2015 IL App (4th) 140589-U

NO. 4-14-0589

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 7, 2015
Carla Bender
4th District Appellate
Court, IL

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from |
| Plaintiff-Appellee, | ) | Circuit Court of |
| v. | ) | Champaign County |
| DEVIN C. OHLSSON, | ) | No. 12DT680 |
| Defendant-Appellant. | ) | |
| | ) | Honorable |
| | ) | John R. Kennedy and |
| | ) | Richard P. Klaus, |
| | ) | Judges Presiding. |

JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court affirms the denial of defendant's motion to suppress where defendant was not seized until after the officer had probable cause to arrest him for driving under the influence, and the officer's objective conduct was relevant to the determination of whether a seizure occurred.

¶ 2 Following a bench trial in April 2014, the trial court found defendant, Devin C. Ohlsson, guilty of one count of driving under the influence (DUI) of alcohol (625 ILCS 5/11-501(a)(2) (West 2012)) and one count of DUI with a blood alcohol content (BAC) of 0.08 or more (625 ILCS 5/11-501(a)(1) (West 2012)). Prior to trial, defendant filed a motion to suppress his inculpatory statements, the results of the field sobriety tests, and his BAC. Defendant argued this evidence must be suppressed because it was obtained as a result of his illegal, warrantless arrest. The trial court denied the motion to suppress. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 2012, the State charged defendant with one count of DUI and one count of DUI with a BAC of 0.08 or more. Prior to trial, defendant filed a motion to suppress evidence. Specifically, defendant sought to suppress statements he made admitting drinking, his performance on field sobriety tests, and the results of his Breathalyzer test, alleging all the evidence was the fruit of an illegal, warrantless seizure. The trial court denied the motion. Defendant proceeded to a stipulated bench trial, where the trial court ruled on both the DUI charges and on defendant's motion to reconsider the denial of the motion to suppress. The trial court declined to reconsider the denial of the motion to suppress and found defendant guilty beyond a reasonable doubt on both DUI charges.

¶ 5 A. Motion To Suppress

¶ 6 Prior to trial, Judge John R. Kennedy held a hearing on defendant's motion to suppress. Defendant testified he woke up at 4:30 a.m. on December 12, 2012, to go to his job with Carpenters Local 243. On his way home that evening, he swerved to miss a deer in the road and ended up crashing his truck. The airbag in the truck deployed, but defendant's only injury was a sore shoulder. After the accident, defendant called his girlfriend, Melissa Gower, to pick him up. The police had not arrived at the scene of the accident by the time she arrived.

¶ 7 On the drive home, defendant and Gower got into an argument about the accident. Gower stopped the car, defendant got out, and Gower drove off. Defendant testified it was a cold night and he walked approximately two miles back to the home he shared with Gower. By the time he arrived home, defendant was cold, tired, and sore, and it was after 9 p.m.

¶ 8 Upon arriving home, defendant discovered a uniformed police officer, Jonathan Rieches, in the kitchen. Rieches asked defendant what happened, and defendant explained he swerved to miss a deer and crashed his truck. Rieches told defendant to accompany him to the

scene of the accident, and defendant said he would rather stay home and deal with the truck in the morning. Defendant testified Rieches used a stern tone of voice and told him he needed to go to the accident scene. Defendant again said he would rather stay home. Defendant testified Rieches said, "you need to come with me, now" and was "very stern and demanding."

¶ 9 Defendant further testified Rieches motioned defendant out of the home and toward the patrol car. Defendant testified he did not feel free to stay home. Defendant initially reached for the front passenger door handle of the patrol car, but Rieches told him to go to the rear door. Rieches then informed defendant he needed to be searched to ensure the officer's safety. Rieches then searched defendant, opened the rear door, put defendant in the patrol car, and shut the door. Defendant testified the interior of the patrol car had a cage-like divider between the front and rear seats. Rieches did not inform defendant of any right to remain silent, right to refuse to answer questions, or that any statements made by defendant could be used against him. Defendant did not testify as to the substance of any questions Rieches asked him.

¶ 10 Once they returned to the accident scene, Rieches asked if defendant would do a field sobriety test. Defendant asked if he could call his lawyer, and Rieches told him he could call after he answered whether he would do a field sobriety test. Defendant agreed to do the field sobriety test. On cross-examination, defendant testified he wanted to call his lawyer because he thought he was already under arrest, but he did not know what was going to happen next. Defendant testified he first felt he was under arrest when Rieches told him to go to the accident scene, searched him, and placed him in the patrol car.

¶ 11 The State then called Rieches to testify. On December 12, 2012, Rieches responded to a 9-1-1 call reporting an accident. When Rieches arrived at the scene, he observed a truck sitting at an angle in a steep ditch. The headlights were on and no one was around.

Rieches testified he did not start the accident investigation immediately due to concern for the well-being of the occupants. Rieches ran the license plate on the truck and discovered the truck was registered to a nearby address. Rieches went to the address and found Gower at the residence. Gower told Rieches she had picked defendant up from the scene of the accident but had let him out of the vehicle due to an argument. Rieches believed it was possible defendant was in the house and asked Gower for permission to search the residence. She consented, but Rieches' search was not fruitful.

¶ 12 After Rieches performed his search of the residence, he and Gower were talking in the kitchen. Rieches testified defendant entered the kitchen and, in response to Rieches' inquiry, confirmed he was the driver of the truck. Rieches asked defendant to come back to the accident scene. Defendant responded he did not want to because it was cold out. Rieches explained his patrol car was warm and defendant would not have to get out. Rieches did not handcuff defendant and "walked in front of or along side of" defendant out to the patrol car. Rieches further testified he observed defendant stumble a couple of times as he walked to the patrol car. Rieches testified he had defendant sit in the backseat per department policy and because the front seat was full of papers and clipboards. Once they were in the patrol car, Rieches testified: "I smelled a strong odor of an alcoholic beverage which led me to believe that [defendant] had consumed alcohol, which I had also been told by the woman [(Gower)] that was at the house of where they had been and what they were doing."

¶ 13 Rieches asked defendant how the accident occurred and where the proof of insurance would be located in the vehicle. Rieches did not believe defendant swerved to miss a deer because the tire tracks showed "a gradual path that left the road to the south." Rieches believed the truck hit a culvert on the south side of the road, turned on its side, and slid across the

road into the ditch on the north side of the road. At the scene, Rieches asked defendant to perform field sobriety tests. Defendant asked to call his attorney, and Rieches told defendant he needed an answer as to whether defendant would perform the tests. Defendant then asked if he would be arrested if he did not perform the tests, and Rieches responded in the affirmative. Defendant agreed to perform the tests.

¶ 14 On cross-examination, Rieches acknowledged his testimony that Gower had told him defendant had been drinking. Rieches responded, "I don't know," when asked why that was not included in his police report. On redirect, Rieches testified, "I do recall where she told me they were and exactly—not exactly what she said, but I recall that she told me they were at Hooters, they were drinking, they were driving separate, she drove one vehicle, he drove the other, she made it home, he didn't."

¶ 15 The trial court denied the motion to suppress. The court expressly found Rieches' testimony to be substantially credible, and the court found defendant's testimony less credible in light of the fact defendant had a long day, had been in a car accident, and had been drinking. The trial court summarized the events as follows:

> "The officer is admitted into the home by the girlfriend. He hasn't—there has been no forced entry. There has been no entry other than consensual.
>
> The only description that we have of that is the officer saying he goes to the home because he has got an address off of a [license] plate. He goes there. He meets the person who we learn in the evidence is the defendant's girlfriend. They talk. There is some discussion about consumption of alcohol. There is some

discussion about an argument that takes place and that [defendant] is no longer with her, is on his way home apparently on foot. This is the situation that [defendant] comes into, a police officer is in his home consensually.

And then there is a discussion that takes place, and during the course of the discussion the police officer makes a request and asked [*sic*] if he would come back to the scene of the accident.

***

He makes a request to go back to the scene of the accident. [Defendant's] response is to the effect that his preference would be not, it's cold, but the officer says I've got a heated car and makes another request."

¶ 16 The trial court found no indication of coercion and found defendant was not in custody when he was placed in the patrol car. The court acknowledged Rieches' questions about the accident and insurance information were interrogation, but it found the interrogation was not custodial. Finally, the court found that Rieches telling defendant he would be arrested if he refused to do the field sobriety tests did not compel defendant.

¶ 17 B. Motion To Reconsider Denial of Motion To Suppress and Trial

¶ 18 Defendant filed a motion to reconsider the motion to suppress, alleging Rieches' testimony at the original hearing was previously undisclosed. Defendant agreed to the simultaneous hearing of his bench trial and his motion to reconsider the suppression motion. Judge Richard P. Klaus presided over the motion for reconsideration and the bench trial. The State presented testimony from the individual who reported the accident to 9-1-1, the

correctional officer who administered defendant's breath test, and Rieches. Defendant presented testimony from Gower and testified in his own defense. We summarize only the testimony relevant to this appeal.

¶ 19 Rieches' testimony at trial was substantially the same as his testimony at the suppression hearing. He testified he was dispatched to an accident and when he arrived he discovered a truck on its side in a ditch with the headlights on. He searched the area for the vehicle occupant and found no one. He ran the license plate and discovered the vehicle was registered to a nearby address. He went to the address and encountered Gower. She stated she and defendant had been at Hooters and drove home separately. She received a call from defendant asking for a ride after the accident. After she picked defendant up, the two got into an argument and she kicked defendant out of the car. Rieches requested permission to search the home, received Gower's consent, and searched for defendant. His search was unsuccessful, and he returned to the kitchen. As he was talking with Gower, defendant arrived on foot.

¶ 20 On cross-examination, defendant established Rieches' police report indicated Rieches received information that defendant had left in a red Dodge Intrepid. Prior to going to the accident scene, Rieches saw the red Dodge and stopped the vehicle. Gower pulled into her driveway and spoke to Rieches. She told Rieches defendant was on foot, and Rieches left to search for defendant. He was unsuccessful and returned to the accident scene, which is when he proceeded to run the plates and return to defendant's home. Rieches' testimony that he obtained Gower's consent to search the home and was standing in the kitchen talking with Gower when defendant arrived remained consistent.

¶ 21 Rieches asked defendant to accompany him back to the accident scene. Reiches noticed an odor of alcohol coming from defendant and observed him stumble as he walked to the

patrol car. Once the two were inside the patrol car, the odor of alcohol became noticeably more pronounced. Rieches testified he explained defendant was not under arrest and he did not handcuff defendant, something he did not mention at the suppression hearing.

¶ 22 Reiches completed his accident investigation and began a DUI investigation. He testified the odor of an alcoholic beverage and defendant's difficulty with walking and balancing prompted the DUI investigation. Rieches refreshed his memory using his police report and described the various field sobriety tests he performed. Defendant displayed a standardized indicator of impairment on the horizontal gaze nystagmus test. Defendant also demonstrated standardized indicators of impairment on the nine-step walk-and-turn test—defendant did not stand in the demonstrated starting position, stepped off the line, and did not step heel to toe. Further, defendant could not keep his balance on the one-legged-stand test and put his foot down multiple times to remain upright. Based on the field sobriety tests, Rieches placed defendant under arrest for DUI.

¶ 23 Rieches took defendant to Carle Foundation Hospital because of the accident. There, he explained defendant's options between chemical testing and breath analysis and read defendant the warning to motorists. Defendant asked whether he could later change his mind if he chose to do breath analysis. Rieches told defendant he could refuse at any time prior to actually taking the breath test. Eventually, defendant did indeed undergo breath analysis and the test revealed defendant had a BAC of 0.171.

¶ 24 Gower testified the entire exchange with Rieches, including his search of the home, occurred before he left to go search for defendant. Gower told Rieches defendant was physically okay. She denied telling Rieches she or defendant had been drinking. Approximately 20 minutes later, Rieches returned to the house. Gower let Rieches in the house and told him she

had contacted someone to help get the truck out of the ditch. Rieches turned to go, and at that precise moment defendant entered the kitchen. Gower further testified defendant was not intoxicated, was not stumbling, and did not smell of alcohol.

¶ 25 Defendant testified he swerved to avoid a deer and crashed his truck into a ditch. He called Gower to pick him up, and the two got into an argument on the ride home. Defendant got out of Gower's vehicle and walked home. He testified he had put two beers from a cooler in his truck in his coat pocket. He drank those two beers on his walk home, though he never mentioned this to Rieches or the officer who administered the breath test. He also testified he had suffered a gunshot wound to one of his legs approximately six years before. He testified this wound occasionally gave him trouble.

¶ 26 Rieches was in defendant's kitchen when he arrived home. Defendant testified Rieches used a loud, commanding voice to repeatedly order defendant to return to the accident scene. He tried to get into the front seat of the patrol car, but Rieches had him sit in the rear seat. Rieches performed a pat-down search before defendant got into the car. On cross-examination, defendant testified Rieches informed him he was formally under arrest and handcuffed him after defendant completed the field sobriety tests.

¶ 27 During defense counsel's closing argument, the trial court asked, "Do you think that the law requires that your client be Mirandized before he is obligated under Illinois statute to, by implied consent, give a BAC breathalyzer test?" Counsel acknowledged the statute does not require that. The following exchange occurred:

> "THE COURT: So let's suggest perhaps that some of what you are asking for would ultimately be suppressed, assuming that I would disagree with Judge Kennedy's rulings, which I am not

suggesting, and I were to suppress some of the evidence, under [*People v. Martin*, 2011 IL 109102, 955 N.E.2d 1058] an A1 charge is an absolute liability charge. The state is required to prove two things, that the defendant drove, which he has testified to, and that the BAC was above .08, which the state has proven beyond a reasonable doubt and which is uncontroverted.

How do you get to the point where I have to suppress the BAC result?

[DEFENSE COUNSEL]: Defendant's BAC was not tested until hours after and until after he had consumed two beers on the walk back.

THE COURT: Okay. I don't know that that actually is an answer to the issue of suppression. It is an answer arguing as to the weight of the evidence, but I understand what you are saying."

¶ 28 Ultimately, the trial court denied the motion to suppress. The court found no reason based on testimony at trial to disagree with Judge Kennedy's prior ruling. The court went on to find defendant guilty beyond a reasonable doubt of both DUI charges. The court sentenced defendant to 180 days in the Champaign County jail, including as a condition thereof 24 months' probation.

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 On direct appeal, defendant argues his inculpatory statements, his performance on field sobriety tests, and his BAC should all have been suppressed, as they were the fruits of a

warrantless arrest in violation of the fourth amendment. Specifically, defendant argues the seizure violated the fourth amendment because (1) defendant submitted to a show of police authority and did not voluntarily consent to accompany the officer; and (2) the seizure was a ruse, based on a hunch, to obtain evidence of a crime. Because the seizure was illegal, defendant argues all evidence against him must be suppressed. We disagree.

¶ 32 When reviewing a trial court's ruling on a motion to suppress, this court applies a two-part standard of review. *Ornelas v. United States*, 517 U.S. 690, 699 (1996). See also *People v. Wear*, 229 Ill. 2d 545, 561, 893 N.E.2d 631, 641 (2008). We uphold a trial court's factual findings unless those findings are against the manifest weight of the evidence. *People v. Gherna*, 203 Ill. 2d 165, 175, 784 N.E.2d 799, 805 (2003). However, we review *de novo* the ultimate determination whether suppression is warranted. *Gherna*, 203 Ill. 2d at 175, 784 N.E.2d at 805.

¶ 33 The fourth amendment of the United States Constitution and article I, section 6, of the Illinois Constitution of 1970 both protect the right of individuals to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. The supreme court has recognized three tiers of encounters between citizens and law enforcement officers that do not constitute unreasonable seizures. *Gherna*, 203 Ill. 2d at 176-77, 784 N.E.2d at 806. The first tier is the arrest of a citizen, supported by probable cause. *Gherna*, 203 Ill. 2d at 176, 784 N.E.2d at 806. "Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime." *People v. Love*, 199 Ill. 2d 269, 279, 769 N.E.2d 10, 17 (2002). The second tier of police-citizen encounters involves temporary investigative seizures under *Terry v. Ohio*, 392 U.S. 1 (1968). A *Terry* stop is reasonable where "the officer has a reasonable,

articulable suspicion of criminal activity, and such suspicion amounts to more than a mere 'hunch.' " *Gherna*, 203 Ill. 2d at 177, 784 N.E.2d at 806. Finally, the third tier is consensual police-citizen encounters, which " 'involve[] no coercion or detention and therefore do[] not involve a seizure.' " *Gherna*, 203 Ill. 2d at 177, 784 N.E.2d at 806 (quoting *People v. Murray*, 137 Ill. 2d 382, 387, 560 N.E.2d 309, 311 (1990)).

¶ 34 When determining whether a challenged encounter was consensual, the United States Supreme Court has found "a person is seized within the meaning of the fourth amendment 'only when, by means of physical force or a show of authority, his freedom of movement is restrained.' " *People v. Almond*, 2015 IL 113817, ¶ 57, -- N.E.3d -- (quoting *United States v. Mendenhall*, 446 U.S. 544, 553 (1980)). If, given the totality of the circumstances, a reasonable person would not feel free to leave, a seizure has occurred. *Almond*, 2015 IL 113817, ¶ 57. Some factors outlined in *Mendenhall* that may indicate a seizure are (1) the threatening presence of several police officers; (2) the display of an officer's weapon; (3) some physical touching; or (4) the use of a tone of voice or language showing compliance with the officer's request may be compelled. *Mendenhall*, 446 U.S. at 554. These factors are not exhaustive, but the absence of any *Mendenhall* factors "is highly instructive" in determining whether a seizure occurred. *People v. Luedemann*, 222 Ill. 2d 530, 554, 857 N.E.2d 187, 202 (2006).

¶ 35 Defendant contends the circumstances were such that a reasonable person would not have felt free to disregard Rieches' request to return to the scene of the accident. Defendant claims Rieches used an increasingly threatening and demanding tone to tell defendant he needed to accompany the officer. Additionally, defendant claims the officer's "full complement of police equipment," including a gun, added to the coercive nature of the situation. We disagree.

¶ 36 As to the first factor, Rieches was the only officer at defendant's home. While a uniformed officer's presence in one's home is arguably threatening, Rieches was there consensually and defendant must have seen the marked patrol car outside before he entered the home. Because Rieches peacefully and consensually entered the home and defendant was alerted to his presence by the presence of his squad car, this factor does not support finding defendant was seized. While defendant makes much of the "full complement of police equipment," Rieches never displayed or brandished a weapon of any kind. The second factor also does not support finding defendant was seized.

¶ 37 It is uncontroverted Rieches never physically touched defendant until he patted defendant down prior to entering the squad car. Rieches did not handcuff defendant, nor did Rieches touch him to direct him outside or into the patrol car. The absence of physical contact also does not support a finding defendant was seized.

¶ 38 As discussed previously, we give deference to a trial court's findings of fact and credibility determinations, unless such findings and determinations are against the manifest weight of the evidence. *Almond*, 2015 IL 113817, ¶ 63. This deference is warranted because a trial court is in a superior position to determine the witnesses' credibility and to resolve conflicting testimony. *People v. Gonzalez*, 184 Ill. 2d 402, 412, 704 N.E.2d 375, 380 (1998). Defendant testified the officer's tone of voice was "demanding" and "threatening." However, Rieches testified at the motion to suppress hearing, "I asked him to come back with me to the scene of the accident." The State pressed him further, asking, "How did you ask him to come back to the scene with you?" Rieches responded, "I asked him if he would come back to the scene of the accident." Rieches summarized defendant's response: "he said he didn't really want to because it was cold outside. I explained to him that my squad car was running, it was warm,

and he wouldn't have to get out." The trial court found Rieches' account of the events credible and found defendant was cooperative on the night in question.

¶ 39 This testimony shows the trial court determined Rieches' account was more credible and therefore constituted the facts of the encounter. That determination was not against the manifest weight of the evidence. Rieches merely asked *if* defendant *would* accompany him to the accident scene. Defendant responded that he would rather not, due to the cold. Defendant's own testimony supports a finding that this encounter was consensual, as it indicates he felt as though he could remain in his home. Tellingly, Rieches did not inform defendant he was required to return to the scene. Rather, Rieches told defendant that his patrol car was warm in the hopes of convincing defendant to accompany him back to the accident scene. This sort of cajoling does not amount to the aggressive, authoritative behavior the *Mendenhall* factors contemplate. *People v. Barker*, 369 Ill. App. 3d 670, 677, 867 N.E.2d 1021, 1027 (2007) ("[A]bsent some show of authority beyond the verbal request, the law presumes a reasonable person would feel free to decline the request and depart.").

¶ 40 Moreover, as the trial court concluded, defendant's consent to accompany Rieches to the accident scene was voluntary. Defendant argues his silence before going to the vehicle indicates submission to Rieches' show of authority, not voluntary consent. We are not persuaded. First, as discussed above, Rieches never made a coercive show of authority. Second, Rieches' statements that his car was warm and defendant would not have to get out are not the type of coercion or deception that renders consent involuntary. See *People v. Roberts*, 374 Ill. App. 3d 490, 498, 872 N.E.2d 382, 389 (2007) (finding a defendant's consent would be invalid if given after an officer mentioned nearby units with drug-sniffing dogs, but it would be valid if given before the officer made such a comment).

¶ 41 While the *Mendenhall* factors are not exhaustive, defendant fails to persuade us the totality of the circumstances show he was seized. Defendant further testified he attempted to sit in the front seat of the patrol car. A reasonable person who believed himself to be under arrest would certainly not head for the front seat of a patrol car. Defendant simultaneously argues the fact the rear seat was separated from the front seat by a "cage-like" divider indicates a seizure occurred. That Rieches' car, like many patrol cars, has a protective divider is hardly enough to sustain a finding defendant was seized. Having considered the *Mendenhall* factors, as well as the totality of the circumstances, we hold the initial encounter between defendant and Officer Rieches was consensual and the fourth amendment does not apply. *People v. Woods*, 2013 IL App (4th) 120372, ¶ 27, 995 N.E.2d 539.

¶ 42 By the time Rieches asked defendant to exit the patrol car at the accident scene to perform field sobriety tests, Rieches had probable cause to arrest defendant. Probable cause exists when facts known to the officer at the time of arrest are sufficient to lead a reasonable person to believe a crime has been committed. *Love*, 199 Ill. 2d at 279, 769 N.E.2d at 17. The information within Rieches' knowledge at that time included (1) the fact an accident occurred; (2) tire marks indicating the vehicle had gradually drifted off the road before hitting a culvert, as opposed to tire marks indicating a sudden turn to avoid an obstruction; (3) Gower's statement defendant had been drinking; (4) defendant's difficulty walking; and (5) the strong odor of alcohol on defendant's breath. That alone would be enough for an experienced officer to have probable cause to arrest. *People v. Ruppel*, 303 Ill. App. 3d 885, 889-90, 708 N.E.2d 824, 828 (1999). However, defendant also admitted consuming alcohol and that admission was not made during custodial interrogation. Any detention of defendant at the accident scene or thereafter was reasonable as it was supported by probable cause.

¶ 43 Defendant appears to be under the impression the State is arguing Rieches was acting within his community-caretaking function, and he thus argues Rieches did not have genuine concern for defendant's well-being. Defendant argues Rieches had a hunch a crime had been committed and relied on his concern for defendant as an insidious ploy to ferret out crime. The State argues in its brief an officer's subjective intentions are irrelevant in determining whether a seizure has occurred. We agree the test requires an examination of an officer's objective conduct. *Luedemann*, 222 Ill. 2d at 551, 857 N.E.2d at 200 ("The analysis requires an objective evaluation of the police conduct in question and does not hinge upon the subjective perception of the person involved."). Defendant's concerns about Rieches' disingenuous regard for defendant's well-being are wholly irrelevant to our finding a consensual encounter occurred. "[T]he 'community caretaking' doctrine is analytically distinct from consensual encounters and is invoked to validate a search or seizure as reasonable under the fourth amendment. It is not relevant to determining whether police conduct amounted to a seizure in the first place." *Luedemann*, 222 Ill. 2d at 548, 857 N.E.2d at 198-99.

¶ 44 To summarize, the trial court's findings of fact and determinations of credibility were not against the manifest weight of the evidence. Defendant's encounter with Rieches was consensual at the outset. Rieches did not make a show of authority that would cause a reasonable, innocent person not to feel free to ignore his request. *People v. Cosby*, 231 Ill. 2d 262, 278-79, 898 N.E.2d 603, 613-14 (2008). Rieches had probable cause by the time he arrested defendant for DUI. Finally, defendant's community-caretaking argument is irrelevant to our consideration of whether a seizure occurred.

¶ 45 III. CONCLUSION

¶ 46 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 47 Affirmed.