in determining physical control and affirmed the defendant's DUI conviction. Turner was behind the steering wheel in a running vehicle with the lights on. He explained to a police officer that, although he was intoxicated, he had no intent to drive and claimed he had contacted his nephew to pick him up. Likewise, Truman was intoxicated in the driver's seat of his vehicle with the engine running. Although Truman was passed out and, therefore, presumably had no intent to drive, he was still in physical control of his vehicle based on the holding in Turner.

In State v. Lawrence, 849 S.W.2d 761 (Tenn. 1993), the Tennessee Supreme Court held that a totality of circumstances approach should be applied to determine physical control and affirmed the defendant's DUI conviction. Lawrence was found asleep on the driver's side of his vehicle that was parked on a narrow public road. The keys were in his pocket, and the motor was off. The court found Lawrence to be in physical control and noted that:

Thus, when the issue is the extent of the accused's activity necessary to constitute physical control . . . [the test is] to take into account *all* circumstances, i.e., the location of the defendant in relation to the vehicle, the whereabouts of the ignition key, whether the motor was running, the defendant's ability, but for his intoxication, to direct the use or non-use of the vehicle, or the extent to which the vehicle itself is capable of being operated or moved under its own power or otherwise. The same considerations can be used as circumstantial evidence that the defendant had been *driving* the vehicle.
Id. at 765.

Truman was passed out in the driver's seat of his automobile that was parked in the middle of Hooter's parking lot. When Truman was found, the motor was running as the keys were in the ignition. Therefore, since the standard of being in physical control was met in Lawrence without the truck's motor to be on while the keys were in Lawrence's pocket, Truman being found unconscious with the motor running certainly constitutes being in physical control based on Lawrence.

In State v. Butler, 108 S.W.3d 845 (Tenn. 2003), the court held that a reasonably capable of being rendered operable standard should be applied to determine physical control and affirmed the defendant's DUI conviction. Butler was intoxicated when he was arrested in the Walmart shopping center. He was on a motorcycle that would not start. He was carrying a sparkplug and sparkplug wrench and told the Officer that he had driven to the store to purchase a part for his motorcycle. However, Butler testified that the purpose of his trip to Walmart was to get some food because he had not eaten that day. He said that his motorcycle began to sputter and stopped working when it got to Walmart. Although Butler claimed that his motorcycle was not operational in an attempt to show that there was no physical control, the majority of the court held that the evidence was sufficient to convict Butler of being in physical control. Since Truman's automobile was running, he had physical control based on Butler.

CONCLUSION

Tennessee uses a totality of circumstances test to determine whether a person is in physical control of a motor vehicle. This test includes the location of a person in relation to the vehicle, the whereabouts of the ignition key, whether the motor was running, if the person is intoxicated and their ability to direct the use or non-use of the vehicle, and the extent to which

the vehicle itself is capable of being operated or moved under its own power. Truman was behind the wheel of his automobile. The motor was running, so the vehicle was able to be driven. Although Truman was passed out, therefore, unable to drive, he was still in physical control of his vehicle based on the totality of the circumstances test. The evidence is sufficient to convict Truman for driving under the influence because it can be determined that Truman was in physical control of his automobile.