

No. 1-10-0372

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 06 CR 11543
	)	
BENJAMIN JOHNSON,	)	Honorable
	)	Carol M. Howard,
Defendant-Appellant.	)	Judge Presiding.
	)	

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JUSTICE STERBA delivered the judgment of the court.  
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

**ORDER**

¶ 1 *HELD:* The jury's rejection of defendant's insanity defense was not against the manifest weight of the evidence where two experts testified defendant was sane at the time he committed the offense, defendant's own expert testified that she was not prepared to say that he was criminally insane at the time of the offense, and the evidence adduced at trial regarding defendant's entry into the victim's residence, statements he made to the victim, and actions he took to elude detection and arrest supported the conclusion of the State's experts. The Illinois Department of Corrections appropriately indicated a mandatory

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supervised release term of three years to life where this term is mandated by statute and the trial court lacked the authority to impose a term of three years.

¶ 2 Following a jury trial, defendant Benjamin Johnson was convicted of home invasion, aggravated kidnapping, armed robbery, aggravated vehicular hijacking, aggravated fleeing, escape, and two counts of aggravated criminal sexual assault. He was sentenced to a total of 80 years in prison. On appeal, defendant contends that his convictions should be reversed because he was legally insane at the time of the offense. Defendant also asks this court to amend the mittimus to reflect the three years of mandatory supervised release orally imposed by the trial court and a credit of 1,330 days for time served in presentence custody. For the reasons that follow, we affirm the judgment of the circuit court and amend the mittimus to reflect the proper presentence custody credit.

¶ 3

#### BACKGROUND

¶ 4 Defendant was charged in a 78-count indictment which included: 5 counts of home invasion, 1 count of residential burglary, 11 counts of aggravated kidnapping, 1 count of kidnapping, 1 count of armed robbery, 1 count of vehicular hijacking, 1 count of aggravated vehicular hijacking, 1 count of aggravated battery, 1 count of possession of a stolen motor vehicle, 1 count of unlawful restraint, 1 count of aggravated unlawful restraint, 24 counts of aggravated criminal sexual assault, 2 counts of criminal sexual assault, 24 counts of aggravated criminal sexual abuse, 1 count of aggravated fleeing or attempting to elude a peace officer, and 1 count of escape, for his actions on May 10, 2006.

¶ 5 At trial, S. S. testified that she was asleep in her condominium at 4144 North Sheridan Road in Chicago on May 10, 2006, when she was awakened by a loud crashing noise at

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approximately 3 a.m. When she went to investigate, she collided with a man who was in her condo, who she identified in court as defendant. S.S. testified that defendant pushed her back into her bedroom and onto the bed. She was laying on her back and defendant climbed on top of her and beat her in the head and face repeatedly. S.S. struggled to get away and defendant said, "You stupid fucking bitch, why are you fighting back, why even try to fight back." Defendant then laughed at her and said, "Don't you think I know what I'm doing; don't you think I've done this before, just why even bother fighting, you stupid fucking bitch." S.S. testified that she wore herself out trying to get out from under defendant. He turned her over onto her stomach and she could not breathe because her face was pressed into the sheets. She passed out for a brief period of time and when she woke up defendant was still on top of her but was no longer hitting her. Defendant then tore one of the sheets into strips and tied her hands in front of her. Defendant left the bedroom and S.S. could hear him rummaging through drawers. Then she heard him go into the bathroom and urinate. She realized that her hands were not tied tightly and she got up and tried to get to the front door. Defendant ran out of the bathroom, grabbed her, and pushed her back into the bedroom.

¶ 6 S.S. testified that defendant started hitting her in the head again repeatedly and said, "You stupid fucking bitch, why are you trying to get away." When defendant stopped hitting her, he tore more of the sheets into strips and tied her hands tightly behind her back, tied her feet together, and threw her on the bed. S.S. could then hear defendant rummaging around her condo. He came back into the bedroom, pulled S.S. off the bed, and maneuvered her into the bathroom with her hands and feet still tied. He sat her on the toilet and S.S. could see that her bathroom

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ceiling was caved in and realized that was how defendant had gotten into her condo. Defendant unzipped his pants and put his erect penis in front of her face. S.S. refused to open her mouth and defendant told her to "take it" and he would go easy on her if she did. S.S. kept her mouth tightly closed and defendant eventually took her back into the bedroom and put her face down on the bed. He said, "Stupid fucking bitch, look what you're making me do; you're so stupid, look what's going to happen to you now." Defendant removed her pajama bottoms and told S.S. to spread her legs. She refused and defendant hit her and told her to loosen up. He tried to penetrate her but was unable to. S.S. said, "Please don't rape me." Defendant said, "I'm not raping you, bitch; I'm fucking you." Defendant then turned S.S. over onto her back and was able to penetrate her vaginally with both his finger and his penis. S.S. testified that defendant penetrated her repeatedly and that she believed it was more than 50 times. Defendant then rolled over so that S.S. was on top of him and moved her hips up and down for a while before finally ejaculating.

¶ 7 S.S. testified that defendant then went back into her living area and asked her where her purse was. Defendant brought her purse back into the bedroom and made S.S. put on a sleeping mask that was on the night stand. He then started going through the items in her purse and asked her about her credit card or ATM card and where he could get money. He asked questions about her Blackberry and made her help him turn it on. Defendant also brought her laptop into the bedroom and asked her to show him how to use it. Defendant then told S.S. that he was going to leave and was going to take her with him. He got a suitcase and started throwing things in it. He told S.S. he had to get her cleaned up because she could not look the way she was looking.

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Defendant took her into the bathroom and started helping her clean her face. He said, "Look what you made me do to you." After taking her to the closet so she could get dressed, defendant asked S.S. if she was religious. S.S. felt defendant press a sharp blade to her throat. He said, "You say a prayer now, you say a prayer before you die, you say it now." S.S. testified that she started to say the Hail Mary and defendant held her against him with the knife pressed against her throat and just listened. Defendant then removed the mask and told S.S. to get dressed. After she was dressed, defendant took her to the kitchen. S.S. had the mask on again and defendant held her and put his hands under her clothes and felt her breasts. He said, "I know you like that." He then said, "Why do you live alone, don't you have a man, you must be a lesbian." He put his hand down her pants and penetrated her vagina with his fingers and told her how much she liked it. S.S. testified that she had heard defendant turn on one of the burners on the stove earlier. Defendant then turned her around and held her hand over the burner "as a threat." He continued to say things such as, "Why are you alone, look what you made me do to you, I know you liked it."

¶ 8 Defendant then gave S.S. a baseball cap and glasses and they left the apartment.

Defendant told S.S. to put her arm around him as if they were a couple. Defendant had already asked S.S. about her car and had the car keys from her purse. He took her to the car and told her to get in the passenger side. While defendant was driving, he buckled S.S.'s seat belt because he said it would be a shame for her to get hurt. S.S. had just moved to Chicago so she did not know where they were driving. Defendant drove very fast and recklessly and then she saw some buildings she recognized and realized she was in Chicago's Old Town neighborhood. Defendant

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stopped the car and S.S. testified that she tried to look for an opportunity to get away but she was afraid he would catch her and beat her again. Defendant drove to a gas station and pulled up to a pump. S.S. could not see any other cars at the pumps. Defendant told her not to move or do anything and he got out of the car. She could hear him talking to someone and it sounded like friendly chatter. S.S. looked around but did not see anyone and there were no lights on in any of the stores she could see. Defendant returned to the car and gave S.S. her ATM card. He told her they were parked right in front of the ATM and told her to get out and get as much money as she could out of her account. S.S. went to the ATM and withdrew \$200. She gave defendant the money through the driver's side window and he told her to get back in the car and that he was going to take her home.

¶ 9 As she was walking around the front of the car, S.S. saw a man walking down the sidewalk. She ran toward him and started to scream. She threw off the cap and the sunglasses that were hiding her face and screamed that defendant had raped her. Defendant drove her car out of the gas station and S.S. thought at first that he was going to try to run them over. The man S.S. approached had a cell phone. He called 911 immediately and defendant drove off. The police arrived and S.S. gave them a description of defendant and her car, and gave them her address. She was then taken to the hospital in an ambulance. At the hospital, oral, anal and vaginal swabs were taken from S.S. Following a scan, it was determined that S.S. had an orbital fracture. Her eyes were swollen shut and she had bruises all over her body. Police officers later came to the hospital and showed her some photographs, and she identified defendant in the photos as her attacker.

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¶ 10 Dennis Ryan testified that he was on his way to a class at Kendall College at approximately 4:30 a.m. on May 10, 2006. He crossed through the gas station parking lot to get to his bus stop and noticed a car at the gas station with a man and woman inside. As he proceeded to walk toward the bus stop, he heard a woman scream from behind him that she had been raped. The woman ran toward him and explained that the man in the car had broken into her home and raped her. The woman's face was bruised, swollen and bloody and she had black eyes and red marks on each wrist. Ryan turned toward the car to see if he could identify anything and then called 911. Later that evening, Ryan went to the police station and picked defendant out of a lineup. He testified that he was 60% certain that defendant was the individual he saw in the car.

¶ 11 Cynthia Miura testified that she was employed as a patrol officer by the Chicago Police Department. On May 10, 2006, she and her partner drove to a gas station in response to a call regarding a criminal sexual assault. When they arrived at the scene, Officer Miura saw S.S. in the back of an ambulance. She appeared to have been badly beaten and had strips of sheets tied around her wrists. After S.S. described her attacker and her vehicle, Officer Miura put out a city-wide flash message so that officers could be on the lookout for the vehicle and the offender.

¶ 12 Glen Polanek testified that he was a Chicago police officer and was with his partner in a marked patrol car in the vicinity of the gas station on the morning of May 10, 2006. They were at a red light and had just received the final flash message giving a description of the vehicle and the offender when the traffic light turned green. A vehicle caught their attention because it crossed the intersection in front of them on a red light. They noticed it matched the description

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of the vehicle in the flash message, so they followed the vehicle and got close enough to verify from the license plate that it was the vehicle they were looking for. The vehicle was stopped at a red light and the driver was leaning over and talking through the passenger side window to a woman who was waiting at a bus stop. Officer Polanek's partner pulled up in front and blocked the vehicle. Both officers got out of their patrol car and approached the vehicle. The driver ducked down and reversed quickly. He then drove the car toward the officers and swerved around the patrol car. Officer Polanek and his partner made a radio call to alert other officers in the area. The officers then pursued the vehicle. They briefly lost sight of the vehicle and continued on the same street, where they saw the vehicle straddling the sidewalk and resting on a wrought iron fence. The vehicle was unoccupied.

¶ 13 Officer Mitchell testified that around 6 a.m. May 10, 2006, he and his partner heard a radio call about a car that had nearly hit some police officers and had subsequently crashed. They were near the crash site, so Officer Mitchell and his partner began to search the area. They found defendant hiding in a garage at the address where the car crashed. Officer Mitchell's partner opened the overhead garage door and defendant jumped up and asked if they were looking for somebody. Defendant attempted to get away and the officers restrained and handcuffed him. The officers recovered a Blackberry, an insurance card with S.S.'s name on it, and \$200 in cash from defendant's person.

¶ 14 Officer Jason Guziec testified that he and his partner were assigned to transport defendant from the scene in a paddy wagon at approximately 6:10 a.m. on May 10, 2006. When they placed defendant in the paddy wagon, his hands were handcuffed behind his back and a bar for

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support was secured in a locked position at his back. The officers double-locked the rear door of the paddy wagon and then proceeded to the police station. As they were driving, Officer Guziec heard a horn and saw a man on a motorcycle waving him down. He stopped and the man told him that someone had just jumped from the top of the paddy wagon. They looked in the back of the paddy wagon and defendant was gone, so Officer Guziec made a radio call to let other officers know that they no longer had defendant in custody.

¶ 15 Glen Wheeler testified that he was driving his motorcycle to work at 6:30 a.m. on May 10, 2006. Wheeler was approximately 25 feet behind a police paddy wagon that had stopped at a stop sign when he saw a man poke his head out of the top of the paddy wagon. The man then slipped off the roof, landed on the bumper, and jumped off the paddy wagon as it was driving away from the stop sign. When the man got up and ran away, Wheeler saw that he was handcuffed. Wheeler caught up with the paddy wagon and told the officer who was driving that they had "lost their guy."

¶ 16 Lucyna Radycki testified that she was at home on May 10, 2006 when she heard helicopters at approximately 6 a.m. She looked out the window and saw that her neighbor's yard was full of police officers and a police officer was trying to come in her back gate. She ran outside to meet the police officer and, when she went down the porch steps, she noticed that the door to the crawl space under the porch was wide open. Radycki told the police officer that the door was open much wider than usual. Radycki could see that a yellow blanket that was used by a feral cat that stayed in the crawl space was missing, and that an old door that usually covered some ladders had been moved and the ladders were visible. The police officer crawled in a few

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feet with her flashlight but did not see anything.

¶ 17 An hour or two later, Radycki saw a group of police officers walking down the street with some dogs. She ran outside and asked them if they would be willing to bring a dog and double check her place. The officers came and told Radycki and her husband to go inside and close the door. After the police officers left, Radycki said she had a strange feeling. At approximately 10 a.m., she went back outside and closed the door to the crawl space. There was no lock on the door, so she used a small two-by-four to keep the door closed. Just in case someone was hiding there, Radycki testified that she screamed quite loudly, "You'd better get out because I'm closing this door so you'll stay here forever." Then she closed the door and ran back upstairs. Just as she reached the kitchen door, she heard a loud boom. She looked out the kitchen window and saw a man walking with his hands in front of him, covered with the yellow blanket.

¶ 18 Joseph Mirro testified that he was working for his father's construction company on May 10, 2006. He noticed police and helicopters in his neighborhood when he woke up around 6 a.m. When he came back to drop off some tools at his father's house, the police were still there. He and his brother were on their father's porch talking at approximately 10 a.m. when they saw a man coming through the neighbor's yard. The man hopped over the gate and they could see that his hands were together and covered with something, so they figured he was the person the police were looking for. Mirro and his brother shouted and the man started to run. Mirro and his brother tackled the man and held him on the ground until the police arrived.

¶ 19 Officer Faizullah Khan testified that he and his partner were searching yard by yard in the neighborhood where defendant escaped from the paddy wagon on the morning of May 10, 2006.

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He saw a man with a yellow blanket over his hands who matched the description of the person who escaped . He also saw an elderly woman in the front door of the house attempting to flag him down. As Officer Khan approached, the man began to run in the opposite direction. Two men in civilian clothing also joined in the chase and tackled the man to the ground. Officer Khan then took the man into custody.

¶ 20 Detective David Scholtes testified that he was assigned to investigate the crime scene. When he arrived at 4144 North Sheridan, he observed scaffolding outside the building that went from the ground to the top floor. When he entered S.S.'s unit, it was in disarray with clothing and paper thrown all over and furniture upended. One of the stove burners was turned on. There was a two-by-two hole in the bathroom ceiling over the tub. In the bedroom, Detective Scholtes observed apparent blood stains on the wall, floor and mattress. Detective Scholtes went to the unit next door and observed that it was under construction. The door was open, as was a sliding glass patio door. He observed that the height of the ceiling in the unit under construction was about two feet above the ceiling in the adjacent unit.

¶ 21 Detective Ed Heerdt testified that he interviewed defendant after he was taken into custody on May 10, 2006. After Detective Heerdt informed defendant of his *Miranda* rights, defendant said he would like to make a statement. Defendant told Detective Heerdt that around 8 p.m. on May 9, 2006, he left his mother's house in Chicago's Gold Coast neighborhood and proceeded to ride home on his bicycle. The next thing he remembered was being placed in handcuffs by police and taken into custody. Detective Heerdt explained the things defendant was accused of doing, and defendant said he did not remember those things but that he was guilty of

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them. Detective Heerdt asked defendant if he would explain point by point what had occurred and defendant said he did not want to talk anymore, that he expected to be in trouble for this, that he would be going back to jail and he was just ready to go. On cross-examination, Detective Heerdt was shown a copy of his police report to refresh his recollection, and acknowledged that after defendant told him he did not remember anything until the police handcuffed him, defendant stated that he was sick and needed help.

¶ 22 Maria Salazar testified that she was employed as a forensic scientist with the Illinois State Police. Salazar conducted a DNA analysis on a buccal swab standard that was collected from defendant subsequent to his arrest, for comparison purposes. Salazar also conducted a DNA analysis on the vaginal swab from S.S.'s sexual assault kit. Salazar testified that the DNA profile she identified from the vaginal swab matched defendant's DNA profile. Salazar's opinion, within a reasonable degree of scientific certainty, was that the DNA profile identified in the vaginal swab was consistent with having originated from defendant.

¶ 23 E.M. testified that on March 28, 2006, she was returning to her home at approximately 1 a.m. She entered her building and had just started up the stairs to the second floor when she was grabbed from behind. E.M. started screaming and the person who grabbed her pushed her onto the stairs and repeatedly punched her in the face. The man then pulled her under the stairs, took one of her shoelaces, and used it to tie her hands behind her back. He told her that he would break her neck if she did not stop screaming. He then took her to a mechanical room that was just past the laundry room at the back of the building. The man removed E.M.'s clothing and penetrated her vaginally with his finger. He then asked her if she wanted a condom and E.M.

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said yes. E.M. testified that he used a condom but it broke. The man penetrated her vaginally and anally with his penis multiple times. He then took her shirt into the laundry room, wet it, and used it to wipe the blood off E.M.'s face. He took \$140 and her transit card from her wallet and then sat beside her and smoked a cigarette. He told her it could have been worse, and then he told her to count to forty and he left the building. E.M. went to the hospital where oral, anal and vaginal swabs were taken.

¶ 24 The parties stipulated that, if called to testify, Brian Schoon, a forensic scientist with the Illinois State Police, would testify that he conducted a DNA analysis on the vaginal swabs collected from E.M. He searched the male DNA profile identified from the vaginal swabs in the DNA database. The search resulted in an association to defendant, indicating he may be the donor of the DNA profile identified. Schoon requested an additional buccal swab from defendant. The parties further stipulated that, if recalled to the stand, Salazar would testify that she conducted DNA analysis on the buccal swab obtained from defendant and compared it to the DNA data generated by Schoon from E.M.'s vaginal swabs. It was Salazar's opinion, within a reasonable degree of scientific certainty, that defendant could not be excluded from having contributed to the DNA profile identified in E.M.'s vaginal swabs.

¶ 25 Nicole Smith testified that she was a close friend of defendant's cousin, Nicole Johnson. Smith stated that defendant was living with his cousin, but he was scaring her so Smith let defendant live at her house for a few months in the spring of 2006. Smith noticed a change in defendant's behavior and described him as being very frustrated and angry. Defendant's behavior started to scare Smith and she would lock the door to the house and defendant would stay on the

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back porch and paint and draw. Smith said defendant was drawing weird pictures and talking to himself. Smith testified that defendant hardly slept and could stay up for days. Smith testified that she has two daughters and she started getting worried. Defendant would pace a lot and tell her that he needed to find a job. Smith tried to help him but things did not come through fast enough. Smith would beg defendant to be calm and keep still. Defendant would come and go on his bicycle, and would sometimes stay away for two days. He had access to her basement and back porch, but she kept the door to the house locked. Defendant would sometimes act wild and out of control. When Smith got home from work on May 9, 2006, she tried to talk to defendant and asked him to stay home, but he said he had to go. She waited all night and defendant did not return. She then saw on the news that he had been arrested.

¶ 26 Nicole Johnson testified that she had known defendant all of her life and that he is her father's first cousin. She stated that when she was a child, defendant was different from her other cousins and she was not allowed to be around him. When defendant was released from prison, he stayed with his brother until his brother asked Johnson if he could stay with her. She said that at first, everything was fine, but after six or seven months, defendant stopped going to church and started partying more. Defendant would drink every day and was ingesting cocaine and smoking marijuana every day. One day, defendant had an altercation with Johnson's 18-year-old daughter, who began hitting him. Defendant pinned her daughter down on the floor and Johnson had to pull him off. Johnson testified that although defendant never hit her daughter back, she could see in his eyes that he wanted to hurt her. At one point, defendant told Johnson that voices were telling him to hurt her because she was a mean person and was "out to get him." On another

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occasion, defendant became very angry at Johnson and started hitting the walls and throwing furniture. Defendant would frequently pace and talk to himself. Johnson tried to get defendant some help and took him to see if he could get public aid. She also took him to the Social Security office and the intake worker witnessed defendant talking to himself. Johnson told the intake worker that defendant was getting "really crazy" and she could not sleep at night and was trying to get defendant some help. Johnson said she had an appointment for defendant to be evaluated but he was arrested prior to the appointment.

¶ 27 Defendant testified that his parents separated when he was a young child and he eventually came to Chicago from Mississippi to live with his mother. He started smoking cigarettes and drinking alcohol by the time he was six or seven years old. He had a speech impediment and had trouble in school. He was kicked out of high school for fighting. Defendant testified about several experiences in his childhood, starting when he was about 13. In one incident, he said it felt like a dog jumped on him and was sniffing him, then it jumped out the window and ran across the field. He said the dog followed him to Chicago. In another incident, he saw a man in a little glowing ball over his younger brother's head. He talked about "a thing" that constantly attacks him, pushes him, shakes him, and makes him do things he does not want to do. Defendant stated that the "thing" made him attack people and he would not realize what he had done until later. Defendant then described it as a shadow in the corner of the wall that watched him and talked to him.

¶ 28 Defendant stated that the last time he heard the voice was when he attacked an officer in the Cook County jail. Defendant testified that since he has been on his medication, he no longer

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hears the voices. In 2005, defendant was in the custody of the Mississippi Department of Corrections. He was released but was transferred to the Illinois Department of Corrections for an outstanding warrant, and was in custody in Illinois for a month and 15 days. Upon his release, he was given a ticket to Chicago, even though he wanted to return to Mississippi. He initially stayed with his brother but they did not get along so he asked his cousin if he could stay with her. Defendant described his life as a wreck during that period because he was unable to find a job. As time went on, he started drinking and using drugs. One morning he woke up in a garbage dumpster in nothing but his underwear on the north side of Chicago near his mother's house. Defendant testified that the experience was weird and it scared him. While he was living at his cousin's house, defendant testified that he started hearing the voices again. He said it would start with a voice, and if he did not stop it, he would be attacked. When asked to explain what that meant, defendant said he would be in a far corner of his mind and would not be in control of his body any more. At first he was able to make it stop by drinking alcohol, but that stopped working. After he moved to Smith's house, defendant would go out at night because Smith did not want him staying up all night. He would walk or ride his bike and would stay out all night.

¶ 29 On May 9, 2006, defendant testified that he was trying to paint a picture of Smith and her daughters but it would not come out right. As he painted, the voice was laughing at him. Then it said that he would never be able to paint any more because he was going to end up hurting Smith and her daughters. Defendant got his bike and left the house. He rode from Maywood to the Gold Coast neighborhood in Chicago to visit his mother. Defendant told his mother that he loved her but that he was not in control anymore. His mother asked him what was wrong with

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him and he told her he did not know but he could not stay there with her. Defendant left his mother's house and bought a bottle of alcohol. Defendant testified that was the last thing he remembered doing before he was taken into custody. He said that when S.S. testified, it was the first time he had ever seen her. Defendant did not remember doing any of the things S.S. testified that he did. He just remembered waking up with handcuffs on and a woman was talking to him. Defendant said he woke up and he was covered with a blanket. He heard a woman say to get out of her yard and then heard a door close. Defendant said he asked a man to help him and the man told him to get away from him. Defendant said that when people jumped on him they broke his ribs, and that the officers beat him all the way to the police station and, when they got to the police station, the officers beat him all the way up the stairs. Defendant testified that when he told the detective that he was sick and needed help, he meant that he was sick in his mind. He said that he wanted his medicine, because when he does not have his medicine, he is liable to attack someone.

¶ 30 Defendant testified that when he was taken to the Cook County jail, he was attacked. When asked who attacked him, defendant said that it was "the thing" and that he had not given it a name but just called it an "it." He said his family calls it a witch, but it is like a dog or something, or sometimes it is like a head in a corner just watching. Defendant testified that no matter where he is, "it" picks a victim and he is going to attack that person, no matter who it is. Defendant said that he was not aware of his actions at the time he attacked S.S. On cross-examination, after testifying that he did not remember any of the incidents prior to waking up in the crawl space, defendant stated that he was not running from the police after he left the yard but

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was looking for help. Defendant further testified that he did not do anything to E.M.

¶ 31 Dr. Linda Sue Grossman was accepted as an expert in the field of forensic psychology and mental illnesses. Dr. Grossman was hired by the court as an independent evaluator and interviewed defendant twice. From her review of his medical records, Dr. Grossman concluded that defendant suffers from an intermittent psychotic disorder that is responsive to medication. Dr. Grossman testified that in her report, she had written that defendant was legally sane but mentally ill at the time he committed the crimes against S.S. She stated that she was rushed when she wrote the report but that, since that time, she had thought more about it and could not rule out that defendant was insane at the time. She explained that a number of his behaviors during the assault suggest the possibility that defendant may not have been aware of the criminality of what he was doing. Dr. Grossman further explained that some of defendant's behaviors suggested that he might have been thinking the encounter was more consensual than it actually was, such as comments he made that he was not raping S.S. and that she liked it, talking with her afterward as though nothing bad had happened, telling her to put her arm around him, and appearing to be solicitous and almost kind at times as they left the apartment. Dr. Grossman concluded that she was not willing to say within a reasonable degree of medical and psychiatric certainty that defendant was insane, but she was also not willing to exclude that possibility. On cross-examination, Dr. Grossman acknowledged that in her report, she stated that defendant's actions at the time of the crime were consistent with an ability to appreciate the criminality of his alleged conduct, such as fleeing from the police. However, she stated that fleeing from the police could also indicate that a person is paranoid. Dr. Grossman again concluded that she could not

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say that defendant was insane, but she also could not rule it out.

¶ 32 The State called two rebuttal witnesses. Dr. Nishad Nadkarni was accepted as an expert in the field of forensic psychiatry. Dr. Nadkarni testified that he examined defendant on August 4, 2008, after reviewing his medical records and criminal history. Defendant would not give Dr. Nadkarni any details of his version of the events of May 10, 2006, stating that he did not remember the events. Dr. Nadkarni examined the records from Cermak Health Services at the time defendant was arrested. The records revealed no mental abnormalities and defendant was not given any psychiatric treatment. Over the next several days, defendant was evaluated as malingering or faking psychiatric symptoms in order to get out of segregation for fighting. Dr. Nadkarni testified that his review of the police reports indicated that defendant understood the criminality of his actions. He explained that, according to the police reports, defendant attempted to elude detection, wiped his fingerprints off a surface, threatened the victims with bodily harm if they told, and attempted to escape from the police. Dr. Nadkarni asked defendant whether he had experienced any alcohol-related blackouts and the only blackouts defendant described were in the context of previous criminal behaviors and allegations of things that he had done. Dr. Nadkarni stated that, within a reasonable degree of medical and psychiatric certainty, it was his opinion that defendant was legally sane at the time of the alleged offense. Dr. Nadkarni further testified that he did not believe defendant suffered from any type of mental disease or defect. On cross-examination, Dr. Nadkarni explained that although some medical reports indicated a diagnosis of schizophrenia, the predominant number of diagnoses he had seen and the ones supported by the data indicate malingering. Dr. Nadkarni explained that "malingering" is either a fabrication or an

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exaggeration of symptoms for secondary gain, essentially faking psychiatric symptoms in order to get something.

¶ 33 Dr. Fidel Echevarria was also accepted as an expert in the field of forensic psychiatry. Dr. Echevarria interviewed defendant on November 21, 2008. He asked defendant about his state of mind on May 10, 2006 and defendant told him that he was using alcohol and smoking marijuana every day. Dr. Echevarria asked defendant whether any family members or friends had indicated concern regarding his appearance or behavior and defendant stated that no one had expressed concern. Defendant stated that he did not remember a lot of what happened on May 10, 2006. Dr. Echevarria reviewed the treatment records from Cermak Health Services. He stated that the records from May 12, 2006, were significant because they represented an objective evaluation closest in time to the actual offense. The May 12 records did not document the presence of any illness, and defendant was not referred for a secondary mental health evaluation but was sent to the general population. In several subsequent evaluations, defendant was assessed as nonsymptomatic and referred back to the general population. Psychotropic medications were not prescribed until later as a result of defendant's aggression and fighting. Dr. Echevarria also reviewed defendant's records from the Mississippi Department of Corrections. The records showed that during 93 months of incarceration, defendant was on medication for 39 of those months and off medication for 54 months. Dr. Echevarria stated that it was difficult to explain how a person with a severe mental illness could remain symptom-free for those periods of time, and it made him suspect that defendant did not have a bona fide mental illness. Dr. Echevarria concluded, within a reasonable degree of medical and psychiatric certainty, that

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defendant was legally sane at the time of the offense and was able to appreciate the criminality of his conduct.

¶ 34 The parties stipulated that defendant was found guilty of attempted armed robbery on October 10, 1995, in the state of Mississippi. It was further stipulated that defendant was found guilty of burglary on June 20, 1989 in the state of Illinois. The jury found defendant guilty of four counts of aggravated criminal sexual assault, home invasion, two counts of aggravated kidnapping, armed robbery, aggravated vehicular hijacking, aggravated fleeing or attempt to elude a police officer, and escape, and the trial court entered judgment on the verdicts.

Defendant's motion for a new trial was denied. The trial court sentenced defendant to 20 years for home invasion, 20 years for the merged counts of aggravated kidnapping, 20 years for armed robbery, 20 years for aggravated vehicular hijacking, 3 years for aggravated fleeing, and 7 years for escape, to run concurrently. Two of the counts of aggravated criminal sexual assault merged, and the trial court sentenced defendant to 20 years each for the two remaining counts, to run consecutive to each other and to the sentence for the remaining counts. The trial court then added statutory enhancements of 10 years each for the two aggravated criminal sexual assault counts because they involved a knife, for a total sentence of 80 years. Defendant timely filed this appeal.

¶ 35

#### ANALYSIS

¶ 36 Defendant first contends that the jury's rejection of his insanity defense was against the manifest weight of the evidence. Section 6-2 of the Criminal Code of 1961 provides that "[a] person is not criminally responsible for conduct if at the time of such conduct, as a result of

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mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct." 720 ILCS 5/6-2(a) (West 2006). When a defense of insanity is raised, the defendant must prove, by clear and convincing evidence, that he is not guilty by reason of insanity. 720 ILCS 5/6-2(e) (West 2006). On review, we will not reverse a trier of fact's resolution on the issue of an insanity defense unless it is against the manifest weight of the evidence. *People v. Urdiales*, 225 Ill. 2d 354, 428 (2007). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon*, 227 Ill. 2d 322, 332 (2008) (citing *In re D.F.*, 201 Ill. 2d 476, 498 (2002)). Moreover, a reviewing court will not substitute its judgment for that of the trier of fact regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn therefrom. *Id.*

¶ 37 Defendant contends that the jury's determination that defendant did not show by clear and convincing evidence that he was insane at the time of the offense was against the manifest weight of the evidence because defendant testified that he suffered from severe hallucinations and blackouts, two witnesses who knew him intimately corroborated this testimony, and the two complainants testified to bizarre behavior during the incidents that indicated defendant did not understand the criminality of his actions. Defendant further contends that the testimony of the State's two expert witnesses was incredible because they opined that defendant did not even suffer from a mental illness, despite medical records indicating that he did.

¶ 38 The credibility and weight to be given psychiatric testimony are matters for the trier of fact. *Urdiales*, 225 Ill. 2d at 431. Moreover, the trier of fact is not obligated to accept the

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opinion of defendant's expert witness over those opinions presented by the State. *Id.* However, the relative weight to be given to an expert witness' testimony on sanity cannot be determined arbitrarily but must be based on the reasons given and the facts supporting the expert's opinion. *People v. Kando*, 397 Ill. App. 3d 165, 196 (2009). Bizarre or delusional statements do not compel an insanity finding as a defendant may suffer mental illness without being legally insane. *People v. McCullum*, 386 Ill. App. 3d 495, 504 (2008). In making its determination, relevant factors for the trier of fact to consider are the testimony of lay witnesses who observed the defendant shortly before or after the crime, the existence of a plan for crime, and methods to prevent detection. *Id.*

¶ 39 None of the three experts who testified at trial concluded that defendant lacked the capacity to appreciate the criminality of his conduct on May 10, 2006. Dr. Grossman testified that she initially concluded defendant's actions at the time of the crime were consistent with an ability to appreciate the criminality of his alleged conduct and only later decided that she could not rule out the possibility that he was insane. Her change of opinion was based primarily on what she perceived to be defendant's delusional thinking that his encounter with the victim may have been consensual. Even if this was a correct interpretation of the evidence, the existence of delusional thinking alone does not compel a conclusion of insanity. Moreover, the totality of the evidence indicated that defendant knew the encounter was not consensual. S.S. testified that defendant told her to stop fighting and told her he knew what he was doing and that he had done it before. He told her he would go easier on her if she would let him insert his penis into her mouth and, when she refused, told her she was so stupid and said, "Look what you're making me

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do; look what's going to happen to you now." A comment in the middle of this assault that he was "fucking her" and not raping her is not sufficient to indicate he had delusional thoughts that the encounter was consensual. When he was trying to get S.S. cleaned up, defendant again stated, "Look what you made me do." At the same time defendant was telling S.S. that she liked it, he was also asking her why she lived alone and stating that she must be a lesbian. His actions in having her put on a hat and glasses and put her arm around him as if they were a couple were actions taken to avoid detection, not the solicitous actions of someone who held the delusional belief that they were actually a couple. Most importantly, a conclusion that insanity merely cannot be ruled out is not compelling evidence that defendant did not have the capacity to appreciate the criminality of his actions.

¶ 40 Both of the State's expert witnesses concluded that, not only was defendant not legally insane at the time of the offense, they did not believe he had a mental illness at all, despite medical records containing various psychiatric diagnoses. However, both experts gave reasons for their conclusions that were supported by the evidence. Dr. Nadkarni explained that while some of the medical reports contained diagnoses of specific mental illnesses, the reports predominantly supported a diagnosis of malingering, or faking psychiatric symptoms for secondary gain. He further explained that when he questioned defendant about his alleged blackouts, defendant only appeared to suffer from them in the context of criminal acts or wrongdoing. Dr. Echevarria was even more specific in the reasons for his conclusion, stating that during the 93 months defendant was incarcerated, he had not been on medication for 54 of those months, an indication that he did not suffer from a severe mental illness. Dr. Echevarria

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noted that after his arrest, defendant was only put on psychotropic medication after a period of time as a result of his aggressive behavior and fighting, not as a result of a specific diagnosis.

Finally, Dr. Echevarria noted that the May 12 records from Cermak Health Services, which were the most significant records as they were closest in time to the offense, did not indicate the presence of any illness and defendant was not referred for a mental health evaluation but was placed in general population.

¶ 41 Defendant's testimony regarding the "it" that controlled him and the voices he heard was only partially corroborated by one of the two lay witnesses who had recent contact with him prior to the offense. Johnson testified about one incident in which defendant told her that the voices were telling him to hurt her, several months prior to the offense. Johnson also described defendant's drug and alcohol abuse and frightening altercations in which defendant became violent or angry. Johnson stated that defendant was talking to himself when she tried to get him some help from a government agency, and that she told the intake counselor that he was "really crazy" and she could not sleep at night because she did not know how to help him. Smith described defendant's behavior as agitated and angry, and said that he drew weird pictures and talked to himself. On the evening before the offense, Smith said she tried to get defendant to stay home, but only described his behavior as agitated, with no mention of any other symptom that would indicate a severe episode related to a mental illness. Defendant's testimony that he suffered blackout periods was not corroborated. Indeed, defendant's own expert did not appear to accept his statement that he did not remember what happened, focusing instead on her perception that he might have been delusional.

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¶ 42 The evidence indicated that defendant planned the crime, climbing up the scaffolding to obtain access to an unoccupied apartment, from which he climbed into a space that would allow access through the ceiling of the adjacent unit. The evidence also indicated that defendant took deliberate and, at times, extreme measures to elude detection and arrest. When S.S. tried to escape, defendant caught her and beat her again for trying to get away. In preparation for leaving the apartment with S.S. after the assault, defendant told her she "could not look like this" and helped her clean the blood off her face. He then told her to put on a hat and sunglasses to hide the bruises. He also made her put her arm around him as they walked to the car so that if anyone saw them, they would appear to be a couple. When S.S. ran for help at the gas station, defendant fled in the car. When he was blocked by police and officers were approaching the vehicle, he reversed and swerved around the officers and the police vehicle. After crashing the car, he hid in a garage and attempted to run from the officers who found him there. He then managed to get out of the paddy wagon and hid in a crawl space for hours, only coming out when the homeowner told him he had better get out because she was closing the door. He then again attempted to elude capture.

¶ 43 Finally, in addition to the fact that defendant's testimony regarding voices and blackouts was mostly uncorroborated, defendant told the detective who interviewed him after his arrest that he was guilty of the things the detective described to him that he had done, that he expected to be in trouble for them, and knew he would be going back to jail. It is not the role of this court to weigh the evidence or make credibility determinations. The jury heard all of the evidence and determined that defendant was sane at the time of the offense. We cannot say that an opposite

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conclusion is clearly evident, or that the jury's finding was arbitrary, unreasonable, or not based on the evidence. Thus, the jury's rejection of defendant's insanity defense was not against the manifest weight of the evidence.

¶ 44 Defendant next argues that the Illinois Department of Corrections lacked the authority to modify his mandatory supervised release (MSR) term from the three years orally imposed by the trial court to an indeterminate term of three years to life. Defendant relies on *People v. Rinehart*, 406 Ill. App. 3d 272, 281 (2010), and notes that our supreme court allowed the petition for leave to appeal in that case on May 25, 2011 (*People v. Rinehart*, 949 N.E.2d 1102 (Ill. May 25, 2011)(Table No. 111719)). Section 5-8-1(d)(4) of the Unified Code of Corrections (730 ILCS 5/5-8-1(d)(4) (West 2006)) provides that the MSR term for the offense of criminal sexual assault “shall range from a minimum of 3 years to a maximum of the natural life of the defendant.” In *People v. Rinehart*, 2012 IL 111719, ¶ 30, the supreme court held that in enacting section 5-8-1(d)(4) and its related provisions, the legislature contemplated indeterminate MSR terms for criminal sexual assault, not determinate terms. Thus, the Illinois Department of Corrections' records correctly indicate that defendant's MSR term is "3 years to life - to be determined."

¶ 45 Finally, defendant contends that his mittimus should be amended to reflect a credit against his sentence of 1,330 days for time served in presentence custody instead of 1,321 days, and the State concurs. The record shows that defendant was arrested on May 10, 2006, and remained in custody for a total of 1,330 days until he was sentenced on December 30, 2009. A defendant shall be given credit on his sentence for the time spent in custody as a result of the offense for which the sentence was imposed. 730 ILCS 5/5-8-7(b) (West 2006). We therefore

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order that the mittimus be corrected to reflect 1,330 days of presentence custody credit. Ill. S. Ct.

R. 615(b) (eff. Aug. 27, 1999).

¶ 46 For the reasons stated, we affirm the judgment of the circuit court.

¶ 47 Affirmed; mittimus amended.