2015 IL App (2d) 130991-U
No. 2-13-0991
Order filed October 8, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. LATANNYA A. LATIN, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 13-CF-59 Honorable Fernando L. Engelsma, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State failed to prove defendant guilty beyond a reasonable doubt of aggravated battery, specifically that she committed the battery on public property, as no evidence established that the property, a public school's transportation department, was itself publicly owned or accessible; (2) the trial court properly admitted a witness's testimony based on video-surveillance materials, as his testimony was based on his perception of the materials and, given the materials' lack of clarity and the witness's opportunity to study them, his testimony aided the court in determining whether defendant was depicted; although the witness invaded the court's province by identifying defendant, that error was harmless, as the court recognized its responsibility to identify her itself.

¶ 2 Following a bench trial, defendant, Latannya A. Latin, was convicted of robbery (720 ILCS 5/18-1(a) (West 2012)) and aggravated battery (720 ILCS 5/12-3.05(c) (West 2012)), and

she was sentenced to concurrent prison terms of nine years for the robbery and seven years for the aggravated battery.[1] On appeal, defendant argues that (1) the State failed to prove her guilty beyond a reasonable doubt of aggravated battery; and (2) she was denied a fair trial when the court allowed an officer to identify her from surveillance videos and a screen shot taken from one of those videos. For the reasons that follow, (1) we reverse defendant's conviction of aggravated battery and remand the cause for the trial court to enter a conviction of misdemeanor battery (see 720 ILCS 5/12-3 (West 2012)) and to sentence defendant for that offense; but (2) we otherwise affirm, concluding that the admission of the officer's testimony was not reversible error.

¶ 3 The following facts are relevant to resolving the issues raised. The indictment charging defendant with aggravated battery provided as follows:

> "That on or about the 4th day of October, 2012, in the County of Winnebago, State of Illinois, [defendant], or one for whose conduct she is legally responsible, committed the offense of **AGGRAVAVATED BATTERY** when, in committing a battery in violation of 720 ILCS 5/12-3(a)(2), other than by the discharge of a firearm, [she] knowingly made contact of an insulting or provoking nature with Denise Combs while Denise Combs was on or about *** public property, being the Transportation Department of Rockford Public Schools, in that the defendant pushed Denise Combs to the ground, in violation of 720 ILCS 5/12-3.05(c) [(West 2012)] ***."

¶ 4 Prior to trial, both the State and defendant filed motions *in limine*. In her motion, defendant sought to bar the State from introducing video evidence from Wal-Mart and Murphy's

[1] Given her criminal history, defendant was sentenced as a Class X offender for robbery. See 730 ILCS 5/5-5-4.5-95 (West 2012).

USA that allegedly depicted her using Combs's credit card and checks to purchase goods. Defendant claimed that such evidence was relevant only to a forgery charge that was not part of the case.[2] Defendant argued that having the State seek to identify her based on what was depicted in the video would be highly prejudicial and would violate her due-process rights. In its motion, the State claimed that Officer David Swanson was unaware of who defendant was when he viewed the videos and screen shot. Swanson showed these materials to two other officers who recognized defendant and told Swanson who she was. The State wished to have the two officers who were familiar with defendant identify defendant from these images.

¶ 5 At the hearing on the motion, the court noted:

> "Well, I don't find the defense's argument [to] be persuasive after I ruled on it that it's the forgery incident is related. But I don't see how someone will be testifying that they saw a picture and recognized it as the defendant is admissible.
>
> Is that not something that I would decide from the video? I mean, how is that relevant *** [?]"

¶ 6 After more discussion on the issue, the court prohibited the State from calling the police officers who were familiar with defendant. The court then granted the State's motion in part, ruling:

> "I do find the other crime's evidence, had it been a forgery that was unrelated to the incident in the robbery, I would consider that or at least give more consideration to defense argument than it's propensity. It's not. It's a transaction that goes to show identity if nothing else. It's the same checks or material that was allegedly stolen in the robbery, correct[?]"

[2] The forgery charge was set to be tried at a later date under case number 12-CF-3303.

The court also noted that it would "permit [Swanson] to testify that based on information gathered he made contact with [defendant, and] then [the State] can certainly *** introduce the videos as evidence."

¶ 7 In addressing defendant's motion, the court stated:

> "I have ruled that evidence regarding identification of the defendant by the two other police officers I wouldn't find to be particularly relevant unless they were eyewitnesses to the event. But seeing [defendant] on a video and then saying that's [defendant] I don't find that to be relevant.
>
> So regardless of that I'm granting [defendant's] motion. But in terms of evidence concerning the forgery[,] I'm denying your motion. I believe that that is indeed relevant. So granted in part and denied in part."

¶ 8 At trial, the following evidence concerning where the attack occurred was presented. Combs testified that, on the morning she was attacked, she was waiting for her shift as a school bus driver for the Rockford School District to start. Combs indicated that the school buses are parked at the district's transportation department. The transportation department is comprised of a lot, where around 290 buses are parked, and a building, which houses a couple of offices, a mechanic department, and a break room. Combs also testified that the area around the transportation department is fenced, but she did not indicate what type of fence. None of the evidence presented at trial revealed whether taxes are used to maintain the facility or whether the public has access to it for any purpose.

¶ 9 Combs then stated that, when she was attacked, she was "park[ed] by the lamp post on Blackhawk." Combs clarified that she "park[ed] on the south fence[,] which is Blackhawk." Defendant testified that Combs was at "the intersection where the yellow bus company's at" and

that, when Anthony Williams, who was with defendant, saw Combs's car, he "whipped up in there." Later, defendant stated that she and Williams did not "approach[] Denise Combs on that property," but they did "pull up to Denise Combs." According to Officer Torry Regez, defendant told him and Swanson that the couple saw Combs "in a parking lot in her car or parking her car."

¶ 10 Evidence concerning matters other than where the attack occurred indicated as follows. Combs stated that defendant and Williams, who was driving, pulled up behind her, "making a T formation." The couple asked for directions, and, during that exchange, Combs gave the couple a piece of paper to write down directions. As Combs was reaching into the couple's car to retrieve her notebook, Williams grabbed her arm, trying to take Combs's purse. Combs fell, and Williams got out of his car and snatched her purse. Although defendant admitted at trial that she was in the car with Williams, she denied taking part in the robbery. Combs gave a description of defendant to the police, saying that defendant, who was sitting in the front-passenger seat, was a "black female around 40 years old." Because defendant did not get out of the car, Combs "didn't give [police] a [better] description of her."

¶ 11 Employees from both Wal-Mart and Murphy's USA testified about how they obtained surveillance video for Swanson. Swanson then testified about what he did with that evidence. When the State sought to introduce the surveillance videos, the court noted that it was admitting them over defendant's objection.

¶ 12 Swanson stated that he watched the Wal-Mart video a few times prior to testifying and made a screen shot of the people who had tried to use Combs's credit card and checks. When asked if the screen shot accurately depicted what was on the video, Swanson replied, "The

original is actually a little brighter. You can see it a little better, but, yeah, it is the same one."[3] Swanson then testified as follows:

"Q. And, Detective, are you familiar with a lady by the name of Latannya Latin?

A. I am.

Q. And was she depicted in [the screen shot]?

A. She was the person [in the] front. Yes, the black female in the photograph."

¶ 13 Defendant objected, and the trial court overruled that objection. The State then asked, "And, Detective, do you see Latannya Latin here today in court?" Swanson replied, "I do." After Swanson pointed to her and described what she was wearing, the court asserted that the record would reflect that Swanson made an in-court identification of defendant.

¶ 14 Swanson then testified that, as part of his investigation, he identified defendant as a suspect and originally charged her with forgery. Thereafter, Swanson and Regez interviewed defendant. During that interview, defendant admitted to being at both Wal-Mart and Murphy's USA on the day Combs was attacked and using Combs's credit card and checks. When shown the screen shot, defendant identified herself as the woman in the picture. Although defendant initially told Swanson and Regez that she was not part of the robbery, she later admitted her involvement to them.[4]

¶ 15 When the surveillance video from Wal-Mart was played in court, Swanson identified defendant as the woman depicted in the upper corner of the screen.[5] Defendant objected,

[3] The screen shot is grainy and underexposed. Although one can see the profile of the person Swanson identified as defendant, her facial features are unascertainable.

[4] The record does not indicate what defendant told the officers specifically.

[5] The surveillance video, though in color, is grainy. When this court viewed it, it was

claiming that "[t]his is only going to forgery at this point[, as] identification has been shown by the officer." The court overruled the objection. The State also played the surveillance video from Murphy's USA, pausing several times to have Swanson identify defendant as the woman in the video.[6] Defendant renewed her objection to the introduction of this evidence, arguing that "at this point we are not at all involved with the charge that's on trial right now." Defendant never questioned Swanson about either surveillance video or the screen shot.

¶ 16 The court found defendant guilty of aggravated battery and robbery. In doing so, the court simply noted, with regard to the aggravated battery charge, that "[t]here again the testimony establishes contact with assaulting [*sic*] or provoking nature in that it occurred upon a public way [*sic*]." The court then commented that it allowed the State to show the videos and the screen shot because they showed that defendant had the proceeds from the robbery soon after Combs was attacked.

¶ 17 Thereafter, defendant moved for a new trial, arguing, among other things, that the court erred in "overruling [her] repeated objections to testimony and evidence relating [to] the separately charged forgery" and in "admitting into evidence improper, irrelevant[,] and incompetent evidence offered by the State over objections of the defendant." The trial court denied the motion, noting that the videos and screen shot "did go to prove [the] identity of the defendant."

¶ 18 Defendant was then sentenced, and this timely appeal followed.

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impossible to see defendant's face clearly.

[6] The Murphy's USA surveillance video is also grainy, and, because the camera is mounted high on the wall or the ceiling, one can see defendant, if at all, only from an overhead position.

¶ 19 Defendant raises two issues on appeal. She claims that (1) she was not proved guilty beyond a reasonable doubt of aggravated battery; and (2) she was denied a fair trial when Swanson, contrary to the court's ruling on her motion *in limine*, was allowed to identify her from the surveillance-video evidence. We address each argument in turn.

¶ 20 The first issue we consider is whether defendant was proved guilty beyond a reasonable doubt of aggravated battery. "The due process clause of the fourteenth amendment to the United States Constitution requires that a person may not be convicted in state court 'except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.' " *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) (quoting *In re Winship*, 397 U.S. 358, 364 (1970)). "When a court reviews a conviction to determine whether the constitutional right recognized in *Winship* was violated, it must ask 'whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.' " *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 318 (1979)). "In other words, the question is 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *Id.* (quoting *Jackson*, 443 U.S. at 319).

¶ 21 To establish aggravated battery, the State must first prove that the defendant committed a simple battery. That is, the State must establish that the defendant "knowingly without legal justification *** cause[d] bodily harm *** or *** ma[de] physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3 (West 2012) (outlining elements of battery); see 720 ILCS 5/12-3.05(c) (West 2012) (noting that, in order for aggravated battery to be established, the elements of battery must be proved). The State must then prove a factor that enhances simple battery to aggravated battery. See 720 ILCS 5/12-3.05(c) (West 2012). The

provision of the statute under which defendant was convicted enhances simple battery to aggravated battery if the offense is committed "on or about a public way, public property, [or] a public place of accommodation or amusement." *Id.*

¶ 22 Here, defendant takes issue only with whether, as charged, the battery was committed "on or about *** public property." *Id.* She claims that the State failed to prove beyond a reasonable doubt that the "Transportation Department of Rockford Public Schools" is public property.

¶ 23 In *People v. Ojeda*, 397 Ill. App. 3d 285 (2009), this court addressed what comprises "public property." At issue there was whether a high school was "public property" for purposes of the aggravated battery statute. *Id.* at 287. We determined that it was, because taxes were used to maintain it and it was accessible to the public for at least some purposes. *Id.* We reached this decision in part because of the evidence presented at the defendant's trial. *Id.* at 286. Although no evidence revealed for what purposes the public had access to the high school, the undisputed evidence established that the high school was funded by taxes collected from local taxpayers. *Id.*

¶ 24 Here, not only is the record equivocal on the issue of whether Combs was actually attacked within the boundaries of the transportation department, but, even if she was attacked there, no evidence revealed whether that property is public or private. That is, nothing established whether the facility is funded by taxes or whether the public has access to the facility for any purpose whatsoever. Although, as noted, evidence concerning the public's use of the high school in *Ojeda* was lacking, we observed, citing cases addressing that issue generally, that public schools commonly are open to the public for limited purposes. *Id.* at 287-88. Unsurprisingly, neither the parties nor this court has found a case addressing whether a transportation department for school buses is likewise public or private. Accordingly, in the

absence of evidence on the issue, we cannot determine whether the transportation department is public or private.

¶ 25 Citing *People v. Hill*, 409 Ill. App. 3d 451 (2011), the State claims that the transportation department is "public property." There, the defendant, a prisoner in the Macon County jail, was convicted of aggravated battery when he bit a fellow prisoner while in one of the jail's housing units. *Id.* at 452-53. At issue on appeal was whether the jail was "public property" as used in the aggravated battery statute. *Id.* at 453. The defendant, relying on *Ojeda*, argued that it was not, because the jail was not open to the public. *Id.* at 455. The reviewing court disagreed, finding that property is considered public for purposes of the aggravated battery statute only if it is "owned by the government." *Id.* Because the evidence presented at trial by way of judicial notice revealed that the jail was "public property," in that taxes were used to maintain it, the court affirmed the defendant's conviction of aggravated battery. *Id.* at 453, 455.

¶ 26 *Hill* is distinguishable. In *Hill*, evidence, by way of judicial notice, established that the jail was public property. *Id.* at 453. Here, no evidence established whether the transportation department is public or private. Because such evidence is lacking in this case, even if we adopted *Hill*, we could not find that defendant was proven guilty beyond a reasonable doubt of aggravated battery.

¶ 27 Because, as noted, the State failed to establish an element of aggravated battery as charged, we reverse defendant's conviction of aggravated battery and remand this cause. On remand, the trial court shall enter a conviction of misdemeanor battery (see 720 ILCS 5/12-3 (West 2012)) and resentence defendant on this lesser included offense. See Ill. S. Ct. R. 615(b)(3) (eff. Jan. 1, 1967); see also *People v. Rowell*, 229 Ill. 2d 82, 97-98, 101 (2008).

¶ 28 We next address whether defendant was denied a fair trial when the court allowed Swanson to identify her from surveillance videos and a screen shot taken from one of those videos. In response to this argument, the State argues only that defendant has forfeited the issue. We address the State's claim first.

¶ 29 To preserve an issue for appeal, a defendant must make a contemporaneous objection at trial and file a written posttrial motion raising the issue. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). If the defendant fails to do this, the issue is considered forfeited. *People v. Jones*, 235 Ill. App. 3d 342, 350 (1992). The State claims that defendant forfeited her claim, because she did not raise it in her posttrial motion.

¶ 30 Although defendant did not specifically contend in her posttrial motion that error arose when Swanson identified her based on the surveillance videos and screen shot, she did claim that the court erred in "overruling [her] repeated objections to testimony and evidence relating [to] the separately charged forgery" and in "admitting into evidence improper, irrelevant[,] and incompetent evidence offered by the State over objections of the defendant." We find this sufficient to preserve the issue, and thus we conclude that the issue is not forfeited. See *People v. Coleman*, 245 Ill. App. 3d 592, 593-94 (1993).

¶ 31 Turning to the merits, defendant takes issue with the fact that Swanson was permitted to identify her from video-surveillance materials. Although the admission of evidence is ordinarily within the sound discretion of the trial court, we consider *de novo* whether it was legally proper for Swanson to identify defendant as the woman in the videos and screen shot. See *People v. Mister*, 2015 IL App (4th) 130180, ¶ 45.

¶ 32 Illinois Supreme Court Rules 701 and 704 (eff. Jan. 1, 2011) allow for the admission of testimony based on video surveillance evidence.[7] Rule 701 provides in relevant part:

> "If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue ***." Ill. R. Evid. 701 (eff. Jan. 1, 2011).

¶ 33 Rule 704 states:

> "Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Ill. R. Evid. 704 (eff. Jan. 1, 2011).

¶ 34 In construing these rules in the context of video surveillance, courts have found that "a surveillance video may be admissible as substantive evidence in the absence of authentication by an eyewitness with personal knowledge of the content if there is adequate proof of the reliability of the process that produced the recording." *Mister*, 2015 IL App (4th) 130180, ¶ 46. "Under this theory, it is not necessary for a witness to testify to the accuracy of the images depicted in the video so long as the accuracy of the process used to produce the evidence is established with an accurate foundation." *Id.* This is so because the evidence received is considered a " 'silent witness' " and " ' "speaks for itself." ' " *People v. Taylor*, 2011 IL 110067, ¶ 32 (quoting Jordan S. Gruber, *Foundation for Contemporaneous Videotape Evidence*, 16 Am. Jur. Proof of Facts 3d 493, § 5, at 508 (1992)).

[7] Illinois Rules of Evidence 701 and 704 are identical to Federal Rules of Evidence 701 and 704(a) (eff. Dec. 1, 2011).

¶ 35 Here, defendant does not challenge the admissibility of the surveillance videos or the screen shot on foundational grounds. Rather, she contends that she was denied a fair trial because the trial court permitted Swanson, who lacked personal knowledge, to identify her in the surveillance videos and screen shot. Defendant claims that allowing Swanson to do so invaded the province of the court, *i.e.*, the trier of fact. Accordingly, she contends that she is entitled to a new trial.

¶ 36 "Illinois has long allowed identification testimony by witnesses who did not personally observe events depicted in a video recording." *Mister*, 2015 IL App (4th) 130180, ¶ 51. However, traditionally, courts held that it must be established that (1) the witness was familiar with the defendant prior to the depicted event and (2) the witness's testimony will aid the fact finder in resolving the issue of identification. *Id.* ¶ 53. Under the second prong, courts have found that a witness's testimony will aid the trier of fact if (1) the defendant's appearance changed between the date of the recording and trial; or (2) the video or photograph is unclear. *Id.*; see also *People v. Thompson*, 2014 IL App (5th) 120079, ¶ 24; *People v. Starks*, 119 Ill. App. 3d 21, 25 (1983).

¶ 37 Here, we determine that the second prong of this "test" has been established. Specifically, the videos and screen shot are unclear. However, the same cannot be said about the first prong of the "test." Although Swanson testified at trial that he was familiar with defendant, nothing indicates that this familiarity stemmed from events transpiring *before* Swanson started investigating this incident. Indeed, in its pretrial motion, the State made clear that Swanson was not familiar with defendant before the investigation began, as Swanson learned defendant's identity only after talking with other officers who knew defendant.

¶ 38 That said, however, a recent decision from the Fourth District departed from the traditional "test." See *Mister*, 2015 IL App (4th) 130180. In *Mister*, the victim, who had won a large sum of money at the Par-A-Dice Hotel and Casino in East Peoria, was attacked and robbed when he returned to his apartment building in Champaign. *Id.* ¶¶ 5, 7. At the defendant's jury trial, a surveillance shift supervisor at the casino testified. *Id.* ¶ 14. He stated that, after following the defendant in the surveillance videos taken throughout the casino and reviewing still photographs taken from those videos, he identified the defendant as a possible suspect and forwarded pictures of the defendant to the police. *Id.* ¶¶ 18, 24. The supervisor did not, however, identify the defendant in court as the person he saw in the videos and still photographs. *Id.* ¶ 25.

¶ 39 On appeal, the defendant argued that he was denied a fair trial when the supervisor was permitted to narrate events, including the identification of the defendant, on the surveillance video shown to the jury. *Id.* ¶ 41. The reviewing court disagreed. *Id.* ¶ 68. The court held that, "although the witness must be in a better position than the jurors to identify the individuals captured by the camera, this does not require the witness to have prior knowledge of those individuals; nor does it require those individuals to have changed their appearance." *Id.* Because the supervisor's opinion was based on his close scrutiny of the videos and photographs, which he reviewed several times; because his opinion provided the jury with a clearer understanding about whether the defendant was in the casino; and because his opinion did not invade the province of the jury in that he did not identify the defendant in court as the same person depicted in the surveillance materials, the admission of the supervisor's testimony was not improper. *Id.* ¶¶ 69-71. Moreover, the court observed that "the weight to be given to [the supervisor's] lay opinion testimony is for the trier of fact to assess." *Id.* ¶ 72. Because the

supervisor was extensively cross-examined, with the defendant highlighting any deficiencies in the supervisor's testimony concerning his familiarity with the defendant and the clarity of the video, the jury was able to effectively assess what weight should be given the supervisor's testimony. *Id.*

¶ 40 Based on all of this, the court fashioned its own "test" for the admission of testimony based on video-surveillance materials. *Id.* ¶ 73. Specifically, the court found such evidence admissible under Rule 701 if the testimony is "(1) rationally based on [the witness's] own perception of the video and (2) helpful [to] the jury [in] determin[ing] whether the [defendant was where he was alleged to be]." *Id.* ¶ 73. Further, the court noted that a trial court will not err in admitting lay opinion testimony based on video-surveillance materials if such testimony does not invade the province of the jury. *Id.*

¶ 41 Here, under *Mister*, the fact that Swanson did not have personal knowledge of defendant before the investigation into the incident is immaterial. Rather, all that is required is that the witness providing identification testimony based on video-surveillance materials be in a better position than the trier of fact to identify the individuals depicted in those materials. Here, Swanson indicated, and our own review of the materials confirmed, that the copied materials were not very clear. Indeed, Swanson stated that, at least with regard to the screen shot, the original was clearer than the copy shown in court. A witness's opportunity to view unclear surveillance materials several times and decipher who is shown in the materials allows him to aid the trier of fact in identifying the subject in the materials. See, *e.g.*, *id.* ¶ 60 (and cases cited therein). Accordingly, given Swanson's opportunity to view clearer images more than once, we determine that Swanson's testimony aided the trier of fact.

¶ 42 Similarly, as in *Mister*, we believe that Swanson's testimony provided a clearer understanding about what transpired on the day that Combs was attacked. That is, Swanson's testimony revealed that there was a connection between Combs's attack and the use of her credit card and checks later that day. After Combs was attacked and her credit card and checkbook taken, someone attempted to use the credit card and checks at Wal-Mart and Murphy's USA. Swanson went to these two businesses, retrieved the surveillance videos, and found video of who attempted to use Combs's credit card and checks at the specified times. Swanson then took a screen shot of the individuals when they left Wal-Mart. As in *Mister*, having the court, as the trier of fact, review the extensive videos and pinpoint when and where exactly the suspects could be seen would have been an inefficient use of the court's time. *Id.* ¶ 70. Thus, in this regard too, Swanson's testimony was helpful to the trier of fact.

¶ 43 However, unlike in *Mister*, we cannot conclude that Swanson's testimony did not invade the province of the trier of fact. Specifically, unlike in *Mister*, Swanson identified defendant as the person he saw in the video-surveillance materials. That said, however, here, unlike in *Mister*, the court, not a jury, sat as the trier of fact, and, at the hearing on the motions *in limine*, the court's comments indicated that it was aware that the identification of defendant as a participant in the incident was something that it was going to have to decide. Given those facts, although it was error for Swanson to identify defendant as the person shown in the video-surveillance materials, we conclude that such error was harmless. See *People v. Span*, 2011 IL App (1st) 083037, ¶ 88 (recognizing in a different context that an "experienced trial judge" is "[u]nlike a jury," and if error occurs, the court will be better able to properly address issues without considering the error).

¶ 44 Moreover, we cannot conclude that the court, in finding defendant guilty, placed great weight on the fact that Swanson identified defendant as the person seen in the video-surveillance materials. Although the court commented that the videos showed that defendant had the proceeds of the robbery soon after Combs was attacked, which was a relevant consideration (see, *e.g.*, *People v. Poree*, 119 Ill. App. 3d 590, 595 (1983)), nothing suggests that the court found that defendant was the person depicted in the video-surveillance materials based on Swanson's identification of defendant. Rather, it is quite possible that the court, after observing defendant in court and watching the surveillance videos and examining the screen shot, concluded on its own that defendant was the woman in the surveillance materials. The fact that the court, as the trier of fact, commented that it was charged with ascertaining identification suggests as much. *People v. Gaultney*, 174 Ill. 2d 410, 420 (1996) (court presumed to know and follow the law).

¶ 45 Accordingly, like the court in *Mister*, we find that Swanson's testimony was properly admitted under Rule 701, as his lay opinion testimony (1) was rationally based on his own perception of the video-surveillance materials, and (2) helped the court, as the trier of fact, in determining whether defendant was at the Wal-Mart and Murphy's USA with the proceeds of the robbery soon after it occurred. Although, unlike in *Mister*, we believe that Swanson's testimony invaded the province of the trier of fact, we cannot conclude, based on this record, that that alone mandates a conclusion that defendant received an unfair trial.

¶ 46 For the above-stated reasons, we reverse defendant's conviction of aggravated battery and remand the cause for the court to enter a conviction of misdemeanor battery and to sentence defendant for misdemeanor battery. In all other respects, we affirm the judgment of the circuit court of Winnebago County. As part of our judgment, we grant the State's request that

defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 47 Affirmed in part and reversed in part; cause remanded with directions.