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2015 IL App (4th) 130515-U

NO. 4-13-0515

FILED
July 23, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
MICHAEL K. ANDERSON,	)	No. 12CF934
Defendant-Appellant.	)	
	)	Honorable
	)	John C. Costigan,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Knecht and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The appellate court reversed defendant's conviction where plain error occurred when witnesses gave improper lay-opinion testimony and the evidence was closely balanced.

(2) The admissible evidence was sufficient to support defendant's conviction beyond a reasonable doubt such that double jeopardy does not bar the State from retrying defendant.

¶ 2 Following a February 2013 trial, a jury found defendant, Michael K. Anderson, guilty of aggravated battery (720 ILCS 5/12-3.05(c) (West 2010)) based on an accountability theory, and he was sentenced to four years in prison. On appeal, he argues that (1) the State failed to prove beyond a reasonable doubt that he was guilty of aggravated battery based on an accountability theory and (2) he was denied a fair trial and the effective assistance of counsel based on certain evidentiary errors. We reverse and remand for a new trial.

¶ 3 I. BACKGROUND

¶ 4 On September 26, 2012, the State charged defendant by indictment with aggravated battery (720 ILCS 5/12-3.05(c) (West 2010)). The charges stemmed from a physical altercation between Carly Northcutt and Araceli Rios at O'Neil Park in Bloomington on September 12, 2012. The State alleged that on September 12, 2012, defendant, or one for whose conduct he was legally responsible, committed the offense of aggravated battery by knowingly and without legal justification causing bodily harm to Northcutt.

¶ 5 On February 13, 2013, defendant's jury trial commenced. The evidence showed that on September 12, 2012, Northcutt was defendant's estranged girlfriend of two weeks and Rios was defendant's current girlfriend.

¶ 6 Officer Bill McGonigle testified first for the State. He was dispatched to St. Joseph's Hospital on September 12, 2012, in response to a battery. After speaking with Northcutt, whom he observed to have a swollen and bloody lip, he learned of the existence of a video that had been taken by Northcutt's friend, Rhiannon Fisher, of the physical altercation. Officer McGonigle spoke with Fisher at the hospital and viewed the video on her cell phone. The following colloquy between the prosecutor and Officer McGonigle followed:

> "Q. Now previous to us coming into court today, you and I viewed the video that is on my computer, correct?
>
> A. Yes, Ma'am.
>
> Q. The video disk I've labeled as People's exhibit number one, can you describe what that video is?
>
> A. It basically shows a video of two individuals fighting. At one point it looks like Ms. Northcutt loses consciousness and the fight continues and then it appears that a male—a male and a

female tried to break the fight up and somebody stops them from doing so.

Q. Okay. People's exhibit one, the video, it's already in the computer set to play, is this the same video that you observed on the telephone? That you saw in Ms. Fisher's phone?

A. Yes, ma'am, same video."

¶ 7 Rhiannon Fisher testified that she was at the park with her friend, Brittney Divizio, when Northcutt arrived. Northcutt left the park when defendant and Rios arrived. When defendant and Rios later left the park, Divizio called Northcutt and she returned to the park. A short time later, defendant and Rios also returned to the park and walked up to the picnic table area, where she and others were "hang[ing] out." According to Fisher, Northcutt and defendant argued while Rios stood beside defendant "putting in input like come on, just fight me, just stupid stuff like that." Fisher stated that after the argument stopped, defendant left the area to go play basketball at the basketball courts located across the parking lot from the picnic tables and skate park. Fisher testified that defendant was playing basketball when Northcutt and Rios got into the physical altercation, which she videotaped on her cell phone. The video was published to the jury for the first time during Fisher's testimony and she identified various people in the video.

¶ 8 The video, which this court has reviewed, depicts two young women, identified by Fisher as Rios and Northcutt, physically assaulting each other while a group of observers gather, several of whom are seen jumping up and down and cheering during the fight. Rios and Northcutt are seen exchanging blows when Rios knocks Northcutt down and straddles her torso. The video then depicts Rios holding Northcutt by her hair and repeatedly banging Northcutt's

head onto the concrete. At one point in the video, Northcutt appears motionless as Rios continues to slam her head on the concrete and punch her about the head and face. The video then depicts an unidentified man holding a skateboard and Courtni Troyer approach Rios and Northcutt. Troyer is seen reaching toward Rios. At this point, defendant appears, running in and pushing Troyer away from Rios and Northcutt while saying, "get off her." Defendant then pushes the unidentified man, telling him, "[d]on't touch my bitch. I'll knock your ass up." An individual identified as Darien Davis then appears to attempt to break up the fight with the subsequent assistance of defendant. The words "let go" are heard several times.

¶ 9 On cross-examination, Fisher agreed that defendant "was hundreds of feet away playing basketball when the fight started."

¶ 10 On redirect-examination, Fisher testified that while Northcutt and Rios were arguing, defendant "was just saying like rude comments to [Northcutt] and how [Rios] was going to beat her profanity words." According to Fisher, defendant "was just like egging [the fight] on." She further stated, "[a]s you can hear in the video when he comes in, he was telling people to get away from his B and he says *** more violent things, just basically saying he wants the fight to go on as you see him pushing other people away [who were] trying to tear it apart."

¶ 11 On re-cross-examination, Fisher testified that she could not remember the exact words defendant used during the argument between Northcutt and Rios. She agreed with defense counsel, however, that whatever defendant did say was after Rios and Northcutt had already discussed fighting.

¶ 12 Northcutt testified that she was at O'Neil Park on two separate occasions on September 12, 2012. She left the park initially because defendant was there but returned after her friend called and told her defendant had left. Approximately 20 minutes after she returned to

the park, defendant and Rios also returned to the park. Northcutt stated defendant approached her and started yelling at her. At some point during the argument, defendant called Rios over. Rios had been talking to her friends. Northcutt and Rios then argued. According to Northcutt, Rios was angry with her because she had called defendant's telephone. The following colloquy between the prosecutor and Northcutt followed:

> "Q. Okay. Was [defendant] still involved in the argument at this time?
>
> A. Yeah.
>
> Q. Do you remember anything he was saying at this time?
>
> A. He wasn't really saying much, he was just standing around.
>
> Q. Okay. At some point did you and [Rios], did the argument progress to where a fight was going to happen?
>
> A. Yeah.
>
> * * *
>
> Q. Do you recall if [defendant] was saying anything when you and [Rios's] argument turned to talking about going to fight?
>
> A. He was telling her to fight me.
>
> Q. Now prior to any fight, did [defendant] leave where the two of you were arguing at?
>
> A. Yeah.
>
> Q. Do you know where he went?
>
> A. To go play ball.

Q. At the time that he left to play basketball, were you and [Rios] still arguing?

A. Yeah."

Northcutt then described the fight, from which she suffered injuries to her head and mouth. According to Northcutt, she was standing by a picnic table when Rios first hit her and they ended up on the ground in the skate park area.

¶ 13 Courtni Troyer testified she was present during the fight between Northcutt and Rios. Troyer identified herself in the video, which was again played for the jury. She explained that she was walking toward Northcutt and Rios because she intended to break up the fight. Troyer stated that defendant "pushed me away from her and told me not to touch them," so she "backed away." The prosecutor asked Troyer, "[w]hat was your impression of [defendant's] demeanor when he told you not to touch them?" She responded, "[t]hat he wanted them to continue fighting."

¶ 14 After the State rested, defendant moved for a directed verdict, asserting no reasonable trier of fact could find him guilty of aggravated battery based on the evidence presented. The State argued that defendant pushed people who were trying to separate the combatants away from the fight, as depicted in the video, and noted the testimony regarding the arguments between defendant, Northcutt, and Rios indicated that defendant instigated the fight. The trial court denied the motion for a directed verdict.

¶ 15 Araceli Rios testified first for the defense. She had by then pleaded guilty to the aggravated battery of Northcutt. According to Rios, she and defendant went to the park so he could play basketball. Approximately 30 minutes after arriving at the park, they left to take one of defendant's friend's home and the two subsequently returned. Upon returning to the park, she got into an argument with Northcutt. According to Rios, defendant did not say anything during

her argument with Northcutt and he left the area to play basketball after the argument had finished and "everybody had everything figured out." Rios testified that approximately five minutes after defendant left to play basketball, Northcutt approached Rios and they mutually agreed to fight one another. In anticipation of the fight, Rios removed her shoes and tied her hair up and Northcutt removed her shoes, a necklace, and "some weave." Rios testified that defendant did not tell her to fight Northcutt. Rios then described the fight between her and Northcutt. The following colloquy between defense counsel and Rios ensued:

> "Q. How did the fight stop?
>
> A. [Defendant] came. I guess he heard everybody calling him, talking about your girl is over there fighting, so he ran from the basketball court like two hundred feet away, he ran from there I guess, him and his friend.
>
> * * *
>
> Q. Then what did they do?
>
> A. They came, [defendant] came and he pushed a girl away, was like, you know, get off my bitch and um, I guess he was—I don't even know what is going on.
>
> * * *
>
> Q. And at the very end of the fight you had ahold [sic] of [Northcutt's] hair, isn't that right?
>
> A. Yes.
>
> Q. [Defendant] was telling you to let go?

A. [Defendant] was telling me to let go and some other guy was trying to grab me too and I just wasn't letting go."

¶ 16 On cross-examination, Rios acknowledged having told a detective Roth, approximately six hours after the fight that she had been angry with Northcutt because defendant told her Northcutt "was talking stuff" about her. However, she testified that defendant did not actually tell her that. Rios also acknowledged that any information she had regarding defendant's actions during the fight came from the videotape. The following colloquy between the prosecutor and Rios followed:

"Q. All right. On that video you would agree that [defendant] stopped somebody from stopping the fight at that point, correct?

A. The girl, yes.

Q. The girl tried to come up and separate the two of you?

A. She looked like she was about to come up and do something, and that is when [defendant] came up and yeah, pretty much stopped her.

Q. So you were looking at her to see that?

A. I didn't see her, no."

¶ 17 Darien Davis testified that on September 12, 2012, he had been playing basketball with defendant and others at O'Neil Park for approximately 30 minutes when they heard people yelling over by the skate park. They ran over to the skate park, which he estimated to be 100 to 150 yards away, to see what was happening. When they got to the area, Davis stated defendant pushed somebody because it "looked like they [were] jumping his girlfriend. So there [were]

multiple people around, so he pushed them off of them to see what was going on. That's when we seen just the two girls fighting and that's when we pulled them apart, tried to pull them apart."

¶ 18 Defendant testified on his own behalf. He and Rios went to O'Neil Park on September 12, 2012, so he could play basketball with friends. Several minutes after arriving at the park, Jaden Ferris, one of defendant's friends, arrived with Northcutt. Ferris and Northcutt left the park shortly thereafter. Defendant and Rios then left the park as well to take another friend home. When defendant and Rios returned to the park 10 minutes later, Ferris and Northcutt were there and an argument about defendant and Northcutt's prior relationship broke out among the four.

¶ 19 Defendant testified he and Ferris "pretty much like stopped the argument so I thought, you know, when we stopped the argument that everything was okay. I didn't know nothing further was going to happen so I decided to just go over and play basketball." Defendant stated that when he left the area to go play basketball, Rios was with her group of friends and Northcutt was "on the other side" with her group of friends.

¶ 20 Defendant testified he had been playing basketball for approximately 30 minutes when he heard loud noises and screams coming from the skate park area. Defendant stated he "t[ook] off running to see what was happening." The following colloquy between defense counsel and defendant occurred:

> "Q. When you got there what did you see? What did you observe?
>
> A. I observed a white male, he was like kind of hovering over [Rios] and I observed a female who was just like standing there in a threatening manner.

Q. Did you—did you realize what was taking place between [Rios] and [Northcutt] at that moment when you got there?

A. Not at the moment because all I wanted to do, like I say, my adrenaline was rushing and at the same time I'm nervous and in shock because I hear screaming at the same time I'm seeing a crowd of people forming over something around the skate[ ]park.

Q. And you can clearly see from the video that you did brush by [Troyer] and you went up and pushed somebody?

A. Yes, sir.

Q. And what did you say to him?

A. I told him excuse my language, I told him to stay away from my bitch.

Q. And you used some additional profanity along the way?

A. Yes, sir.

Q. What was your intention when you pushed him and told him that?

A. My intention was, to my best knowledge I felt as if he was a threatening manner because at the same time, you know, I'm running when I approach, you know, I see him hovering over [Rios]. That clearly states in my defense, you know, I have to do something because I don't know what this male is trying to do towards [Rios].

Q. Well I'm going to ask you again, did you realize the gravity of what was going on between [Rios] and [Northcutt], the fact that [Northcutt] was defenseless and [Rios] was continuing to inflict injuries?

A. Not at the time I was not observing to it [*sic*] because I was drawn in on this male suspect.

Q. At some point did you realize that, did you understand that?

A. Um, I did when I—when I stopped observing what the male was doing and I looked down and I, you know, I came to my senses well, you know, I need to break this fight up because it's getting out of hand.

Q. Did you do that?

A. Yes, sir."

¶ 21 Defendant testified he was not aware of any animosity between Rios and Northcutt prior to September 12, 2012. Defendant stated that he did not tell Rios to fight Northcutt, nor did he want Rios to hurt Northcutt.

¶ 22 During closing argument, the State argued defendant prevented Troyer and the unidentified male from breaking up the physical altercation between Rios and Northcutt. In particular, the prosecutor argued, in part, as follows:

"The video speaks for itself. That [unidentified] man comes in with one hand and is reaching in to where Araceli Rios is repeatedly punching Carly Northcutt in the face and that

[defendant] pushes him back and you can tell from the rest of the video the guy is like (gesturing hands up) okay. So what happened? [Defendant] succeeded. He stopped [Troyer] from stopping the fight. She's afraid to go back in. He stops the [unidentified] man with the hat from going back in. He has aided the commission of this offense to facilitate and continue. *He is legally responsible for the actions of [Rios] at this point.*

Now this is appalling and I'm sure every one of you agree[s] with me, that these kids stood around and watched this. And unfortunately that is not a crime. *** It's not a crime to stand around and observe, cheer, whatever they were doing and to videotape it. It's not a crime. But to stop—the law says that at the point that you attempt to facilitate it and aid it, the commission of that, that is a crime and that you now are legally responsible for that person's actions and that is why we are here and that is why this defendant is guilty of aggravated battery." (Emphasis added.)

¶ 23 During deliberations, the jury requested to view the video again. The jury was brought back into the courtroom, and, without objection, the video was published in open court four more times. After further deliberations, the jury asked to see the video again, starting from the point defendant first entered the scene. The jury then asked if it could have the video in the jury room. Without objection, the court allowed the video to be taken to the jury room so that the jurors could view it during their deliberations. Thereafter, the jury found defendant guilty of aggravated battery.

¶ 24 Following an April 2, 2013, sentencing hearing, the trial court sentenced defendant to four years in prison. On April 24, 2013, defendant filed a motion to reconsider the sentence, alleging the four-year prison sentence was excessive. On May 24, 2013, the court denied the motion. This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, defendant argues (1) the State failed to prove beyond a reasonable doubt that he was guilty of aggravated battery based on an accountability theory and (2) he was denied a fair trial and counsel was ineffective based on certain evidentiary errors. We address the issues in reverse order.

¶ 27 A. Improper Lay-Opinion Testimony

¶ 28 Defendant asserts he was denied a fair trial and the effective assistance of counsel where, without objection, the State elicited testimony from four of the seven witnesses regarding events depicted in the video of the physical altercation of which they had no personal knowledge.

¶ 29 The admission of evidence is ordinarily within the sound discretion of the trial court; however, where the issue does not involve an exercise of discretion, fact finding, or credibility determination, as is the case here, our review is *de novo*. *People v. Sykes*, 2012 IL App (4th) 111110, ¶ 30, 972 N.E.2d 1272.

¶ 30 Defendant acknowledges the alleged evidentiary errors were not preserved for appeal due to defense counsel's failure to object at trial or raise them in a posttrial motion (see *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988) (to preserve an error for appellate review, a defendant must raise the issue at trial and in a posttrial motion)); however, he contends this court may review the issue for plain error. "The plain-error doctrine permits a

reviewing court to by-pass normal rules of forfeiture and consider '[p]lain errors or defects affecting substantial rights *** although they were not brought to the attention of the trial court.' " *People v. Eppinger*, 2013 IL 114121, ¶ 18, 984 N.E.2d 475 (quoting Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967)). "Plain-error review is appropriate under either of two circumstances: (1) when 'a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error'; or (2) when 'a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.' " *Id.* (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007)). " 'In both instances, the burden of persuasion remains with the defendant.' " *Piatkowski*, 225 Ill. 2d at 565, 870 N.E.2d at 410. "The first step in our analysis is to determine whether an error occurred." *Eppinger*, 2013 Il 114121, ¶ 19, 984 N.E.2d 475. If error occurred, we will then consider whether either of the two prongs of the plain-error doctrine has been satisfied. *People v. Sargent*, 239 Ill. 2d 166, 189-90, 940 N.E.2d 1045, 1059 (2010).

¶ 31 A lay witness is precluded from giving opinion testimony " ' "wherever inferences and conclusions can be drawn by the jury as well as by the witness." ' " *Sykes*, 2012 IL App (4th) 111110, ¶ 36, 972 N.E.2d 1272 (quoting *Freeding-Skokie Roll-Off Service, Inc. v. Hamilton*, 108 Ill. 2d 217, 221, 483 N.E.2d 524, 526 (1985)). Further, a lay witness' testimony must be limited to " '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, and (c) not based on scientific, technical, or other specialized knowledge.' " (Emphasis in original.) *Id.* ¶ 35, 972 N.E.2d 1272 (quoting Fed. R. Evid. 701). "[W]hile a lay witness may

testify to his observations or sensory perceptions, he generally may not give his opinions or interpretations of those observations." *People v. McCarter*, 385 Ill. App. 3d 919, 934, 897 N.E.2d 265, 279 (2008).

¶ 32 Here, the State concedes that clear or obvious error occurred when witnesses, on five separate occasions, testified regarding their interpretations of (1) events depicted in the video of which they had no personal knowledge and (2) out-of-court statements made by defendant. Specifically, the State acknowledges error relating to the following: (1) Officer McGonigle's testimony that the video showed defendant stopping a male and a female from breaking up the fight; (2) Fisher's description of defendant's acts as seen on the video as "pushing other people away [who were] trying to tear [the fight] apart"; (3) Rios's description of the video as showing Troyer was "about to come up and do something" but defendant "pretty much stopped" her from breaking up the fight; (4) Fisher's interpretation of defendant's words as "violent things," which indicated "he want[ed] the fight to go on"; and (5) Troyer's impression that defendant "wanted them to continue fighting." We accept the State's concession.

¶ 33 Despite these errors, however, the State contends defendant has failed to meet his burden of proving that it was serious error or that the evidence was so closely balanced the error alone threatened to tip the scales of justice against him. We first examine whether the evidence supporting the State's accountability theory, that defendant aided in the aggravated battery of Northcutt by preventing the fight from being stopped sooner, was closely balanced such that the improper lay-opinion testimony threatened to tip the scales of justice against defendant.

¶ 34 "A person is legally accountable for the conduct of another when *** either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the

planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2010). To prove a defendant possessed the requisite intent under section 5-2(c) of the Criminal Code of 1961 (720 ILCS 5/5-2(c) (West 2010)), the State must prove beyond a reasonable doubt (1) that the defendant shared the criminal intent of the principal, or (2) the existence of a common criminal design. *People v. Fernandez*, 2014 IL 115527, ¶ 13, 6 N.E.3d 145. A person's mere presence at the scene of a crime, by itself, does not render him accountable for the offense. 720 ILCS 5/5-2(c) (West 2010).

¶ 35 As argued by defendant, in order to prove him guilty of aggravated battery based on an accountability theory, the State had to prove his intent in pushing the bystanders away was to prevent them from stopping the fight. See 720 ILCS 5/5-2(c) (West 2010). The State's primary evidence in this regard was the video. However, defendant argues that rather than simply playing the video for the jury, the State elicited improper lay-opinion testimony regarding defendant's intent from witnesses who were in no better position than the jury to interpret defendant's intent based on his actions portrayed in the video, which tipped the balance in favor of the State in an otherwise close case. As previously noted, prior to the video being published for the jury, Officer McGonigle testified the video depicted an individual, later identified as defendant, preventing two other individuals from stopping a fight. Thereafter, Fisher testified defendant was pushing people away and saying "violent things" indicating "he want[ed] the fight to go on," and Rios testified on cross-examination that the video showed Troyer was "about to come up and do something" but defendant "pretty much stopped" her from breaking up the fight. In addition, Troyer testified to her impression that defendant "wanted them to continue fighting." This improper opinion testimony went to the heart of what the State was required to prove, *i.e.*, defendant's intent in pushing the bystanders away was to prevent the fight from being stopped.

¶ 36 On the other hand, defendant testified that at the time he arrived at the scene, he saw a male hovering over Rios and a female standing by in a threatening manner. According to defendant, when he pushed Troyer and the unidentified male away, he did not realize the gravity of the situation. He was focused on the unidentified male because he felt the male was a threat to Rios. Further, Davis testified that when he and defendant arrived at the scene there were multiple people around and it "looked like they [were] jumping [defendant's] girlfriend."

¶ 37 Based on our review of the video and the properly admitted evidence, we find the evidence regarding defendant's intent was closely balanced such that we cannot say the improper lay-opinion testimony did not tip the scales of justice against him. Accordingly, we find the improper lay-opinion testimony amounted to plain error. We therefore reverse defendant's conviction and sentence and remand for a new trial. Given our determination, we need not address defendant's ineffective-assistance-of-counsel claim.

¶ 38 Notwithstanding the above-described evidentiary errors, the State asserts the primary accountability issue in this case was not whether defendant pushed the bystanders away with the intent to allow the fight to continue—as defendant asserts—but whether defendant solicited Rios to commit aggravated battery in the first place. The State maintains the evidence presented at trial regarding defendant's solicitation of Rios to fight Northcutt "was at least strongly weighted in the prosecution's favor," and therefore, "it does not matter that the evidence was somewhat closer concerning his intent to facilitate the offense *** by keeping bystanders from protecting Northcutt after she became defenseless." Defendant asserts this "alternative" accountability theory was not argued at trial and therefore it cannot be argued for the first time on appeal.

¶ 39 Whether the State actually asserted a separate "solicitation" theory of accountability at trial or has raised it for the first time on appeal does not affect our analysis of the above described evidentiary errors, or ultimately, our decision. In its brief, the State, arguing it had presented to the jury two bases for holding defendant accountable for the aggravated battery, asserted his conduct during the fight "bolstered circumstantially" the evidence of his solicitation of Rios. It further argued, "[t]he credibility contest, about whether defendant had instigated Rios into fighting with Northcutt in the public park, shifted decidedly in the prosecution's favor with the video recording of what defendant said and did as Rios continued to batter Northcutt." Thus, according to the State, the video was important evidence and relevant to *both* theories of accountability. We have determined the evidence was closely balanced on the claim defendant aided in the aggravated battery by preventing the fight from being stopped sooner. Likewise, we find it to be closely balanced on the issue of whether defendant solicited the aggravated battery in the first place. We note the State's evidence regarding defendant's solicitation of the aggravated battery was limited to Northcutt's testimony that defendant told Rios to fight her and Fisher's testimony that defendant was "egging on the argument" and told Northcutt Rios "was going to beat her." However, Fisher testified on cross-examination that defendant's comments were made after Rios and Northcutt had already discussed fighting. Further, both Rios and defendant denied that defendant ever told Rios to fight Northcutt.

¶ 40 B. Sufficiency of the Evidence

¶ 41 "Generally, a decision to remand a cause for a new trial alleviates the need to address other issues; however, the constitutional guarantee prohibiting double jeopardy requires that we consider defendant's challenge to the sufficiency of the evidence." *People v. Strong*, 316 Ill. App. 3d 807, 815, 737 N.E.2d 687, 693 (2000).

¶ 42 "Due process requires proof beyond a reasonable doubt in order to convict a criminal defendant." *People v. Ross*, 229 Ill. 2d 255, 272, 891 N.E.2d 865, 876 (2008). "When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant." *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010). Rather, we must determine "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 offense beyond a reasonable doubt." *People v. Lloyd*, 2013 IL 113510, ¶ 42, 987 N.E.2d 386.

¶ 43 To prove defendant guilty of aggravated battery as charged in this case, the State was required to prove that defendant was legally responsible for Rios's aggravated battery of Northcutt. See 720 ILCS 5/12-3.05(c), 5-2(c) (West 2010). Here, it is undisputed that Rios committed the offense of aggravated battery. See *id*. Thus, the issue on appeal is whether the properly admitted evidence, viewed in the light most favorable to the prosecution, was sufficient to prove defendant legally responsible for Rios's conduct beyond a reasonable doubt.

¶ 44 In this case, the video demonstrates defendant arrived at the scene while Rios was on top of Northcutt punching her about the face and head, and he immediately pushed Troyer out of the way. He then confronted the unidentified male who was reaching toward Rios and Northcutt, telling him, "don't touch my bitch." A jury could reasonably have concluded Troyer and the unidentified male were attempting to separate the fighting pair and that defendant intervened with the intent to prevent the fight from being broken up. In viewing the properly admitted evidence in the light most favorable to the State, we find the evidence is sufficient to support the jury's verdict beyond a reasonable doubt, such that double jeopardy concerns are not implicated. Our determination is not binding on retrial and does not express this court's opinion as to defendant's guilt or innocence.

¶ 45 III. CONCLUSION

¶ 46 For the reasons stated, we reverse defendant's conviction and sentence and remand for a new trial.

¶ 47 Reversed; cause remanded.