



prove she was in actual physical control of her vehicle to sustain the conviction for driving under the influence of alcohol. For the reasons that follow, we affirm.

¶ 3 The State charged defendant with four driving-related offenses: (1) driving under the influence of alcohol (625 ILCS 5/11-501(a)(2) (West 2012)); (2) driving without a driver's license (625 ILCS 5/6-112 (West 2012)); (3) driving without insurance (625 ILCS 5/3-707 (West 2012)); and (4) improper parking on a roadway (625 ILCS 5/11-1301 (West 2012)).

¶ 4 At trial, the evidence demonstrated that on February 4, 2012, at approximately 5 a.m., Officer Robert Brenka of the Berwyn police department was on routine patrol when he observed an automobile with one "rear tire up over the curb" on the street. The vehicle appeared to have narrowly missed hitting a light pole. The front of the automobile was off the curb in a traffic lane on the street, "sideways to the way it should have been parked." The vehicle was not in a parking spot.

¶ 5 As Brenka approached the automobile, he observed vomit on the ground next to the vehicle. The driver's side window was down. When Brenka looked inside the automobile, he noticed two women, including defendant in the driver's seat. Defendant was in the process of vomiting. The vehicle was not running and the keys were "sitting right on top of the center console." Defendant had "red, bloodshot eyes" and emitted "a strong odor of alcohol" on her breath. After defendant stopped vomiting, Brenka requested her driver's license and insurance information, but she did not respond. He also asked her if she needed an ambulance or had any medical problems, but she continued to not respond. Brenka described defendant as "zoned" out and staring "blankly" at him.

¶ 6 Brenka called an ambulance. After the ambulance arrived, defendant did not answer the paramedics' questions. Because Brenka believed defendant was under the influence of alcohol and not fit to be driving an automobile, he informed her that she was under arrest. Brenka could not perform any field-sobriety tests because defendant was "partially unresponsive," "unable to walk on her own" and "unable to stand up" on her own. Brenka, however, never observed defendant operate the vehicle.

¶ 7 The ambulance transported defendant to MacNeal Hospital in Berwyn. Brenka informed the hospital's nurses that defendant was under arrest and would be left in their care until he returned.

¶ 8 Dr. Jaime Moreno, an emergency room physician at MacNeal Hospital, treated defendant. At trial, Moreno said he did not have a "vivid recollection" of treating defendant. He only remembered defendant from reviewing his medical notes of her. When defendant arrived at the hospital, the police informed Moreno that defendant had been vomiting. Moreno smelled alcohol on her breath and determined she was suffering from "alcohol intoxication." Moreno ordered a blood sugar test for defendant to determine if she was diabetic. Defendant's blood sugar level was less than 130, and Moreno noted a blood sugar level under 200 is not considered dangerous.

¶ 9 Later, Brenka returned to the hospital. He read defendant her "Warning to Motorists" and asked her if she would be willing to submit to a blood or urine test. Defendant pulled a hospital bed sheet over her head and refused to remove it. Brenka considered defendant's act "a refusal."

¶ 10 Defendant moved for a directed finding, but the trial court denied the motion. Defendant then testified.

¶ 11 Around 4 a.m. on the morning in question, defendant was leaving a party with a friend, Samantha Lund, because defendant had an anxiety attack. The anxiety attack gave defendant the “sensation to vomit.” Anxiety attacks were common for defendant, and in the past, they had caused her to vomit. Because defendant knew she could not drive her vehicle while having an anxiety attack, defendant called another friend, Gianna, to drive her home. Defendant’s vehicle was a stick shift, which Lund did not know how to drive. While they were waiting for Gianna, Brenka appeared.

¶ 12 Defendant heard Brenka ask her several questions, but she was “reluctant” to answer them because of the tone in his voice. Defendant knew she smelled like alcohol, which she explained is why she gave Lund the vehicle’s keys who then put them on the center console. Brenka asked defendant if she wanted an ambulance, and defendant responded affirmatively. She also asked Brenka for chocolate to help raise her blood sugar because she “thought [she] was diabetic” and had not eaten all day. Defendant acknowledged to having three or four beers at the party from around 10 p.m. the night before until 4 a.m. the morning in question. She also admitted that Lund drove her vehicle a little bit down the block, but when Lund realized she could not drive a stick shift, she “turned,” “pull[ed] over,” and parked the automobile. Defendant and Lund then switched seats in the vehicle because Lund did not have a driver’s license.

¶ 13 After argument, the trial court found defendant guilty of driving under the influence of alcohol and improper parking on a roadway. The court stated that it did not place much weight on Moreno’s testimony because he “couldn’t recognize” defendant. The court found Brenka “credible,” and it did not believe defendant’s version of events, including that she had an anxiety attack. The court noted that when Brenka approached defendant’s vehicle, he observed defendant

in the driver's seat vomiting with "a strong odor of alcohol" and "bloodshot eyes." Furthermore, defendant did not respond to his questions, and she had to be transported to the hospital by an ambulance. Based on Brenka's testimony, as well as defendant's own admissions to drinking alcohol and vomiting, the court found she was impaired by alcohol. The court also found that defendant was in "possession" of her vehicle because she was in the driver's seat and the keys were on the center console. Defendant moved the trial court to reconsider, but the court denied her motion. The court subsequently sentenced defendant to 18 months' supervision. This appeal followed.

¶ 14 On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that she was in actual physical control of her vehicle to sustain the conviction for driving under the influence of alcohol. Specifically, defendant argues that Officer Brenka did not observe her operate the vehicle, and when he observed her in the automobile, the vehicle was not running, the keys were not in the ignition and the keys were not in her exclusive control.

¶ 15 When a defendant challenges her conviction based upon the sufficiency of the evidence presented against her, we must ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find all the elements of the crime proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). All reasonable inferences must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. We will not overturn a conviction unless the evidence is "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48. While we must carefully examine the evidence before us, we must give proper deference to the trier of fact who observed the witnesses testify

(*id.*), because it was in the “superior position to assess the credibility of witnesses, resolve inconsistencies, determine the weight to assign the testimony, and draw reasonable inferences therefrom.” *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24. We will not substitute our judgment for that of the trial court on determinations involving witness credibility. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001).

¶ 16 To sustain a conviction for driving under the influence of alcohol, the State must prove that the defendant was either “driv[ing]” or in “actual physical control” of a vehicle while “under the influence of alcohol.” 625 ILCS 5/11-501(a)(2) (West 2012); see also *People v. Harris*, 2015 IL App (4th) 140696, ¶ 41. Defendant does not dispute that she was under the influence of alcohol, thus she only argues there was insufficient evidence to prove her “actual physical control” over the vehicle.

¶ 17 The determination of whether a defendant was in actual physical control over a vehicle is made on a case-by-case basis. *People v. Morris*, 2014 IL App (1st) 130512, ¶ 17. The following factors are relevant, whether the defendant: “(1) possessed the ignition key; (2) had the physical capability to operate the vehicle; (3) was sitting in the driver’s seat; and (4) was alone with the doors locked.” *Id.* The list is merely illustrative, not exhaustive, and no one factor is controlling. *Id.* The credible testimony of an officer by itself can be sufficient to sustain a conviction for driving under the influence of alcohol. *People v. Phillips*, 2015 IL App (1st) 131147, ¶ 18.

¶ 18 In the instant case, when Officer Brenka, whom the court found credible, approached defendant’s automobile, he observed defendant sitting in the driver’s seat with her friend in the passenger seat. Though the keys were not in the vehicle’s ignition, they were beside defendant on top of the center console. Thus, there was nothing physically preventing defendant from

taking hold of the keys, starting the vehicle and driving away. See *Morris*, 2014 IL App (1st) 130512, ¶¶ 17-19 (though an officer observed the defendant in his automobile sleeping with the driver's door open and the vehicle's keys in his hand, the defendant could "easily have woken up, closed the door, and driven away"). Therefore, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found defendant was in actual physical control of her vehicle while under the influence of alcohol.

¶ 19 Nevertheless, defendant raises several arguments why the State presented insufficient evidence to convict her. First, she argues that defendant gave un rebutted testimony that her friend drove the automobile as well and parked the vehicle at the location where Brenka observed defendant. However, this assertion completely ignores the trial court's finding that it did not believe defendant's testimony, a determination that a reviewing court cannot simply disregard. See *Ortiz*, 196 Ill. 2d at 259. Moreover, the trial court was under no obligation to believe her testimony simply because it was un rebutted. See *People v. Ferguson*, 204 Ill. App. 3d 146, 151 (1990) ("The trier of fact is not required to accept defendant's version of the facts, but may consider its probability or improbability in light of the surrounding circumstances."); *People v. Schaefer*, 87 Ill. App. 3d 192, 194 (1980) (stating the trier of fact is not required to "accept a defendant's exculpatory statement as true even in the absence of directly contradicting evidence by other witnesses").

¶ 20 Defendant also places much emphasis on the fact that she was not alone in the automobile when observed by Brenka. The mere fact that defendant was accompanied by another person in her vehicle is inconsequential based on the uncontroverted evidence that defendant was in the driver's seat with the keys to the vehicle directly beside her. These two facts provide

sufficient evidence of actual physical control for purposes of driving under the influence (625 ILCS 5/11-501 (West 2012)), regardless if defendant was alone in the automobile or with another person. See *People v. Heimann*, 142 Ill. App. 3d 197, 199 (1986) (“Actual physical control of a vehicle requires only that one is behind the steering wheel in the driver’s seat with the ignition key and physically capable of starting the engine and moving the vehicle.”). Additionally, we note that based on defendant’s automobile being parked sideways to the curb with a rear tire on the curb, her vomiting outside the vehicle and her admission that the automobile belonged to her, a reasonable inference can be drawn that she drove the vehicle while under the influence of alcohol, and not merely had actual physical control over it. See *People v. Lurz*, 379 Ill. App. 3d 958, 969 (2008) (stating that it is “well established that observation of a defendant in the act of driving is not an indispensable prerequisite” to prove a defendant drove a automobile while intoxicated, and “[t]he driving element may be proved by circumstantial evidence alone”); *People v. Slinkard*, 362 Ill. App. 3d 855, 858 (2005) (finding that “the fact that [a] defendant owned” a vehicle supported “an inference that he was driving it”).

¶ 21 Next, defendant cites to several cases (see, e.g., *City of Naperville v. Watson*, 175 Ill. 2d 399 (1997); *People v. Eyen*, 291 Ill. App. 3d 38 (1997)), and argues that “[i]n most cases upholding a finding of actual physical control over a stationary vehicle, the defendant was found in a car with the engine running or the keys in the ignition.” However, no one factor is controlling in determining whether a defendant exercised actual physical control over the vehicle, and each case requires a case-by-case determination. See *Morris*, 2014 IL App (1st) 130512, ¶ 17. Moreover, *Morris* itself is an example of a case where a reviewing court found

sufficient evidence of a defendant's actual physical control of a vehicle despite the fact the automobile was not running and the keys were not in the ignition. See *id.* ¶¶ 5, 15-19.

¶ 22 Finally, defendant argues that the trial court “appears to have conflated” the issue of actual physical control of a vehicle for purposes of driving under the influence with a defendant’s “constructive possession of contraband.” Defendant highlights the trial court’s pronouncement of her guilt, specifically where the court stated because defendant “was in the driver’s seat, and the keys were in the center console, she is under the law and for the [driving under the influence] statute in possession of that car.” However, we presume that the trial court knew the law and applied it correctly. *People v. Howery*, 178 Ill. 2d 1, 32 (1997). Only “when the record contains strong affirmative evidence to the contrary” will that presumption be rebutted. *Id.* This one isolated reference by the trial court to “possession” is not strong affirmative evidence that it conflated the concepts of actual physical control of a vehicle for purposes of driving under the influence with a defendant’s constructive possession of contraband.

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.