2014 IL App (2d) 140080-U
No. 2-14-0080
Order filed December 31, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. ERICKA N. PARKS, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Stephenson County. No. 13-DT-58 Honorable James M. Hauser, Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justice Burke concurred in the judgment.
Justice Hutchinson dissented.

ORDER

¶ 1 *Held*: The trial court erred in granting the defendant's motion to quash arrest and suppress evidence and her petition to rescind statutory summary suspension.

¶ 2 The defendant, Ericka Parks, was charged by complaint with driving under the influence (DUI) in violation of section 501(a)(2) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-501(a)(2) (West 2012)). On October 28, 2013, the trial court granted the defendant's motion to quash arrest and suppress evidence and her petition to rescind statutory summary suspension.

The State filed a certificate of impairment and appeals from this order. We reverse and remand for additional proceedings.

¶ 3 I. BACKGROUND

¶ 4 On June 29, 2013, the defendant was charged by complaint with DUI (625 ILCS 5/11-501(a)(2) (West 2012)). On July 5, 2013, the defendant filed a petition to rescind her statutory summary suspension, arguing that the arresting officer did not have reasonable suspicion to believe that she was driving or actually in control of a motor vehicle while under the influence of alcohol and that she was not properly placed under arrest. On August 9, 2013, the defendant filed a motion to quash arrest and suppress evidence arguing that the arresting officer did not have probable cause or reasonable suspicion to believe that she was committing an offense at the time of her arrest.

¶ 5 On September 20, 2013, a joint hearing commenced on the defendant's motion to quash arrest and suppress evidence and her petition to rescind statutory summary suspension. The evidence showed that the police received two anonymous phone calls during the evening at issue. The first call was sometime after 10:30 p.m. on June 28, 2013. The caller stated that a light green van was being driven by an intoxicated black female, cited the location, and stated that there was open alcohol in the van. The caller did not state how she knew there was alcohol in the van. In the second call, received at about 12:30 a.m. on June 29, 2013, the caller named the defendant and stated that the defendant was leaving a bar and was drunk. The caller gave the license plate number and stated that the defendant was driving a van but had not yet driven away.

¶ 6 Officer Phillip Behnke testified that he was a Freeport police officer and had been for about three and a half years. At about 12:32 a.m. on June 29, 2013, he was dispatched to a bar called Munzy's on Main Street in Freeport. The dispatch was based on the second anonymous

call. After refreshing his recollection by reviewing his police report, Behnke testified that the anonymous caller indicated that there was a black woman in a green minivan outside the bar and she was about to start driving. The anonymous caller did not say how she knew the defendant was intoxicated.

¶ 7 Behnke drove by the bar and saw the green minivan parked across the street from the bar. The van was facing to the east. The interior light was on because the driver side door was open and there was a black female sitting in the driver's seat facing forward. The officer did not know if the vehicle was running at that time. Behnke drove by the van and then turned around to come back towards the green van. At that time, the van was not running. When he first approached in his vehicle, the defendant was in the driver's seat facing forward with keys in her hand. Just as he started the video recorder, the defendant turned his direction and appeared to be finishing changing her shoes. Behnke exited his vehicle and approached the defendant, advising her that an anonymous caller had stated that an intoxicated female was driving the van. Shortly after Behnke arrived on the scene, another officer, Officer Patridge, arrived.

¶ 8 Behnke further testified that when he was within a few feet of the defendant, he asked what she was doing. She stated that she had come out to her car to change shoes and that she was not driving. Behnke testified that as soon as he started speaking to the defendant, he noticed signs of impairment. Specifically, the defendant spoke very loudly, slurred her speech, and smelled of alcohol. At this point, he knew she was under the influence. Once the defendant exited her vehicle, she was unsteady on her feet and was having outbursts of disdain and anger towards the police approaching her. She asked to leave the scene but he told her she was not free to go. Behnke testified that once he noticed the impairment and smelled the alcohol, it became a

DUI investigation and she was no longer free to go. Behnke acknowledged that he never saw the vehicle running, did not see defendant driving, and did not see keys in the ignition.

¶ 9 Thereafter, defense counsel requested the admission of the video recording taken from Behnke's dashboard camera, and the State stipulated to its foundation. It was marked as Defense Exhibit 2, and was played in court. Behnke acknowledged that the video showed that as he approached the green van, the defendant's feet were outside the vehicle and she appeared to be changing her shoes. Behnke identified the defendant in court. Behnke acknowledged that he never checked the keys in the defendant's hand to see if they fit the ignition of the van.

¶ 10 On cross-examination, Behnke testified that, during the encounter with the defendant, he never activated his emergency lights or sirens. The key ring in defendant's hand had multiple keys on it, a number of which looked like car keys. Behnke testified that he had received training in detecting and apprehending drivers impaired by alcohol at the police training institute. He had attended refresher courses held by the sheriff's department. At the police academy, he had a full week of DUI education and had two refresher courses since then. During his three and a half years as a Freeport police officer, he had conducted 50 to 55 DUI investigations. Physical characteristics of an intoxicated person included glossy eyes, speech impairment, slurring of speech, smell of alcohol on the breath, difficulty standing or walking, and emotional changes.

¶ 11 Behnke testified that he had observed all these characteristics during his encounter with the defendant. When he first approached and the defendant looked at him, he saw that her eyes were glossy. As soon as she spoke, he noticed that her speech was slurred. He also smelled alcohol coming from her facial area. He noticed that she had balance issues when she exited the van and began to walk around. He also noticed quick emotional changes. She was cooperative at first, but as the encounter continued she became angry and belligerent.

¶ 12 Behnke further testified that when the defendant asked to leave, he told her she was not free to go because he believed further investigation was warranted based on her being in control of a vehicle and exhibiting signs of impairment. However, he did not arrest her at that point. Rather, he asked her to perform field sobriety tests, but she refused. Behnke testified that although the defendant never admitted to drinking, the fact that she admitted being at the bar all night, and had intended to walk home, was an indirect admission that she had been drinking. The defendant also admitted that the green van belonged to her. Finally, Behnke testified that the license plate number on the van matched the number given by the anonymous caller.

¶ 13 The videotape showed Behnke parking his vehicle, in a parking lot, perpendicular to and facing the defendant's van. The defendant was seated sideways in the driver's seat of the van. Her feet were outside the van and she appeared to be changing shoes. Behnke approached her and asked how she was doing. He explained that there had been a couple anonymous calls about her green van that indicated the driver was intoxicated. He asked the defendant if she knew why someone would be calling and saying that. The defendant stated that she was "not sure." The officer was standing in front of the defendant at this time and his flashlight was pointed at the ground. Behnke asked if the van was hers and the defendant responded affirmatively. Behnke then asked if she had her driver's license. The defendant reached behind the driver's seat as if looking for something. She did not produce a driver's license and proceeded to stand up out of van. Behnke pointed to the keys in her hand and asked if those were the keys to the van. At this point, the second officer arrived on the scene. In response to Behnke's question, the defendant said yes and started to shut the driver's side door. Behnke said that he "just needs to see her driver's license." She said, "I don't have it, I was just in there." Behnke then asked if she had a driver's license. She said, "I do, I was just in there." Behnke said okay and that he just needed a

couple pieces of information. He again asked if the green van was hers and if the keys in her hand were for the van. She responded affirmatively. He then asked for her name, date of birth and address. The defendant then told Behnke that she was about to walk home. She opened the driver's door, leaned in the car, and pulled out her original shoes to show Behnke. Behnke looked through the window and behind the driver's seat with his flashlight. He asked if that was her purse in the car. She then shut the door and asked why he was bothering her. She appeared to be getting upset. Behnke stated that he was just having a conversation and explained that he was there because of the anonymous calls. He then asked how much she had to drink. She said, "Nothing, I am walking home." Behnke then told her she was not free to go. The encounter continued and after the defendant refused field sobriety tests, Behnke arrested her for DUI.

¶ 14 In closing argument, the defendant argued that the anonymous calls did not provide sufficient indicia of reliability for a *Terry* stop. The caller did not identify herself, sign a complaint, or witness an alleged offense and the information was never corroborated. The defendant further argued that when the officer approached her it was an investigatory stop and a reasonable person would not have felt free to leave. The defendant argued that there was no probable cause to arrest because she was never in actual physical control of the van. The defendant stated that because her feet were outside the van, she did not have the capability to start the engine and drive the van. The defendant also stated that the officer never verified that she had the key to the ignition in her hand.

¶ 15 The State argued that when Behnke approached it was a consensual encounter in which he was attempting to corroborate the anonymous tip to determine whether it justified an investigation. The State noted that the officer did not activate his siren or emergency lights. The State further argued that a reasonable person would have felt free to leave. The State contended

that the defendant was not seized until she was told that she was not free to go. At that point, the State argued, there was reasonable suspicion to conduct further investigation based on the two anonymous phone calls, Behnke's observation of numerous signs of intoxication, and the fact that the defendant was in actual physical control of her vehicle. The State argued that once the defendant refused to perform field sobriety tests, the officer had probable cause to arrest her.

¶ 16 On October 28, 2013, the trial court entered a written order granting the defendant's motion to quash arrest and suppress evidence and her petition to rescind her statutory summary suspension. The trial court found that the only reason the officers approached the defendant was based on the anonymous phone calls. The trial court further found that the anonymous phone calls did not have sufficient indicia of reliability to justify a *Terry* stop and that there was no other basis providing the officers with a reasonable suspicion prior to the *Terry* stop of the defendant. Following the denial of the State's motion to reconsider, the State filed a certificate of impairment pursuant to Supreme Court Rule 604(a) (eff. Feb. 6, 2013) and a timely notice of appeal.

¶ 17 II. ANALYSIS

¶ 18 On appeal, the State argues that the trial court erred in granting the defendant's motion to quash arrest and suppress evidence and her petition to rescind statutory summary suspension. The State contends that when Behnke first approached the defendant it was a consensual encounter. The State further contends that a seizure did not occur until Behnke told the defendant she was not free to go. At that point, Behnke had probable cause to arrest, or reasonable suspicion to investigate further, based on many observed signs of intoxication. Additionally, the State argues that Behnke ultimately had probable cause to arrest because the defendant refused field sobriety tests and was in actual physical control of her vehicle.

¶ 19 We follow a two-part standard of review when considering a trial court's ruling on a motion to suppress evidence. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). Following this standard, we grant the trial court's findings of fact great deference under the manifest weight of the evidence standard, though we may undertake our own assessment of the facts in relation to the issues presented and draw our own conclusions when deciding proper relief. *Id.* The trial court's ultimate legal ruling is reviewed *de novo*. *Id.*

¶ 20 There are three tiers of police-citizen encounters. The first tier of police-citizen encounters involves an arrest or detention of a citizen that must be supported by probable cause. *People v. McDonough*, 239 Ill. 2d 260, 268 (2010). The second tier involves an investigative stop pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), where the police officer has a reasonable articulable suspicion of criminal activity that exceeds a mere hunch. *Id.* The third tier involves consensual encounters where there is no coercion or detention by the police officer and, therefore, the fourth amendment is not implicated. *Id.*

¶ 21 As to a consensual encounter, the law is clear that a police officer does not violate the fourth amendment by merely approaching a person in a public place and asking him questions if he is willing to listen. *Luedemann*, 222 Ill. 2d at 549. The police have the right to approach citizens and ask potentially incriminating questions. *Id*.

¶ 22 An individual is "seized" within the fourth amendment when the individual's liberty has been restrained by means of a police officer's force or show of authority. *Luedemann*, 222 Ill. 2d at 550. Whether a seizure has occurred is ultimately determined by whether, under the circumstances, the individual felt "free to leave" or free to decline an officer's requests or terminate the encounter. *Id.* This is an objective evaluation that presupposes a reasonable,

innocent person interacting with the police officer. *People v. Colquitt*, 2013 IL App (1st) 121138, ¶ 32.

¶ 23 In *United States v. Mendenhall*, 446 U.S. 544, 554 (1980), the United States Supreme Court listed four factors that may be indicative of a seizure: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person of the citizen; and (4) the use of language or tone of voice indicating that compliance with the officer's request might be compelled. The Illinois Supreme Court adopted these factors in *People v. Murray*, 137 Ill. 2d 383, 391 (1990). "'In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.'" *Id.* at 390-91, abrogated on other grounds by *Luedemann*, 222 Ill. 2d 530, quoting *Mendenhall*, 446 U.S. at 555.

¶ 24 In *Luedemann*, the defendant, Derek Luedemann, was seated in the driver's seat of his parked vehicle on a public street at 2:40 a.m. *Luedemann*, 222 Ill. 2d at 533-34. An officer in a squad car noticed him, and, as the officer came closer to Luedemann's vehicle, the officer observed Luedemann reach toward the floorboard of the vehicle. *Id.* at 534. Luedemann's car was facing east and the officer was driving west down the street. As the officer drove past, the officer noticed Luedemann slump down in his seat. The officer then stopped, parked his car in the center of the street and approached Luedemann's vehicle from the rear driver's side with a flashlight. Luedemann's car window was rolled down and Luedemann was listening to music. As the officer approached, Luedemann removed the keys from the ignition. When the officer was at the rear quarter panel of the vehicle, he noticed an open, brown bottle on the passenger side floorboard of Luedemann's vehicle. *Id.* The officer asked the defendant what he was doing there and for his identification. Luedemann stated that he was waiting for his girlfriend to get

home. The officer explained to Luedemann that he had decided to question the defendant because there had been recent burglaries in the area. While the officer was speaking to Luedemann, the officer noticed that Leudemann's speech was slurred, his eyes were bloodshot, and the officer could smell liquor on Luedemann's breath. *Id.* at 534-35. Having observed evidence of intoxication, the officer radioed for back-up and asked Luedemann to exit the vehicle and perform field sobriety tests. The defendant failed numerous field sobriety tests and was placed under arrest. *Id.* at 535. The defendant filed a motion to quash arrest and suppress evidence, which the trial court granted and the appellate court affirmed. *Id.* at 532-33.

¶ 25 Our supreme court reversed and held that no seizure occurred until after the officer had a reasonable suspicion that Luedemann was under the influence. *Id.* at 565. The court noted that none of the *Mendenhall* factors were present because the officer did not block Luedemann's vehicle in, turn on his overhead flashing lights, use coercive language or a coercive tone of voice, touch Luedemann, or display his weapon. *Id.* The court also noted that the officer's use of a flashlight was not coercive, but was "merely incident to a police officer's performance of his job after dark." *Id.* at 563. Accordingly, the court held that nothing the officer did would have made a reasonable innocent person feel as though they could not decline to answer the officer's questions or go about his business. *Id.* at 565.

¶ 26 In this case, the trial court erred in finding that the defendant was seized at the moment Behnke first approached her. Rather, the undisputed facts demonstrate that when Behnke approached the defendant it was a consensual encounter. A seizure did not occur prior to Behnke observing signs of intoxication and thus having a reasonable suspicion to detain the defendant based on those signs. As in *Luedemann*, when Behnke first approached the defendant he did not block the defendant in, activate his emergency lights, use a coercive tone of voice,

touch the defendant, or display a weapon. The defendant argues that Behnke did use a coercive tone of voice. However, the videotape does not support this assertion. Rather, Behnke's tone was calm and matter of fact.

¶ 27 The defendant argues that Behnke displayed a show of authority because, when he approached, he positioned his body so that he was blocking the defendant from exiting the van or closing the door. However, the video shows that Behnke's position did not prevent the defendant from standing up and getting out of the van. When the defendant stood up, she had to move closer to Behnke. Behnke then moved back to restore the personal space that was lost when the defendant stood up. The defendant was then able to close the van door. The videotape demonstrates that the defendant's liberty was not restrained by Behnke's position as she was able to both exit the van and close the door. Accordingly, Behnke's position at the defendant's vehicle was not such that a reasonable person would not have felt free to leave under the circumstances.

¶ 28 The defendant also argues that the presence of two officers was suggestive of coercion. While the videotape is unclear as to exactly when the second officer arrived on the scene, it does show that when Behnke first started questioning the defendant, and first noticed signs of impairment, he was the only officer that had approached the defendant. The second officer did not actually approach the scene until after the defendant stood up to get out of the van. Moreover, the simple fact that two officers were present does not transform an encounter into a seizure where neither officer touches the defendant, displays a weapon, or uses coercive language. *People v. Cosby*, 231 Ill. 2d 262, 278 (2008). Here, the second officer did none of those things. In this case, Behnke merely approached the defendant's vehicle and asked her a question. Absent some indicia of coercion or show of authority, these questions did not convert

an otherwise consensual police-citizen encounter into a seizure. *Luedemann*, 222 Ill. 2d at 565. Based on the foregoing, we hold that when Behnke initially approached the defendant it was a consensual encounter and not a seizure. As such, we need not determine whether, nor does the State argue that, the anonymous calls would have justified a seizure at that time.

¶ 29 The defendant argues that Behnke did not have reasonable suspicion to effectuate a seizure at the time he told her she was not free to leave. We disagree. Behnke testified that when he first approached the defendant and questioned her, she had glossy eyes, slurred her speech, and smelled of alcohol. These observations gave Behnke the reasonable suspicion necessary to detain the defendant and investigate further. *Luedemann*, 222 Ill. 2d at 543. Accordingly, at the time Behnke told the defendant she was not free to leave, which was after he observed signs of impairment, Behnke possessed the requisite reasonable suspicion.

¶ 30 Finally, the defendant argues that Behnke did not have probable cause to arrest her because she was not in actual physical control of her vehicle. Section 11-501 of the Illinois Vehicle Code (Code) provides, in relevant part, that a person shall not drive or be in "actual physical control" of any vehicle within this State while under the influence of alcohol. 625 ILCS 5/11-501 (West 2010). Actual physical control is a question of fact that must be decided on a case-by-case basis. *People v. Cummings*, 176 Ill. App. 3d 293, 295 (1988). A defendant need not actually be operating a moving vehicle to be found in actual physical control. It is enough if the defendant was (1) in the driver's seat, (2) possessed the ignition key, and (3) had the physical capability or potential to start the engine and drive the vehicle. *Id.* While some courts have considered whether the defendant was the sole occupant of a locked vehicle, recent case law indicates that courts tend to ignore this factor. *People v. Kiertowicz*, 2013 IL App (1st) 123271, ¶ 28 (citing cases). Further, in a prosecution for driving under the influence, the State is not

required to prove the defendant's intent to put the vehicle into motion (*Cummings*, 176 Ill. App. 3d at 296) because such intent is irrelevant to a determination of actual physical control (*People v. Davis*, 205 Ill. App. 3d 431, 435 (1990)).

¶ 31 When reviewing a ruling on probable cause, we uphold the trial court's findings of fact unless they are against the manifest weight of the evidence but we review *de novo* whether suppression is warranted under those facts. *People v. Long*, 351 Ill. App. 3d 821, 824 (2004). "[T]he probable cause standard does not require that the arresting officer's conclusion that a defendant has committed an offense be correct beyond a reasonable doubt, but only that it be reasonable." *Id.* In reviewing a ruling on a motion to suppress, the question of whether the defendant *in fact* had actual physical control of her vehicle is not at issue. *Id.* Accordingly, in the present case, we need not decide whether the facts are sufficient to sustain a finding of actual physical control beyond a reasonable doubt at trial. We need only determine whether the facts are sufficient to establish probable cause to arrest. *Id.*

¶ 32 Here, when Behnke approached, the defendant was in the driver's seat, had the car keys in her hand, and had the potential to start the vehicle and drive away. This was sufficient to provide Behnke with probable cause to believe that the defendant was in actual physical control of her vehicle. See *Long*, 351 Ill. App. 3d at 825 (probable cause to establish actual physical control found where defendant was lying across the front seat of the car and the car keys were on the driver's side floor below the steering column). The defendant argues that there was no evidence that she had the keys to the van's ignition in her hand. However, the video shows that when asked if the keys in her hand were the keys to the van, she twice answered that question in the affirmative. Regardless of whether she actually had the van's ignition key in her hand, her

affirmative responses that she had the keys to the van were sufficient to support a finding of probable cause.

¶ 33 The defendant argues that she was not in the driver's seat because she was seated sideways with the door open and her feet were outside the car. However, as stated above, courts tend to ignore whether a defendant is in the car with the doors locked. *Kiertowicz*, 2013 IL App (1st) 123271, ¶ 28. Moreover, the presence of the motorist in the driver's seat is not an essential ingredient to a finding of actual physical control. *People v. Eyen*, 291 Ill. App. 3d 38, 45 (1997) (actual physical control found where the keys were in the ignition, the vehicle was in neutral, and the defendant was pushing the car along the road), citing *People v. Davis*, 205 Ill. App. 3d 431, 437 (1990) (actual physical control found where the defendant was asleep in a zipped sleeping bag in the back seat of the car). Accordingly, the circumstances in the present case were sufficient to support a finding of probable cause for the defendant's arrest.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we reverse the order of the circuit court of Stephenson County granting the defendant's motion to quash arrest and suppress evidence and her petition to rescind statutory summary suspension, and we remand the matter for further proceedings.

¶ 36 Reversed and remanded.

¶ 37 JUSTICE HUTCHINSON, dissenting:

¶ 38 I respectfully dissent. I do take some issue with the reliability of the anonymous informant because defendant has, by her concerns expressed in the video, raised an issue that this caller may have ulterior motives for notifying the police about defendant's apparent intoxication. My primary concern, however, is the question of probable cause to believe that defendant was under the influence of alcohol and in actual physical control of the motor vehicle.

¶ 39 I agree that actual physical control of a motor vehicle is a question of fact that must be decided on a case-by-case basis. I also agree that the cases cited by the majority concerning actual physical control are accurate statements of the law. However, they are clearly distinguishable from this case because the facts are significantly different. Here, while defendant was sitting in her car, albeit not directly behind the steering wheel, and she did have keys in her hand when approached by the police officers, there is no evidence that the keys in her hand could have operated the car in which she was sitting. Furthermore, the video is clear that even if the keys could operate the car, defendant could not have driven the car sitting as she was, with her feet dangling out of the car. Finally, the individuals in the cases cited by the majority generally had the keys in the ignition or the car running when the police arrived.

¶ 40 The trial court saw the videos and observed the police officer and the defendant during the hearing. The evidence was clear that the only reason that the police approached the defendant was because they had received a phone call concerning her apparent intoxication. The evidence does not reflect that they found any open intoxicant in the vehicle, as described by the anonymous caller, and that the first officer on the scene did prevent the defendant from leaving the area after she had changed her shoes, closed the car door, and locked the car door. While the officer did testify that he observed the odor of alcohol coming from the defendant, that was the only reliable, direct evidence that defendant may have consumed an alcoholic beverage on the night in question.

¶ 41 It is also very clear from the video that the defendant had every intention of walking to her final destination that night. The dashboard camera video shows defendant with at least one bare foot as the officer approached; she was in the process of removing heeled shoes and putting on gym shoes to walk home. The trial court recognized those efforts and the other facts noted

above in its memorandum and order rescinding the summary suspension and granting the defendant's motion to quash arrest.

¶ 42 This court has long recognized that a trial court's finding of historical facts should be reviewed only for clear error, and the reviewing court must give due weight to the inferences drawn from those facts. *People v. Boomer*, 325 Ill. App. 3d 206, 209 (2001) (citing *Ornelas v. United States*, 517 U.S. 690 (1996)). Indeed, while the second part of the analysis in a case such as this, the ultimate determination of probable cause based on those facts and inferences, will be reviewed *de novo* (*id.* at 209), the proper handling of the historical facts must come first.

¶ 43 In this case, I respectfully submit that both the State and the majority have disregarded the trial court's findings of historical facts and jumped directly to common law supporting probable cause relating to actual physical control of a motor vehicle. As indicated earlier, those cases accurately reflect the current state of the law, but they are factually distinguishable. Did defendant have the car keys in her hand or in the ignition? Was she preparing to walk to her final destination or was she sobering up in her car? Did defendant drink socially that night or had she consumed too many alcoholic beverages to make a choice between walking and driving?

¶ 44 The trial court resolved those questions of fact in defendant's favor. In accordance with the purpose of our drunk-driving statute, *i.e.*, keeping intoxicated drivers out of their vehicles, we should respect and accept the court's findings.

¶ 45 Therefore, I respectfully dissent.