2017 IL App (2d) 141107-U
No. 2-14-1107
Order filed April 17, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 13-CF-1823
	)	
MARGARITA FELICIANO,	)	Honorable
	)	John A. Barsanti,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court found defendant not acquitted at a discharge hearing. The trial court failed to appreciate its ability to find insanity absent specific testimony thereof; as a result, its finding that defendant did not establish by clear and convincing evidence that, on the day of the incident, she could not, because of mental illness, appreciate the criminality of her conduct, was contrary to the manifest weight of the evidence. Reversed.

¶ 2 On September 28, 2013, defendant, Margarita Feliciano, a 68-year-old homeless woman with a history of mental illness, was found baring her breasts on the sidewalk of a busy street in Elgin. Defendant was wearing pajama pants in the middle of the afternoon, and she did not respond when a local shop employee asked her if she was okay. Police arrived, and defendant

grabbed the arm of one of the officers, resulting in a superficial scratch. Defendant was charged with aggravated battery (720 ILCS 5/12-3.05(d)(4) (West 2012)), public indecency (720 ILCS 5/11-30(a)(2) (West 2012)), and disorderly conduct (720 ILCS 5/26-1(a)(1) (West 2012)). She was found unfit to stand trial and, because she was not restored to fitness, a discharge hearing was held. On October 29, 2014, the court found defendant not acquitted of aggravated battery and disorderly conduct (the court dismissed the public indecency count) and remanded her to the Department of Human Services (DHS) for an additional 15 months of treatment. Defendant appeals, arguing that, at the time of the incident, she was unable to appreciate the criminality of her conduct, *i.e.*, she was legally insane, and that she should have been acquitted. For the following reasons, we conclude that the trial court failed to appreciate its ability to find insanity absent specific testimony thereof and, as a result, its finding that defendant did not meet her burden of establishing insanity is contrary to the manifest weight of the evidence. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 A. Event and Arrest

¶ 5 As mentioned above, around 3:15 p.m. on September 28, 2013, defendant was found in pajama pants, baring her breasts on the sidewalk of a busy street in Elgin. At the discharge hearing, Jonathan Hidalgo testified that he works at a barber shop in Elgin. On the day of the incident, he was working when he noticed traffic gathering outside. Hidalgo went outside and saw defendant "taking her clothes off," which he more specifically described as her sitting on the ground with no shirt or bra. Hidalgo explained that defendant was "just laying there. You know, she looked like she needed help. She was kind of laying there on the floor without a shirt on." Hidalgo went over to defendant and asked her if she was okay. "[S]he looked at me and

obviously she was not okay." Hidalgo called the police. He explained that cars had stopped and people were taking pictures and videos of defendant. "I felt sorry for her. I know her story. She has always been around downtown Elgin, and the four years that I have been [working] there I have seen her walking around. I thought she was not okay."

¶ 6 Three police officers responded to Hidalgo's call: Jeff Wiltberger, Daniel Glasby, and Joshua Miller. All three officers appeared in uniform and arrived in marked squad cars. When Wiltberger arrived, he saw defendant sitting on the sidewalk, against a building, with her shirt above her head. Glasby recalled that, when he arrived after Wiltberger, defendant was on the sidewalk against the building, and he "believed" that defendant was clothed. "Later on[,] she had removed her clothing. So I assume she was clothed." Miller, the last officer to arrive, testified that, when he joined the others, defendant was laying on the sidewalk with her breasts exposed.

¶ 7 Wiltberger did not announce that he was a police officer. He began speaking with Hidalgo, who was standing near defendant, and defendant started swearing in Spanish and approached them. (According to Wiltberger, the other officers were just arriving at this time). Wiltberger testified that defendant was upset and yelling and that she reached out in an aggressive manner to grab Hidalgo. Wiltberger, who was wearing short sleeves, stepped in between defendant and Hidalgo; "defendant grabbed my left arm; and as I pulled away, she scratched me." Wiltberger testified that he did not make physical contact with defendant prior to her grabbing his arm. Photographs in the record reflect that Wiltberger sustained a small, superficial scratch to his left forearm. A photograph of defendant, taken after the incident, also appears in the record; defendant is wearing pink pajama pants with stars on them, and her nails appear untrimmed and dirty (slightly greenish in color).

¶ 8 According to Wiltberger, the other officers were several feet away from him when the event happened. Glasby testified that he was walking toward defendant and Wiltberger when he saw defendant reach out toward Wiltberger and scratch his arm. Glasby did not know if Wiltberger made any physical contact with defendant, but he recalled defendant "lunging" toward Wiltberger. According to Miller, however, defendant was lying on the sidewalk with her sweatshirt pulled up over her exposed breasts and, when Hidalgo began speaking with Wiltberger, defendant stood up, began yelling, and took a step toward Hidalgo. Wiltbeger stepped in between them, and defendant grabbed Wiltberger's left wrist. Miller testified that defendant did *not* run toward Hidalgo, but she took "a step" and her voice was elevated.

¶ 9 Hidalgo's version of events differed. Hidalgo was asked whether defendant kept her shirt off until the police arrived, and he responded that, "once she saw the authorities coming towards her, she started putting her shirt on." However, he also explained that, while he was talking to one of the officers, defendant was loudly "kind of cussing them out and telling them to leave her alone." One of the officers, who already knew defendant, tried to move her over and "when they went to pick her up, you know, she attacked them." Specifically, the officer got her up and went to move her when she "latched at him" (*i.e.*, we assume this means grabbed at him or lashed out at him) near his chest area. At that point, defendant's shirt was "*half* on" (emphasis added), towards her stomach area, and "they [*i.e.*, the officers] kind of pushed it down." Hidalgo agreed that the officers physically tried to pull up defendant, and that it was *after* they were trying to get her up that she reached out one arm towards one of the officers. Hidalgo agreed that, when he initially testified that she "attacked them," he was referring to the arm movement whereby she reached out one arm after the officer tried to move her. The event happened very quickly. Hidalgo did not smell any odor of alcohol coming from defendant.

¶ 10 B. Mental Health History

¶ 11 In February 2014, defendant's counsel raised a *bona fide* doubt as to defendant's fitness, and the court ordered a fitness evaluation. According to a March 7, 2014, report from the Kane County Diagnostic Center, on February 20, 2014, defendant refused to exit her cell to meet with psychologist Shawn Rosenlof. On February 21, 2014, Rosenlof made a second attempt to perform the fitness evaluation. This time, defendant agreed to answer questions, but she appeared confused and mumbled her responses. Defendant was oriented to person and place, *i.e.*, she knew her name and that she was in jail. However, when asked how long she had been incarcerated, defendant replied "5, 6[,] or 8 days." In reality, she had been incarcerated more than 30 days. Rosenlof, accompanied by a guard, spoke to defendant from the doorway of her cell, where she was disheveled, displayed poor grooming, was unkempt and unclean. Defendant appeared to have poor eye sight or cataracts making her left eye appear white. She showed poor eye contact by looking at the ground, rocked her body back and forth in a self-soothing manner, and she presented in a decompensated state and was unable to go beyond the simple questions inquiring about her mental status.

¶ 12 Correctional staff informed Rosenlof that defendant had been refusing to shower, eat, or interact with others. She spent most of the day sleeping in her cell alone and, due to a lack of nutrition, she appeared ill, was vomiting blood, and was rapidly losing weight. Due to her rapid deterioration, defendant was admitted to the hospital for a two-week period.

¶ 13 A third attempt to gain insight into defendant's fitness was attempted on February 28, 2014, by Dr. Alexandra Tsang, the Director of the Kane County Diagnostic Center. However, defendant presented in a further regressed manner than in the prior interviews. She did not know

the date, season, or nature and purpose of the evaluation, her mood was "highly irritable," and, by the third question, defendant became angry and pulled herself into a blanket.

¶ 14 The report summarized that, between 1986 and 2014, defendant had been evaluated 11 times by the Kane County Diagnostic Center. Out of those evaluations, she had been found fit to stand trial on seven occasions and unfit on four occasions, with the most recent evaluation finding her fit in March 2009. In the majority of the fitness evaluations, defendant was diagnosed with bipolar disorder, most recent episode manic, and in her un-medicated state, her symptoms prevented her from communicating or thinking in a logical manner. The report concluded that defendant was in such a deteriorated physical and mental state that no fitness testing was able to be conducted and, consequently, she was unfit to stand trial. "[Defendant's] extensive history of mental illness has caused a severe deterioration of her cognitive and emotional functioning. Her capacity to think logically, respond coherently, and comprehend is clearly impaired ***. Due to the severe level of impairment in [defendant's] functioning, she needs to be placed in an in-patient psychiatric facility ***." The psychologists hoped to restore defendant to fitness within a one-year period.

¶ 15 Based on the March 7, 2014, report, the court found defendant unfit and ordered her remanded to the DHS. In April 2014, a treatment plan submitted to the court reflected that defendant presented as psychotic and that her psychosis impeded her fitness. Specifically, the plan diagnosed defendant with, in part, schizoaffective disorder, unspecified, and noted that she had a history of left-eye damage. Defendant was prescribed psychotropic medications to help her reach psychiatric stability and fitness.

¶ 16 However, in June 2014, the DHS informed the court that there was not a substantial probability that defendant would be restored to fitness within one year from the original unfitness

finding. She had made "no progress towards fitness goals since admission." Although defendant had previously been fluent in English as a second language, her English-language abilities were declining and her current language ability was primarily Spanish. Defendant's thought processes were disorganized, her answers to questions were illogical and inconsistent, she was confused, and she was internally preoccupied. Staff had occasionally observed defendant speaking to herself. Defendant was prescribed Haloperidol and Benztropine for her psychosis. Further, defendant was provided with fitness-education materials, in both English and Spanish, in large-font type; she maintained that she could not see the words. During her hospitalization, she had been diagnosed with cataracts that significantly impaired her vision. Moreover, defendant had to be oriented to the unit multiple times per day for her to find her room and the washroom. Further, defendant required staff assistance in grooming. Notably, defendant was described as having "chronic mental illness" and:

> "*As a result of her limited cognitive abilities*[,] her overall insight[,] judgment[,] and *impulse control* are considered grossly impaired. She also demonstrated ongoing impairments in memory, attention and concentration, and *visuospatial* abilities as evidenced by presenting as confused and disoriented on the unit daily with inconsistent and frequent illogical responses exhibited in her communication." (Emphasis added.)

¶ 17 As defendant was unlikely to attain fitness, the court held a discharge hearing pursuant to section 104-25 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/104-25 (West 2012)). There, Rosenlof testified to his failed attempted fitness evaluations of defendant in February 2014, confirming that, at first, defendant did not meet with him. Later, defendant appeared disheveled, soiled, with a white left eye, and minimal to no eye contact. Defendant was agitated, could not sit still, did not display logical thinking, could not comprehend or

communicate, and could not participate due to her decompensated state. Rosenlof also summarized his October 2014, attempt to perform a sanity evaluation, explaining that he could not reconstruct defendant's state of mind at the time of the offense "principally" because he could not even speak with her. Defendant showed disorganized thinking, could not comprehend simple questions, and was, therefore, unable to provide any information about her situation at the time of her arrest. Rosenlof noted that defendant's gait was impeded, she shuffled her feet, and she needed physical assistance from a nurse to enter the room and to sit. Defendant was asked to look at a third person present in the room; defendant was not able to do so, stating "I cannot. I have something in my eye." Again, she was unable to maintain eye contact. According to Rosenlof, defendant's diagnosis, symptoms, and presentation did not fluctuate between the date he initially met with her in February 2014 and the date he attempted to perform the sanity evaluation in October 2014. However, Rosenlof testified that, in that same period, her cognitive state had *declined* (for example, she used to be able to speak English, but cannot do so anymore). Rosenlof testified that defendant has schizophrenic affective disorder.

¶ 18 Rosenlof agreed that, besides speaking with a patient, in order to perform a sanity evaluation, he would generally rely on documentation, such as notes from the Elgin Mental Health Center and the police report. He agreed that defendant had been diagnosed with a mental illness even before he met with her. When asked whether, within a reasonable degree of psychological certainty, he had an opinion as to what mental illnesses defendant possessed on September 28, 2013, Rosenlof answered that "I didn't see her at the time. So I would say no." He testified that February 2014, when he first personally met defendant, was the earliest date from which he could opine with psychological certainty. He agreed that it would not be fair to

assume that someone is automatically insane simply because he or she has a mental illness. Rosenlof agreed that, since 1985, defendant has had 18 DHS admissions.

¶ 19 Defendant's treating psychiatrist, Timothy Olenek, testified that his first encounter with defendant was on April 14, 2014, upon her admission to the Elgin Mental Health Center. He confirmed defendant's diagnoses, including schizoaffective disorder, cataracts, and left-eye damage, and he recounted the antipsychotic prescriptions she was taking. Olenek testified that the cataracts and left-eye damage "certainly" impact defendant's ability to see, stating that "it would be like putting a film over someone's eyes. So it makes it difficult to see outside of that film." Olenek described defendant's primary issues as being cognitive, as opposed to behavioral, noting that, in the unit, she is not aggressive. Her agitation, since her admittance, has not been "actually physically fighting;" rather, although she sometimes "gets up and yells," Olenek testified that "I think she is confused, because she can't really see that well *** again, she is not swinging at people." He confirmed that he has not seen her display any aggressive tendencies on the unit.

¶ 20 Olenek testified that defendant's "cognitive deficits are certainly increased from the past." Olenek confirmed that defendant had multiple hospitalizations dating back to the 1980's and that, while she was, at times, found unfit, there were other times that she was restored to fitness. When asked what had changed, such that this time, she could not be restored to fitness within one year, Olenek explained:

> "I believe her cognition has much more deteriorated than it was the last time we had record of her being here, which was in 2008. Yeah, I believe she has deteriorated much since that period of time."

Olenek agreed that, in 2008, defendant had a similar schizoaffective diagnosis and that her cognitive deficits had, since then, increased. Olenek was asked whether he could "make any opinions as to what aspects of her illness were affecting her before [the date he began treating her.]" He replied that he could develop some idea, based on what was written in the past, but such opinions would not be as accurate as if he were her physician in the past.

¶ 21 Finally, Tomeka Finch-Hall testified that she is defendant's social worker at the Elgin Mental Health Center. Finch-Hall works with defendant daily and confirmed that defendant requires assistance with standard activities of daily living, including hygiene, going to the bathroom, and eating. She confirmed that defendant occasionally has difficulty finding different areas on the unit, such as the washroom or her bedroom. Further, although defendant was provided with fitness-education materials in large font that she could hold and put right up to her face, her cataracts caused visual impairment that prevented her from seeing and, therefore, retaining the information.

¶ 22 In closing argument, defense counsel asked the court to find defendant: (1) not guilty of the charges; or (2) not guilty by reason of insanity. First, counsel argued that the evidence reflected that defendant could not see (noting that she also had to be guided into court). In light of her visual impairment, that the officers were dressed in uniform and drove marked squad cars was not sufficient to notify her that the men approaching her were officers. In fact, counsel noted, Wiltberger testified that he never announced or gave any verbal indication that he was a police officer. Further, the testimony reflected that defendant grabbed Wiltberger's arm when he tried to move her and, when he pulled away, that is when he sustained his scratch. Further, to the extent the testimony from Glasby and Miller reflected that defendant took a step and reached out toward Wilberger, that could have been to steady herself or because she could not see him well.

As to Hidalgo's comment that defendant began to pull down her shirt when the officers arrived, counsel argued that defendant could simply hear new male voices approaching her and became afraid, agitated, and began yelling, which is consistent with Olenek's testimony that she yells when she is confused and cannot see well. Counsel argued that, in the pictures taken after the incident, Wiltberger is smiling or "smirking." Accordingly, as to aggravated battery, counsel argued that the State had not proved intent or that the contact was insulting and provoking. Similarly, as Hidalgo simply testified that he felt sorry for defendant and was trying to help her, counsel argued that the State had not established, with respect to the disorderly-conduct charge, that Hidalgo was alarmed and disturbed.

¶ 23 Alternatively, if the court were to find the evidence otherwise sufficient, counsel asked that it find defendant not guilty by reason of insanity. Counsel noted that the insanity evaluation could not be completed *because* defendant was so far deteriorated that she could not possibly recall the events giving rise to the charges or participate in the assessment. Therefore, although there was no opinion testimony that defendant was, in fact, insane at the time of the offense, the absence of such testimony resulted from the fact that defendant was in a seriously decompensated state. Counsel argued that the best evidence remaining, however, allowed for the reasonable inference that defendant was in a deteriorated, decompensated state when she bared her breasts in public, in pajama pants in the middle of the afternoon, particularly given Hidalgo's testimony that defendant did not respond when he asked if she was okay and that she was "obviously not okay."

¶ 24 C. Court's Findings

¶ 25 The trial court found defendant not acquitted of the charges of aggravated battery and disorderly conduct.

¶ 26 The court first found that the State met its burden with respect to the aggravated battery charge and that defendant knowingly made contact of an insulting or provoking nature with Wiltberger when she grabbed him about the body knowing him to be a police officer. The court acknowledged that defendant apparently has vision problems, but the court agreed with the State that, even though other people were around, it was not until the officers arrived that defendant tried putting on her shirt or "lunged" at anyone.

¶ 27 As to disorderly conduct, the court found that the State met its burden of establishing that defendant's conduct was alarming and disturbing to Hidalgo. Hidalgo was working when he noticed people stopping and taking pictures of defendant baring her breasts. That he felt sorry for her and tried to help her when he thought she was not "okay" was not, the court found, inconsistent with him being alarmed or disturbed by someone laying in close proximity to his place of business exposing her breasts to the public and causing people to congregate.

¶ 28 The court rejected the insanity defense, asserting that defendant did not establish by clear and convincing evidence that, at the time of the occurrence, she lacked substantial capacity to understand the criminality of her conduct. The court found that the evidence clearly described someone with mental illness who, if the occurrence happened today would have probably established insanity by clear and convincing evidence.[1] However, there was "no testimony about her mental capacity on the date of this occurrence. I have no testimony about anything. *** I did not hear any testimony from the jail on that date that would make me think that *** nor did

[1] The court stated: "I listened to all the experts closely, and they describe somebody who had a mental illness very clearly to me and described somebody probably who today if that occurred knowing what I can see today and what has been described to me of her recent capacities, I think probably that would be clear and convincing evidence."

anybody extrapolate back to give me any kind of indication about whether or not it was possible for her to be in such a condition better than today."

¶ 29 The court found defendant not acquitted. It ordered her remanded for an additional 15 months' of treatment.

¶ 30 D. Miscellaneous

¶ 31 We note that, if, at the end of her 15 months of additional treatment, defendant is restored to fitness, she may be tried. 725 ILCS 5/104-25(g) (West 2012). On December 17, 2013, at a bond call, the court informed defendant that the aggravated battery constituted a class 2 felony and the disorderly conduct was a class C misdemeanor. Although, upon conviction, the class 2 felony typically carried with it a sentence of three to seven years' imprisonment, the State asserted that defendant had a criminal record and was subject to mandatory class X sentencing.[2] Specifically, the court advised defendant that, if ultimately convicted on the aggravated-battery charge, she could be sentenced to 6 to 30 years' imprisonment, "which could be doubled 30 to 60 years and would require a 3-year mandatory supervised release." Defendant appeals.

¶ 32 II. ANALYSIS

¶ 33 Defendant argues on appeal that the trial court erred and that the discharge hearing should have resulted in an acquittal by reason of insanity. She asserts that her actions on the date of the

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[2] At an October 11, 2013, hearing on defendant's bail-reduction motion, defendant's criminal history was summarized to include: (1) a 2010 aggravated-battery conviction, resulting in three years' imprisonment; (2) in 2007, two aggravated-battery charges to which defendant pleaded guilty and was sentenced to three years' imprisonment; (3) aggravated-battery convictions in 2002 and 1999 (sentences unclear); (4) a 1995 felony-prostitution conviction resulting in probation; and (5) numerous misdemeanors.

incident, her extensive history of mental illness, and the evidence that, due to her mental illness, she possessed severely-deteriorated cognitive and emotional functioning all established that she could not have appreciated the criminality of her conduct at the time of the incident. For the following reasons, we conclude that the trial court failed to appreciate its ability to find insanity absent specific testimony thereof and, as a result, its finding that defendant failed to meet her burden of establishing insanity is contrary to the manifest weight of the evidence.

¶ 34 Where there is not a substantial probability that a defendant will become fit to stand trial, the State shall ask for a discharge hearing. 725 ILCS 5/104-23(b)(1) (2012). Under section 104-25, the court cannot find a defendant guilty at the discharge hearing; that finding is deferred until a defendant is fit to stand trial. *People v. Waid*, 221 Ill. 2d 464, 478 (2006). Rather, the court may make one of three findings: (1) the State has presented sufficient evidence from which the defendant could be found guilty beyond a reasonable doubt and, therefore, the defendant is not acquitted; (2) the State did not meet its burden, and the defendant is acquitted; or (3) the defendant is not guilty by reason of insanity and is, therefore, acquitted. 725 ILCS 5/104-25 (West 2012).

¶ 35 The definition of "insanity" provides that a defendant is not criminally responsible for his or her conduct if, "at the time of such conduct, as a result of mental disease or mental defect, he [or she] lacks substantial capacity to appreciate the criminality of his [or her] conduct." 720 ILCS 5/6-2(a) (West 2012). The defendant bears the burden of proving by clear and convincing evidence that he or she is not guilty by reason of insanity. 720 ILCS 5/6-2(e) (West 2012).[3] A

[3] Although not discussed by the parties here, we note that "[a] defendant's unusual behavior or bizarre delusional statements do not compel a finding of insanity, and a defendant may suffer from a mental illness without being legally insane." *People v. Dwight*, 368 Ill. App.

court's finding on the issue of insanity will not be disturbed unless it is contrary to the manifest weight of the evidence, *i.e.*, if the opposite conclusion is clearly evident or it is not based on the evidence presented. *People v. Urdiales*, 225 Ill. 2d 354, 428 (2007); *People v. Johnson*, 146 Ill. 2d 109, 128-29 (1991); *People v. Deleon*, 227 Ill. 2d 322, 332 (2008).

¶ 36 The State asserts that the court's findings here were not contrary to the manifest weight of the evidence, where defendant presented the testimony of doctors who first came into contact with her "well after" the incidents occurred, and where those doctors did not opine that she was insane at the time of the incident. The State acknowledges defense counsel's position that it was not possible to obtain a medical evaluation of defendant's state of mind at the time of the incidents *because* her state of mind was so decompensated that she could not participate in such an evaluation. The State asserts that defendant's plight, while sympathetic, does not change the fact that she cannot meet her burden of proof. Further, the State argues, the evidence contradicts defendant's claim that she could not understand the criminality of her conduct, where Hidalgo testified that defendant exposed herself to the public, but put her shirt back on when she saw the authorities approaching.

¶ 37 We conclude that the court here failed to appreciate its ability to find insanity absent specific testimony thereof and, as a result, its finding that defendant did not meet her burden of

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3d 873, 880 (2006). Indeed, a person who, at the time of the offense, was mentally ill, but not insane, is *not* relieved of criminal responsibility and may be found "guilty but mentally ill." 720 ILCS 5/6-2(c) (West 2012). "Mentally ill" means a "substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he [or she] is unable to appreciate the wrongfulness of his [or her] behavior." 720 ILCS 5/6-2(d) (West 2012).

establishing insanity was contrary to the manifest weight of the evidence. The trial court based its finding that defendant had not proved insanity by clear and convincing evidence on defendant's failure to produce evidence reflecting that, on the date of the incident, she lacked the capacity to appreciate the criminality of her conduct. Rather, the court found that, although defendant produced evidence that might sufficiently show that she was *later* insane, it did not hear from the experts or anyone else that, when defendant committed her acts, she did not appreciate the criminality of her conduct. No witness, the court noted, "extrapolate[d] back" to the date of the incident to opine on defendant's mental state.

¶ 38 However, the court *itself*, as factfinder, could have made the necessary reasonable inferences. The court's findings and the State's arguments on appeal suggest that, to meet her burden, defendant was required to produce a witness to testify specifically that, on the date in question, she could not appreciate the criminality of her conduct. However, just like any case relying on circumstantial evidence, in considering the insanity defense, the court is allowed to consider *all* of the evidence and any relevant factors. For example, in *Dwight*, the court rejected the State's argument that, because no witness testified that, at the time of the offense, the defendant lacked substantial capacity to appreciate the criminality of his conduct, the defendant did not meet his burden of presenting sufficient evidence to warrant insanity jury instructions. *Dwight*, 368 Ill. App. 3d at 880. The court stated, "We find no authority to support the proposition that a defense witness has to say the defendant, due to mental illness or disease, lacked the substantial capacity to appreciate the criminality of his [or her] conduct when he [or she] committed the offense." *Id.* Indeed, the court noted that, in federal court, witnesses may *not* testify to the ultimate issue of a defendant's mental state or condition during the offense. *Id.* at 881. The *Dwight* court reiterated the overall principles that the absence of opinion evidence is

immaterial where there is sufficient evidence based on the testimony and observations of witnesses to support the insanity defense. *Dwight*, 368 Ill. App. 3d at 880. Indeed, "[n]either psychiatric testimony nor medical or lay opinion is necessary to give the instructions if the evidence itself reveals serious mental defects or a substantial history of mental illness." *Id.* The issue, the court noted, was simply whether, based on the defense evidence, a reasonable factfinder could find by clear and convincing evidence that the defendant, due to mental illness, lacked the substantial capacity to appreciate the criminality of his or her conduct at the time of the crime. *Id.* at 881.

¶ 39 The presentation of jury instructions is not at issue here. However, *Dwight* is nevertheless instructive because it reflects that an insanity defense does not necessarily fail simply because a witness does not specifically opine that, on the day in question, the defendant lacked capacity to understand the criminality of his or her conduct. The factfinder is not so constrained; it may look at the evidence presented by the defendant in its entirety. In that vein, we note that, when considering the issue of sanity, lay observations are particularly relevant if they are based on *observations made shortly before or after the crime was committed*; other relevant factors include the existence of a plan for the crime and methods to prevent detection. *People v. West*, 201 Ill. App. 3d 646, 650-51 (1992).

¶ 40 Here, the court looked narrowly at the absence of testimony about defendant's state of mind on September 28, 2013. The remaining evidence, the court apparently determined, reflected only defendant's state of mind afterwards. We disagree. The manifest weight of the remaining evidence reflected that, on September 28, 2013, shortly before the crimes were committed, defendant engaged in bizarre, unusual behavior. In the middle of the afternoon, in pajamas and in an unkempt condition, defendant was lying on the sidewalk, baring her breasts.

Traffic congestion developed, with people taking photographs and videos; defendant did not respond to the public scrutiny. Lay witness Hidalgo testified that, when he spoke to defendant, she did not respond and just stared at him. According to Hidalgo, "obviously she was not okay." Less than four months later, defendant was unable to participate in a fitness evaluation, presenting as confused, extremely disheveled, soiled in fecal matter, and in a decompensated state. Her inability to participate in the fitness evaluation and, later, an insanity evaluation, was specifically *because* of her decompensated state. The evidence reflects that defendant's cognitive abilities were on a declining path; according to Olenek, they had deteriorated between her last DHS admission in 2008 and the most recent admission in 2014, and declined noticeably to Rosenlof even between February and October 2014. Medical records reflected that defendant had "chronic mental illness," around 18 DHS admissions over almost 30 years, and that her "extensive history of mental illness has caused a severe deterioration of her cognitive and emotional functioning. Her capacity to think logically, respond coherently, and comprehend is clearly impaired." Defendant possessed, *as a result of her limited cognitive abilities*, "grossly impaired" impulse control, insight, and judgment, as well as limited "visuospatial abilities." Olenek further testified that defendant's behavior was not aggressive; rather, she yelled and gestured when she was confused and could not see.

¶ 41 Accordingly, the manifest weight of the evidence reflects that defendant established by clear and convincing evidence that she could not, because of her mental illness, appreciate the criminality of her conduct. Her behavior *immediately* before the acts – bizarre, obviously "not okay," and non-responsive – as well as her evaluations thereafter, reflecting her long history of mental illness and that her cognitive state was in an ongoing state of decline, allows for the reasonable inference that defendant's behavior on September 28, 2013, reflected grossly

impaired impulse control and confusion resulting from her mental illness, as opposed to knowing criminal conduct.

¶ 42 Despite the aforementioned evidence, the trial court apparently limited its focus to the absence of *specific* testimony concerning defendant's state of mind *on the date of the incident*. Again, it appears that the trial court did not appreciate the scope of its position as factfinder in that *it* could review all of the evidence and could have, based on that evidence, "extrapolate[d] back" to the date of the incident. Indeed, we read the court's comments that the evidence would likely show, by clear and convincing evidence, *later* insanity as reflecting that, had the court appreciated its ability to "extrapolate back," it *would* have found that defendant satisfied her burden. This is particularly important here where defendant's mental and cognitive status both supports insanity *and* rendered experts unable to opine and perform the very evaluations the court found fatally absent.

¶ 43 Further, in the face of all the evidence of defendant's mental illness and deteriorated condition, we note that it was unreasonable of the trial court to hinge its findings of "knowing conduct" of an insulting nature and that defendant grabbed Wiltberger "knowing" him to be an officer on Hidalgo's comment that defendant started to put her shirt on when the police arrived, but did not act similarly when passersby stopped their cars to take photos. First, Hidalgo's testimony was inherently conflicting, where he later testified that, when the officers reached to grab her, defendant's shirt was half raised and the *officers* pushed it down. Further, it conflicted with officers Wiltberger and Glasby, who both testified that, when they arrived, defendant's breasts were exposed. Second, the testimony that defendant did not alter her behavior when traffic halted and people were videotaping and photographing her, but did alter her behavior after the officers arrived, is not necessarily reflective of or relevant to a consciousness of criminality.

Rather, the change might simply have reflected confusion and a reaction to *anyone*, whether officers or not, coming up to her, talking, and trying to move her. Notably, although the testimony reflected that the public stopped and took pictures, there was no evidence that any of those persons physically approached defendant. As such, the court unreasonably focused on this evidence to the exclusion of the remainder of the record.

¶ 44 The State perfunctorily argues that this case is similar to *People v. Quay*, 175 Ill. App. 3d 965 (1988), where the defendant failed to carry her burden of proof of establishing insanity. We do not find *Quay* particularly instructive. There, the physician examined the defendant one month after the incident, and the parties stipulated that he would testify that, at the time of the incident, her acute paranoid schizophrenia left her unable to appreciate the criminality of her conduct. However, the court ultimately rejected the physician's testimony because the physician's report reflected that his examination of the defendant lasted only 15 minutes and that, while he was certain of his opinion regarding the defendant's fitness, he was less certain on the insanity opinion and, therefore, recommended research and review of the defendant's past mental health records. *Id.* at 969. The record did not establish that the review of the defendant's prior psychiatric history was ever accomplished and, therefore, the court concluded that the trial court's finding that defendant did not carry her burden of proof was not contrary the manifest weight of the evidence. *Id.* In contrast, here, review of defendant's chronic mental illness, prior diagnoses, and treatment was accomplished. In short, the *Quay* case is simply distinguishable from the evidence presented here.

¶ 45 In sum, the trial court failed to appreciate its ability to find insanity absent specific testimony thereof and, as a result, its finding that defendant had not satisfied her burden of establishing insanity was contrary to the manifest weight of the evidence. We reverse the trial

court's non-acquittal finding and enter a judgment of not guilty by reason of insanity. We remand for the trial court to enter any orders relevant and appropriate under section 5-2-4 of the Unified Code of Corrections (730 ILCS 5/5-2-4 (West 2014) ("Proceedings After Acquittal by Reason of Insanity")), or any other statutes similarly relevant and consistent with this order.

¶ 46 III. CONCLUSION

¶ 47 For the reasons stated, we reverse and remand the judgment of the circuit court of Kane County.

¶ 48 Reversed and remanded.