

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE CIVIL DIVISION: AY
CASE NO.: 50-2025-CA-001479-XXA-MB

EVA AGERBRINK,
Petitioner
vs.

DEPARTMENT OF HIGHWAY SAFETY AND
MOTOR VEHICLES,
Respondent.

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Opinion filed: September 12, 2025

Petition from the Department of Highway Safety and Motor Vehicles Hearing Officer

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PER CURIAM

Petitioner, Eva Agerbrink (“Petitioner”), seeks review of a quasi-judicial “Findings of Fact, Conclusions of Law and Decision” (“Final Order”) entered by the Department of Highway Safety and Motor Vehicles (the “DHSMV”) Hearing Officer, Alicia Bacon, which affirmed the order of suspension of Petitioner’s driving privilege. Specifically, Petitioner disputes whether law enforcement officers had probable cause to believe that Petitioner was driving or in actual physical control of a vehicle. We disagree and deny the Petition for Writ of Certiorari.

We note that “the hearing officer is not required to determine that Petitioner was in actual physical control of the vehicle; rather, the hearing officer must determine only whether law enforcement had probable cause to believe petitioner was in actual physical control of the vehicle at the time of arrest under section 322.2615(7)(b).” *Dep't of Highway Safety & Motor Vehicles v. Prue*, 701 So. 2d 637, 638 (Fla. 2d DCA 1997). The Court may consider a combination of factors when deciding whether an individual was in actual physical control of a vehicle including the vehicle’s location, the location of the vehicle’s keys, the location of the individual to the vehicle, the vehicle’s operability, the orientation of the driver within the front seat, and the presence of circumstantial evidence indicating actual physical control. *See Jones v. State*, 510 So. 2d 1147, 1149 (Fla. 1st DCA 1987); *Griffin v. State*, 457 So. 2d 1070, 1071 (Fla. 2d DCA 1984); *Baltrus v. State*, 571 So. 2d 75 (Fla. 4th DCA 1990); *State v. Boynton*, 556 So. 2d 428, 429-30 (Fla. 4th DCA 1989). Additionally, probable cause may be based on circumstantial evidence and common sense inferences coupled with the law enforcement officer’s general knowledge, training, and experience. *State, Dept. of Highway Safety & Motor Vehicles v. Whitley*, 846 So. 2d 1163, 1165–66 (Fla. 5th DCA 2003) (citations omitted).

In the instant case, we consider, Petitioner’s seated presence in the driver’s seat, sole occupancy of the vehicle, actions in exiting the café and entering the driver’s seat of her vehicle, and Petitioner’s statements that she was sober and was going to her boyfriend’s house. We also note that Officer Gerity asked Petitioner to roll down the window of her 2019 Mercedes 4dr SUV indicating that the vehicle was on. The above evidence taken together is competent substantial evidence of the law enforcement’s finding of probable cause of actual physical control of the vehicle. *See City of Fort Lauderdale v. Multidyne Med. Waste Mgmt., Inc.*, 567 So. 2d 955, 957 (Fla. 4th DCA 1990); *Dep’t of Highway Safety & Motor Vehicles v. Allen*, 539 So. 2d 20, 21 (Fla.

5th DCA 1989) (holding that the limits of certiorari review of Department of Highway Safety and Motor Vehicles ruling were exceeded where judge reweighed the evidence and came to a different factual conclusion than that of the administrative body). Therefore, the Petition for Writ of Certiorari is **DENIED**.

(COATES and DIGANGI, JJ. concur.)(SHULL, J. dissents with opinion.)

SHULL, J., dissenting.

At issue here is the Department of Highway Safety and Motor Vehicles (the “DHSMV”) hearing officer’s affirmance of the order of suspension of the Petitioner’s driving privileges. Specifically, Petitioner argues that the hearing officer’s decision is not supported by competent substantial evidence that the officers had probable cause to believe Petitioner had actual physical control of the vehicle.

Petitioner contends that the record lacks competent substantial evidence demonstrating that the arresting officers had probable cause to believe that petitioner had actual physical control of the vehicle due to a lack of evidence in the record regarding the location of Petitioner’s car keys. Where were the keys or the fob to start the vehicle? Also, whether the vehicle’s engine was on, and the way in which she was seated in the vehicle is an unknown. Petitioner also contends that the location of the vehicle parked in a legal spot does not support a finding of probable cause of actual physical control. Actual physical control of a vehicle means the driver “must be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether [the driver] is actually operating the vehicle at the time.” *Deluce v. Dep’t of Highway Safety & Motor Vehicles*, 22 Fla. L. Weekly Supp. 890a (Fla. 15th Cir. Ct. Feb. 26, 2015) (quoting Fla. Std. Jury Instr. (Crim.) 28.1). Florida appellate courts have considered a combination of factors when deciding whether an individual may be in actual physical control of a vehicle including the vehicle’s

location, the location of the vehicle's keys, the location of the individual to the vehicle, the vehicle's operability, the orientation of the driver within the front seat, and the presence of circumstantial evidence indicating actual physical control. See *Jones v. State*, 510 So. 2d 1147, 1149 (Fla. 1st DCA 1987); *Griffin v. State*, 457 So. 2d 1070, 1071 (Fla. 2d DCA 1984); *Baltrus v. State*, 571 So. 2d 75, 76 (Fla. 4th DCA 1990); *State v. Boynton*, 556 So. 2d 428, 429-30 (Fla. 4th DCA 1989).

There is no competent substantial evidence demonstrating that the arresting officers had probable cause to believe that Petitioner had actual physical control of the vehicle. *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957) (holding that competent substantial evidence is defined as such relevant evidence as a reasonable mind would accept as adequate to support the conclusion reached). In the instant case, there was no evidence presented of where Petitioner's keys were located. Additionally, there was no evidence presented that Petitioner's vehicle was on or operable. Finally, the location of the vehicle, parked in a legal parking spot, does not support the finding of probable cause of actual physical control. The remaining evidence that Petitioner was seated in the front seat of the vehicle and that she stated she was going to her boyfriend's house, without more, does not rise to competent substantial evidence to support a finding of probable cause of actual physical control. Therefore, for the foregoing reasons, I would grant the Petition for Certiorari and quash the DHSMV's order sustaining Petitioner's driver's license suspension.