

2026 IL App (1st) 242212-U

No. 1-24-2212

Order filed October 16, 2026

Third Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. TU 300518
	)	
ANDREW ORTIZ,	)	Honorable
	)	James S. Murphy-Aguilu,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Quish and Justice Martin concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm defendant's DUI conviction where the trial evidence sufficiently showed that he had actual physical control of a vehicle while intoxicated by alcohol, and where the record did not affirmatively show that the court considered any inadmissible hearsay statements or inaccurately recalled trial evidence.
- ¶ 2 Following a bench trial, defendant Andrew Ortiz was found guilty of misdemeanor driving under the influence of alcohol (DUI) and sentenced to 12 months' conditional discharge. On appeal, he asserts that the State failed to prove him guilty beyond a reasonable doubt, and that the

trial court improperly based its finding of guilt on inadmissible hearsay statements and an inaccurate recall of a statement made by defendant. We affirm.¹

¶ 3 On August 14, 2020, at about 9:24 p.m., defendant received three traffic citations for obstruction of traffic (TU 300516), possession of alcohol in a motor vehicle (TU 300517), and DUI (TU 300518). The State proceeded on the charges of obstruction of traffic (Chicago Municipal Code § 9-40-130 (added July 12, 1990)) and DUI (625 ILCS 5/11-501(a)(2) (West 2020)).

¶ 4 Prior to trial, defense counsel brought an oral motion *in limine* to exclude any hearsay statements made by nontestifying officers who could have testified. The court stated counsel could make her objections during trial, and the court would rule on them at that time.

¶ 5 At trial, Chicago police officer Kinga Karavanowska testified that she had been a police officer for seven years and received police academy training. She was trained in DUI detection and investigation, which included the administration of standardized field sobriety tests (SFSTs), *i.e.*, the horizontal gaze nystagmus (HGN) test, the walk-and-turn test, and the one-leg stand test.

¶ 6 On August 14, 2020, Karavanowska was on patrol with her partner when she was called to the 1500 block of North Cicero Avenue. The State asked why Karavanowska was called to the scene, and defense counsel objected based on hearsay. The court overruled the objection, stating the question concerned the course of investigation. Karavanowska then testified that she was called to the location “for a DUI driver, who then parked his vehicle in a moving lane.”

¶ 7 During Karavanowska’s testimony, the State published video from Karavanowska’s body worn camera (BWC) at the scene. Defense counsel objected to any inadmissible hearsay

¹In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

statements made by nontestifying officers in the video. The court stated that it would “disregard any potential hearsay statements” made in the video, and that defense counsel could identify those statements as they appeared in the video. Counsel stated she would maintain an ongoing objection. We describe Karavanowska’s testimony together with the video from the scene.

¶ 8 Karavanowska testified that, on arriving at the scene, she saw a police sergeant and officer standing around a black sedan parked in the righthand lane of traffic. The video, which begins with a time stamp of about 9:30 p.m., shows that it was dark outside, the scene was lit by streetlights, and the sedan’s lights were off. The video further reflects that, when Karavanowska exited her vehicle, an officer stated that the sedan’s driver was “passed out in the driver’s seat.” Karavanowska contacted the driver, identified in court as defendant. Another person sat in the front passenger’s seat. According to the video, Karavanowska told defendant that an officer saw him sleeping there. Defendant replied that he was “going home.”

¶ 9 Defense counsel objected to Karavanowska’s statement in the video that defendant had been sleeping in his vehicle. Counsel asserted that, because Karavanowska lacked personal knowledge on the matter, her remark was solely based on the hearsay statement made by the nontestifying officer at the scene, as captured in the video. The court stated it would not consider, for the truth of the matter asserted, “any statement related to something that [Karavanowska] didn’t have personal knowledge of.” As to Karavanowska’s comment in the video that defendant was sleeping, the court stated it did not think the statement was being offered for the truth of the matter asserted, but the court was “not going to consider that statement.”

¶ 10 Karavanowska testified that she smelled an odor of alcohol when interacting with defendant. She observed defendant had “slurred speech” and was “visibly *** intoxicated.”

Further, defendant's eyes were "bloodshot and glassy," his glasses were missing a lens, his pants were unzipped, and he had "soiled himself" with urine. Karavanowska described defendant's demeanor as "indifferent to what was going on."

¶ 11 The video shows that Karavanowska asked defendant to step out of the vehicle, and defendant complied. Karavanowska then told defendant to move to the sidewalk. Defendant said "sure" but remained in the street. Karavanowska repeatedly said "sidewalk" while defendant told her to "hurry this up." Once on the sidewalk, defendant told Karavanowska he was "a little lopsided" and Karavanowska remarked that his glasses were missing a lens. Defendant confirmed that he could see Karavanowska without his glasses. Karavanowska then told defendant his zipper was unzipped, and defendant zipped his pants. Defendant said he was "busy" and again told Karavanowska to hurry up.

¶ 12 Karavanowska then proceeded to administer the SFSTs. Reading from a manual, which is visible in the video, she first asked defendant, "Is everything okay with your head? No injuries?" Defendant said, "I don't think so." She then asked, "Everything okay with your eyes?" Defendant replied, "So far." Karavanowska directed defendant to remove his glasses and put them in his pocket.

¶ 13 Karavanowska first administered the HGN test. She testified that the HGN test measures alcohol intoxication by evaluating a subject for nystagmus, or an involuntary jerking of the eye as it "moves to the side."

¶ 14 In the video, Karavanowska told defendant she was going to check his eyes. She told defendant to keep his head still and follow her finger with his eyes only. Karavanowska attempted the test multiple times, but defendant repeatedly turned his head, laughed, and stated that he sees

“it.” At one point, defendant asked if he could stop to pick his nose, and on another occasion slapped himself in the face with both hands and rubbed his eyes. When defendant finally began to follow Karavanowska’s finger with his eyes, he laughed and said, “That’s pretty funny, look at it. Okay, so what?”

¶ 15 Karavanowska testified that defendant exhibited seven of eight clues of intoxication, including “[e]qual tracking,” failure to follow the stimulus with his eyes, “jerking of eye prior to 45 degrees,” and “[n]ystagmus at maximum deviation.”

¶ 16 Karavanowska testified that she next administered the walk-and-turn test, in which the subject stands still with feet together and hands at the sides, walks nine heel-to-toe steps, turns around with small steps, and then walks nine heel-to-toe steps back.

¶ 17 In the video, Karavanowska read the test instructions from her manual. She told defendant to place his left foot in front of his right foot. Defendant attempted to put his left foot in front of his right foot and repeatedly stated, “That makes no sense.” Defendant also repeatedly raised his arms as Karavanowska told him to keep his arms at his sides. Defendant asked Karavanowska to demonstrate the test but, just as she began, he started performing the test himself. Karavanowska told defendant that she had not told him to walk yet. She attempted to read the instructions again, but defendant began walking on his toes, bobbing up and down and wiggling his fingers in the air. A police officer said, “This is going nowhere” and handcuffed defendant. Defendant stated, “I’m going to take a shit,” then laughed and said he was “kidding.”

¶ 18 Karavanowska testified that, during the walk-and-turn test, defendant was unable to follow any directions, as he started before instructions were given, laughed throughout the process, did not walk heel-to-toe, took an incorrect number of steps, and turned incorrectly. She did not offer

the one-leg-stand test because defendant could not follow instructions or perform the walk-and-turn test.

¶ 19 The video shows that defendant was then taken to the police station. The video ends with officers instructing defendant to remove his shoes. Defendant instead begins removing his shirt and pants, as the officers repeatedly tell him to take off his shoes.

¶ 20 Karavanowska testified that, at the station, defendant was asked to perform a Breathalyzer test but refused. Karavanowska observed defendant for 20 minutes while she did her paperwork. Defendant had to be handcuffed to a bench to prevent him from injuring himself, as he was punching the floor.

¶ 21 Over defense counsel's objection, the State entered another video from Karavanowska's BWC of her observations of defendant at the station. We have also viewed this video, which is part of the record on appeal.

¶ 22 The video begins with a time stamp of August 14, 2020, at 10:11 p.m. and depicts defendant lying on a bench in his underwear, laughing, and talking over Karavanowska as she reads a document titled "Warning to Motorist." The video shows that defendant told Karavanowska, "You guys got me f***ing naked here," and Karavanowska responded that he undressed himself. Defendant laughed and told Karavanowska, "That makes no sense, girl," and called her a "stupid b****." An officer asked defendant if he wanted to put his clothes back on and handed defendant his shirt, but defendant threw the shirt in the officer's direction. He also yelled, "suck my d***," pointed his middle finger at the officers, and punched a wall multiple times.

¶ 23 The video further shows that defendant eventually agreed to perform a Breathalyzer test. He put his clothes back on and was led to another room. There, Karavanowska instructed defendant

to take a deep breath and blow “long” into the device like he was blowing into a balloon. Before performing the test, he inhaled and blew out as instructed, and an officer stated, “There you go, just like that.” Defendant then attempted the test three times, but each time did not blow a long, continuous breath into the Breathalyzer. After the first test, Karavanowska asked defendant if he would perform the next test correctly. Defendant laughed, said, “Probably not,” and told Karavanowska “this” was a waste of her time. After attempting the Breathalyzer test a third time, Karavanowska told defendant “it’s done.”

¶ 24 On cross-examination, Karavanowska confirmed she was not the first officer to arrive at the scene of defendant’s arrest. When asked if she knew why defendant’s vehicle was stopped, she stated, “It was not stopped. He stopped himself.” Based on her own observations, she did not know how defendant’s vehicle came to be stopped on the road. She never saw defendant urinate, but his pants looked wet and smelled of urine.

¶ 25 Karavanowska confirmed that her training was done in part with the National Highway Traffic Safety Administration (NHTSA), and the NHTSA manual lists different clues that are common and reliable indicators that the subject is intoxicated by alcohol. Karavanowska confirmed that she never asked defendant if he had any “ear conditions,” had consumed caffeine, or had a cold. During the HGN test, she used her finger as the stimulus, as her training permitted, and she believed her finger was sufficiently contrasting to the darkness to work as a stimulus. Karavanowska clarified that she misspoke in saying defendant exhibited seven different clues, as he actually exhibited six. As to the walk-and-turn test, Karavanowska confirmed that she only took three steps in demonstrating the test for defendant, as she was trained that she did not have to

demonstrate the whole test. She also confirmed that she never received “an adequate read” from the Breathalyzer test at the station, as defendant “did not try to blow.”

¶ 26 Defendant filed a motion for directed finding. The court granted the motion as to defendant’s charge of obstruction of traffic and acquitted him of that charge. The court reasoned that the police were responding to “an already curbed vehicle,” and there was “no way that [defendant] can [be] accountable for flow-of-traffic when he’s got two police cars behind him.” The court otherwise denied the motion.

¶ 27 The trial court found defendant guilty of DUI. As to whether defendant had actual physical control of the vehicle, the court stated: “I do believe that the reasonable inferences based on the statements that he made, based on his positioning in the car, based on the course of investigation, do indicate that he had actual, physical control.” The court additionally noted, “I believe there was a question that was asked of [defendant] or a conversation between the Officer and him, and him getting out of the vehicle, about his ability to drive, and him saying I just want to go home, I want to drive home.”

¶ 28 The court also found defendant was intoxicated, as indicated by his demeanor and “affect changes.” It found Karavanowska testified credibly regarding her observations that defendant had “soiled himself,” was laughing throughout the process, and “appeared to be physically intoxicated,” as he had slurred speech, smelled of alcohol, and had bloodshot, glassy eyes. The court “agree[d] to a certain point” with defendant that the HGN test was not “done in compliance with NHTSA.” However, the video showed that Karavanowska was using a preprinted form and “trying to follow NHTSA to the letter within the framework of dealing with the Defendant.” The

court remarked that defendant was “clearly being somewhat difficult” and “not cooperative with respect to essentially any of the tests.”

¶ 29 Defendant filed a motion to reconsider and/or for a new trial, and an amended motion, alleging that the State failed to prove him guilty beyond a reasonable doubt. Defendant also claimed that the State failed to lay a proper foundation for the results of the HGN test, as Karavanowska (1) did not specifically testify that the HGN test was administered in accordance with her training and proper procedures; and (2) incorrectly testified that defendant exhibited seven clues during the test. Defendant alleged that the trial court “should not consider the [SFSTs] when not done in compliance with NHTSA standards.” He also alleged that the trial court improperly considered inadmissible hearsay, namely, the information Karavanowska received from other officers who responded to the scene first. Further, defendant stated that the court remarked on testimony that was not presented at trial when it quoted defendant as stating, “I just want to go home, I want to drive home.”

¶ 30 The court denied the motion. It sentenced defendant to 12 months’ conditional discharge.

¶ 31 On appeal, defendant first asserts that the State failed to prove him guilty beyond a reasonable doubt, as the evidence was insufficient to show that he had actual physical control of the vehicle he was in, or that he was under the influence of alcohol.

¶ 32 When a defendant challenges the sufficiency of the trial evidence, our inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Johnson*, 2026 IL 131337, ¶ 59 (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact resolves conflicts in testimony, weighs evidence, and draws reasonable inferences from the facts. *People v.*

Sauls, 2022 IL 127732, ¶ 52. We will not substitute our judgment for that of the trier of fact on issues regarding the weight of the evidence and the credibility of witnesses, nor will we retry the defendant. *Johnson*, 2026 IL 131337, ¶ 59. The *Jackson* standard applies to both direct and circumstantial evidence, and circumstantial evidence that meets this standard is sufficient to sustain a conviction. *People v. Aljohani*, 2022 IL 127037, ¶ 66. We will set aside a conviction only where the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Bush*, 2023 IL 128747, ¶ 33.

¶ 33 To sustain defendant's DUI conviction, the State was required to show that defendant drove, or was in actual physical control of, any vehicle within Illinois while under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2024). We first examine whether the evidence was sufficient to show that defendant was in actual physical control of a vehicle.

¶ 34 A defendant need not be driving to be in actual physical control of a vehicle, and the defendant's intent to put the vehicle in motion is irrelevant to the determination. *People v. McAndrew*, 2024 IL App (1st) 230881, ¶ 46. The issue of actual physical control is determined on a case-by-case basis, and the court considers factors such as 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. *People v. Morris*, 2014 IL App (1st) 130512, ¶ 17. This list is not exhaustive, however, nor is the absence of one individual factor controlling. *Id.*

¶ 35 Here, we find the evidence supported the trial court's determination that defendant was in actual physical control of the vehicle. Officer Karavanowska testified that she observed defendant in the driver's seat of a sedan, which was stopped in a moving lane of traffic. See *City of Naperville v. Watson*, 175 Ill. 2d 399, 403 (1997) ("A person behind the wheel of a parked car can readily

move into a position where he can endanger other persons, property or vehicles.”). Video from Karavanowska’s BWC showed that, when Karavanowska interacted with defendant, defendant stated he was “going home.” He told Karavanowska he was “busy” and repeatedly asked her to “hurry this up.” Given that defendant was in the driver’s seat in a moving lane of traffic and told Karavanowska he was going home and needed her to “hurry,” a trier of fact could have reasonably concluded that defendant had driven the sedan to the location where it was stopped and had the physical capability of driving it further. See *People v. Slinkard*, 362 Ill. App. 3d 855, 859 (2005) (circumstantial evidence that the defendant had been previously driving his vehicle while intoxicated was relevant to support DUI conviction). Thus, there was sufficient evidence to show that defendant had actual physical control of the sedan. See *People v. Brooks*, 2023 IL App (1st) 200435, ¶ 37 (the trier of fact is not required to disregard inferences that naturally flow from the evidence).

¶ 36 While there was another occupant in the front passenger’s seat of the sedan, the trial court was not required to find that anyone other than defendant had actual physical control of the vehicle. See *People v. Cox*, 2020 IL App (2d) 171004, ¶ 18 (the defendant need not be the vehicle’s sole occupant to have actual physical control). Being in the driver’s seat, defendant was in a much better position to exert control over the vehicle than the person sitting next to him. Further, the absence of certain pieces of relevant evidence, such as evidence that defendant owned the vehicle or possessed keys to the vehicle, does not necessarily mean that defendant lacked control, as the question of actual physical control is determined on a case-by-case basis. *Morris*, 2014 IL App (1st) 130512, ¶ 17. In this case, defendant’s position in the driver’s seat of a vehicle stopped in a lane of traffic, and his statements to police that he was “busy,” going home, and needed

Karavanowska to “hurry this up,” was sufficient to show defendant had actual physical control of the vehicle for purposes of his DUI conviction. (Internal quotation marks omitted.) See *McAndrew*, 2024 IL App (1st) 230881, ¶ 50 (the purpose of DUI laws is “to deter intoxicated individuals from getting into their vehicles, except as passengers, and enables law enforcement to apprehend an intoxicated driver before he strikes”).

¶ 37 We further find the evidence overwhelmingly showed that defendant was under the influence of alcohol. A defendant is “under the influence of alcohol” where he or she is “under the influence to a degree that renders the driver incapable of driving safely.” (Internal quotation marks omitted.) *People v. Phillips*, 2015 IL App (1st) 131147, ¶ 18. To establish intoxication, the State may solely rely on circumstantial evidence and is not required to present scientific proof, such as a breath or blood alcohol test. *People v. Groebe*, 2019 IL App (1st) 180503, ¶ 58. The credible testimony of the arresting officer alone is sufficient to sustain a DUI conviction. *People v. Diaz*, 377 Ill. App. 3d 339, 344-45 (2007).

¶ 38 Whether a defendant was intoxicated is a question of fact to be resolved by the trier of fact. *Groebe*, 2019 IL App (1st) 180503, ¶ 57. The trier of fact may consider the officer’s observations of the defendant’s conduct, speech, or appearance; the odor of alcohol on the defendant’s breath; and testimony that the defendant failed a field sobriety test. *Id.* ¶ 58. “Any evidence of alcohol consumption is relevant to the issue of impairment.” *Id.*

¶ 39 Here, Karavanowska made multiple observations that supported a finding that defendant was intoxicated. She testified that she could smell alcohol, and that defendant had slurred speech and “bloodshot,” “glassy” eyes. See *id.* ¶ 59 (evidence sufficient to show intoxication where an officer observed the defendant had slurred speech, smelled of alcohol, and had glassy, red eyes).

Karavanowska also observed that defendant's pants looked wet and smelled of urine, that his pants were unzipped, and that his glasses were missing a lens. See *People v. Banks*, 378 Ill. App. 3d 856, 867 (2007) (the defendant's "disheveled" appearance supported a finding that the defendant was intoxicated). Based on these observations, Karavanowska stated that defendant was visibly intoxicated. See *People v. Olvera*, 2023 IL App (1st) 210875, ¶ 41 (opinion testimony of a police officer may be sufficient to support a finding that a driver was impaired).

¶ 40 Moreover, Karavanowska's testimony and BWC video showed defendant was disruptive and belligerent both at the scene of defendant's arrest and at the police station. When Karavanowska attempted to conduct the SFSTs, defendant continuously laughed, disobeyed instructions, and told Karavanowska to hurry up. He repeatedly stated that he did not understand Karavanowska's instructions and raised his voice. Karavanowska testified that she ultimately could not administer one of the SFSTs, the one-leg-stand test, because defendant could neither follow instructions nor perform the walk-and-turn test. See *People v. Tatera*, 2018 IL App (2d) 160207, ¶ 28 (evidence showed the defendant was under the influence of alcohol where he was unable to follow the officer's directions, became visibly agitated, and raised his voice).

¶ 41 Further, Karavanowska testified that, at the police station, she asked defendant to remove his shoes, but he instead stripped down to his underwear and told her that she undressed him. He had to be handcuffed to a bench to prevent injury because he was punching the floor. Karavanowska's BWC video from the station also shows that defendant continuously laughed at Karavanowska, called her a "stupid b****," cursed, and threw his shirt at officers. At one point, he began punching the wall with his fist. See *People v. Romanowski*, 2016 IL App (1st) 142360, ¶ 37 (evidence sufficient to show the defendant was intoxicated, where he was

“belligerent, unintelligible, and threatening to law enforcement”). Even further, the BWC video showed that defendant initially refused to perform a Breathalyzer test. When he finally agreed to a Breathalyzer test, however, he repeatedly failed to breathe into the device as instructed. When Karavanowska asked if defendant would perform the test correctly, he laughed, said “probably not,” and remarked that “this” was a waste of Karavanowska’s time. Defendant’s behavior in the video supported a reasonable inference that he was refusing to cooperate with the Breathalyzer test. See *Morris*, 2014 IL App (1st) 130512, ¶ 22 (refusal to cooperate with a Breathalyzer test can show consciousness of guilt).

¶ 42 Karavanowska’s observations of defendant, coupled with his behavior at the scene and at the station, overwhelmingly showed that defendant was intoxicated by alcohol. While defendant speculates that all of this evidence could have been indicative of “other circumstances” besides alcohol intoxication, such as intoxication from another substance, the court was not required to search all possible explanations of innocence and raise them to a level of reasonable doubt. *People v. Grunin*, 2022 IL App (1st) 200598, ¶ 57. We ultimately find no reason to disturb defendant’s conviction, as the evidence was far from being so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt. *Bush*, 2023 IL 128747, ¶ 33.

¶ 43 Defendant also asserts that the results of the SFSTs were inadmissible because the SFSTs were not conducted in compliance with the NHTSA manual. As to the HGN test, he asserts that Karavanowska failed to (1) ask defendant if he had inner-ear diseases or had consumed caffeine; (2) instruct defendant to stand with his feet together, arms at his sides, and head still; and (3) use a sufficiently contrasting stimulus. He also asserts that Karavanowska failed to testify as to (1) the number of passes she made across defendant’s eyes during the HGN test; (2) the length of time

she held the stimulus; and (3) that she checked defendant's eyes for "equal pupil size, resting nystagmus, and equal tracking." Defendant also argues that Karavanowska incorrectly stated that defendant exhibited seven of eight clues during the HGN test, when the NHTSA manual enumerates a maximum number of six clues. As to the walk-and-turn test, defendant contends that Karavanowska incorrectly testified that the test had nine possible clues, when it had a total of eight according to the NHTSA manual.

¶ 44 The State responds that defendant is raising these issues regarding the SFSTs for the first time on appeal. We agree with the State. To preserve an issue for appeal, a defendant must (1) raise it in either a motion *in limine* or a contemporaneous trial objection; and (2) include it in a posttrial motion. *People v. Castejon*, 2025 IL App (1st) 221918, ¶ 30. While defense counsel cross-examined Karavanowska regarding her administration of the SFSTs, counsel never brought a motion *in limine* or raised an objection regarding the admissibility of the SFST evidence on the basis that the SFSTs were not administered in compliance with the NHTSA manual. Defendant has therefore forfeited the issue for appeal. *Id.* (failure to preserve a purported error results in forfeiture).

¶ 45 To the extent that defendant asserts the SFSTs should have been given "little evidentiary weight" because they were not compliant with the NHTSA manual, we cannot find that the trial court gave the tests improper weight. It was the trial judge's role, as the trier of fact, to determine the weight to afford the evidence regarding the SFSTs, and we will not substitute our judgment for that of the trial judge. *Johnson*, 2026 IL 131337, ¶ 59. Moreover, as we recounted, Karavanowska's BWC video revealed that defendant was uncooperative and disruptive throughout the SFSTs, repeatedly laughing, acting belligerently, and failing to obey instructions.

Karavanowska testified that she could not complete all of the SFSTs because defendant could not follow instructions or perform the walk-and-turn test. Given this evidence, a rational trier of fact could have concluded that the incomplete administration of the SFSTs was due to defendant's belligerent behavior, which was the result of his intoxication, thus only further supporting defendant's DUI conviction. See *Groebe*, 2019 IL App (1st) 180503, ¶ 58 (any evidence of alcohol consumption is relevant to the issue of impairment). Moreover, the failure of an SFST is only "one factor indicating impairment," and a finding of impairment "can rest solely on the officer's testimony." *Id.* ¶ 60. Even without the results of the SFSTs, Karavanowska's many observations regarding defendant's behavior and appearance, both at the scene and at the police station, alone could have sustained defendant's DUI conviction.

¶ 46 Defendant next argues that the trial court improperly relied on hearsay statements in finding that he had actual physical control of the vehicle.

¶ 47 When the trial judge is the trier of fact, this court will presume that the trial court considered only admissible evidence and that the trial court considered the evidence only for the purpose for which it was admitted. *People v. Serritella*, 2022 IL App (1st) 200072, ¶ 99. That presumption may be rebutted where the record affirmatively shows the contrary. *Id.*

¶ 48 Defendant argues that the record affirmatively shows the court considered inadmissible hearsay statements. He points to the court's statement that, in finding defendant guilty, it inferred defendant had actual physical control of the vehicle "based on the statements that [defendant] made, based on his positioning in the car, based on the course of investigation." Defendant claims there are "several pieces of evidence" that the court may have been referring to when it said "the course of investigation," including the call Karavanowska received to go to the scene, the

statements of nontestifying officers that defendant was “passed out in the driver’s seat,” and Karavanowska’s testimony in cross-examination that defendant “stopped himself,” which defendant argues on appeal was not based on Karavanowska’s personal knowledge.

¶ 49 The rule against hearsay generally prevents the introduction at trial of out-of-court statements offered to prove the truth of the matter asserted. *People v. Brown*, 2025 IL App (1st) 230772, ¶ 54. Hearsay statements are out-of-court statements offered to prove the truth of the matter asserted. *People v. Williams*, 2023 IL App (1st) 192463, ¶ 94. They are generally inadmissible due to their lack of reliability and the inability of the opposing party to confront the declarant, as required by the confrontation clause. *Id.*

¶ 50 Here, there is no indication in the record that the trial court relied on hearsay statements from nontestifying officers that defendant stopped the vehicle in a moving lane and fell asleep in the driver’s seat. During trial, defense counsel objected to Karavanowska’s testimony that she had responded to the scene based on a report of a DUI driver who parked his vehicle in a moving lane. The court overruled the objection, stating the report was admissible because it concerned the course of the investigation. See *People v. Williams*, 2023 IL App (1st) 192463, ¶ 95 (out-of-court statements admissible to explain the progress of a police investigation). When the State published video from Karavanowska’s BWC at the scene, defense counsel again objected to any hearsay statements made by nontestifying officers that they found defendant sleeping in the driver’s seat. Counsel further objected that Karavanowska could not comment on these matters because she did not have any personal knowledge that defendant was sleeping. The court agreed and stated it would disregard “any potential hearsay statements” made in the BWC video and would not consider, for the truth of the matter asserted, any statements made by Karavanowska regarding matters that she

did not have personal knowledge of. We presume that the trial judge did not consider these out-of-court statements for the truth of the matter asserted, where the judge explicitly stated it would not do so and the record does not affirmatively show otherwise. See *People v. Mujkovic*, 2022 IL App (1st) 200717, ¶ 20 (“A trial judge is presumed to consider evidence only for the limited and proper purpose it serves.”).

¶ 51 The trial court’s mere use of the phrase “course of investigation,” in finding defendant had actual physical control of the vehicle, does not defeat the presumption that the court only considered admissible evidence. The court may have simply been referring to Karavanowska’s own observations when she arrived at the scene, where she saw defendant, in the driver’s seat of a sedan parked in a moving lane of traffic and interviewed him. Defendant’s mere suspicion that the trial court “may have” been referring to inadmissible hearsay statements is not sufficient to rebut the presumption that the court only considered admissible evidence. See *People v. Avery*, 227 Ill. App. 3d 382, 389-90 (1991) (“mere suspicion” was not sufficient to rebut that presumption that the trial judge only considered evidence for the limited purpose for which it was admitted). Thus, we must conclude that the trial court did not improperly base its holding on inadmissible hearsay statements.

¶ 52 Nor can we find that the record affirmatively shows the trial court misremembered evidence when it remarked on defendant stating, “I just want to go home, I want to drive home.” It is clear from the record that the court was referring to Karavanowska’s BWC video, in which defendant told Karavanowska, “I’m going home,” before saying he was “busy” and needed Karavanowska to “hurry this up.” The fact that the court paraphrased a single statement by defendant in the video does not amount to an affirmative showing that the trial court failed to

correctly recall “evidence critical to fully understand and evaluate a criminal defendant’s defense strategy at trial,” as defendant argues. *People v. Joiner*, 2018 IL App (1st) 150343, ¶ 69. Thus, defendant has failed to rebut the presumption that the trial court only considered competent, admissible evidence. *People v. Moon*, 2019 IL App (1st) 161573, ¶ 33.

¶ 53 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 54 Affirmed.