ATTORNEY FOR APPELLANT

Anthony C. Lawrence
Anderson, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Courtney L. Staton
Deputy Attorney General
Indianapolis, Indiana.

IN THE
COURT OF APPEALS OF INDIANA

Megan LaVaughn Henderson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 17, 2023

Court of Appeals Case No.
22A-CR-956

Appeal from the
Madison Circuit Court

The Honorable
Angela G. Warner Sims, Judge.

Trial Court Cause Nos.
48C01-2101-F4-187
48C01-1912-F6-2893

Opinion by Judge Foley
Judge Robb concurs.
Judge Mathias dissents with opinion.

Foley, Judge.

[1] Megan LaVaughn Henderson ("Henderson") appeals her convictions for burglary,[1] theft,[2] and battery resulting in bodily injury.[3] Henderson raises a lone issue for our review: whether the trial court erred in concluding that Henderson failed to establish an insanity defense. Because we conclude that the trial court did not err, we affirm.

Facts and Procedural History

[2] Tiffany Wells ("Wells") and Jerry Iteen ("Iteen") (collectively "the couple") returned to their apartment on the evening of January 24, 2021, to discover Henderson inside rummaging through their belongings instead of the locked door they expected. Wells's mother was outside as the couple entered their apartment. Iteen confronted Henderson who responded by eluding Iteen and running out of the apartment holding several of the couple's belongings including a vase which "didn't even have a value to it."[4] Tr. Vol. II p. 140. The couple, along with Wells's mother, gave chase. In the ensuing altercation, Henderson punched Wells in the face and then punched Wells's mother in the face several times. Iteen, meanwhile, phoned the police.

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[1] Ind. Code § 35-43-2-1.

[2] I.C. § 35-43-4-2(a).

[3] I.C. § 35-42-2-1(c)(1).

[4] Henderson disputes this evaluation, contending that the vase was worth "not even fifty dollars of value . . . ." Tr. Vol. II p. 173.

[3] Officers subdued a belligerent and profane Henderson but, based on her erratic behavior, requested paramedic assistance. Paramedics concluded that Henderson did not require hospitalization. Shortly thereafter, police transported Henderson to the county jail. On January 25, 2021, the State charged Henderson with burglary, a Level 6 felony; unlawful possession of a syringe,[5] a Level 4 felony; theft, a Class A misdemeanor; and battery resulting in bodily harm, a Class A misdemeanor.[6] Henderson's attorney filed notice of mental disease or defect and requested a competency evaluation, which the trial court granted on February 23, 2021. Both the psychologists duly appointed, however, notified the trial court that Henderson refused to meet with them.[7]

[4] On May 12, 2021, and partly based on Henderson's medical records, the trial court determined that Henderson was not competent to stand trial and committed her to a state hospital. Henderson's competency had been restored by September 22, 2021. A bench trial took place on March 1, 2022. Neither party called any experts or mental health professionals. Henderson did enter the competency report into evidence. That report, however, did not indicate which, if any, illnesses Henderson had been diagnosed with. Nor did it indicate the details of Henderson's treatment. Finally, the report expressed no opinion

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[5] I.C. § 16-42-19-18(a). Police discovered the syringe when they searched Henderson after her arrest. The charge was dismissed on January 11, 2022.

[6] Henderson had an unrelated pending charge for possession of a syringe, which the trial court subsequently consolidated with the case at bar. Henderson pleaded guilty to this charge.

[7] The record also suggests that Henderson's counsel tried to get her to meet with other medical professionals, but she refused.

as to whether Henderson had been able to appreciate the wrongfulness of her then-alleged criminal conduct. Henderson herself testified under cross-examination—without objection—that she had never been treated for mental illness and did not believe she suffered from any. She also testified, however, that she heard a voice in her head shortly before entering the couple's apartment.

[5] At the conclusion of evidence, the trial court found Henderson guilty of all remaining charges. At a sentencing hearing on March 28, 2022, the trial court repeated its concerns about Henderson's apparent mental health issues and her consistent refusal to accept treatment or assistance. The trial court also noted her extensive criminal history and the fact that Henderson had been incarcerated before, apparently without positive effect. The trial court sentenced Henderson to the advisory six years on the burglary conviction to be executed in the Department of Correction. The trial court further sentenced Henderson to one year for each of the two misdemeanors, all sentences to run concurrently, resulting in an aggregate sentence of six years of imprisonment. This appeal followed.

Discussion and Decision

[6] On appeal, Henderson challenges only the trial court's rejection of her insanity defense. A successful insanity defense absolves a person of criminal liability by demonstrating that the defendant—(1) as a consequence of mental illness—was (2) unable to appreciate the wrongfulness of her conduct at the time of the alleged offense. Ind. Code § 35-41-3-6(a). "The defendant bears the burden of

establishing the insanity defense by a preponderance of the evidence." *Galloway v. State*, 938 N.E.2d 699, 708 (Ind. 2010) (citing I.C. § 35-41-4-1(b)). "[M]ental illness alone is not sufficient to relieve criminal responsibility. Rather, a defendant who is mentally ill but fails to establish that he or she was unable to appreciate the wrongfulness of his or her conduct may be found guilty but mentally ill [ ]." *Id.* (citing *Weeks v. State*, 697 N.E.2d 28, 29 (Ind.1998); *Taylor v. State*, 440 N.E.2d 1109, 1112 (Ind. 1982) (cleaned up).

[7] "'[A] finding that a defendant was not insane at the time of the offense warrants substantial deference from reviewing courts.'" *Robinson v. State*, 53 N.E.3d 1236, 1240 (Ind. Ct. App. 2016) (quoting *Myers v. State*, 27 N.E.3d 1069, 1074 (Ind. 2015)). "Thus, when a defendant claims that an insanity defense should have been successful, the conviction will be set aside only 'when the evidence is without conflict and leads only to the conclusion that the defendant was insane when the crime was committed.'" *Id.*

[8] We are sympathetic to the reality that there are facts in the record indicative of Henderson suffering from mental health issues. The trial court noted as much at the conclusion of the trial. Henderson was committed for a long period for treatment because she was initially ruled incompetent to stand trial, during which period she refused medication for six weeks. During her initial hearing she made strange comments and did not appear to understand the charges against her. Moreover, her belligerent behavior resulted in a truncated hearing and a contempt finding. At a later hearing, the possibility that Henderson might be transferred to a special problem-solving mental health court was

examined. Henderson's refusal to answer questions or be assessed, however, resulted in her being ineligible. Indeed, the consistent refusal to have any involvement with mental health professionals or cooperate with her attorney is, itself, cause for concern.

[9] The trial court grappled with these facts during its pronouncement of the verdict:

> [T]he Court . . . has concerns for Ms. Henderson, has had concerns for Ms. Henderson's overall mental and emotional well-being since this case was filed. I think that's clear from the record and the different attempts that the criminal justice system has tried to provide some intervention not only did Ms. Henderson personally but also to provide the Court and her counsel more information that might be able to substantiate and help better explain the events that happened in January of twenty twenty-one (2021) but in large part, due to Ms. Henderson's refusal to cooperate and or her steadfastness that she doesn't either think she has a mental illness or doesn't want to talk further to explore whether or not there may be something there or something that could be treated to help her and given some of the other actions . . . . [I]t never was very clear to the Court, again given her lack of cooperation at the State Hospital, whether an actual clear diagnosis or understanding as to her behavior was really not dispositive for the Court there, either; therefore, *based on the evidence that's been presented to the Court* ***today***, the Court finds that the State has proven its case beyond a reasonable doubt and the Court finds the defendant guilty . . . .

Tr. Vol. II pp. 178-79 (emphasis added).

[10] We recognize that the trial court conducted numerous pretrial hearings, including those pertaining to Henderson's competency to stand trial, as well as

the fact that the trial court would have reviewed reports from the facility at which Henderson was committed. But Henderson argues that she presented sufficient evidence *at trial* to establish her insanity defense, and, as such, our review must be limited to what was presented at trial. A trial court abuses its discretion when it determines that a defendant fails to demonstrate insanity only if the facts presented at trial are: (1) without conflict; and (2) lead to only one conclusion, namely that the defendant was insane at the time the crimes were committed.[8]

[11] And while Henderson's testimony at the trial does sporadically give the impression of mental health struggles, and the testimony of the other witnesses suggests that Henderson was erratic and aggressive on the night in question, we cannot conclude that Henderson produced enough evidence to meet her burden. No witnesses, expert or lay, opined as to whether Henderson suffered from mental illness. Likewise, as to whether Henderson was incapable of appreciating the wrongfulness of her conduct. Moreover, the testimony

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[8] Despite the fact that the trial court may have received evidence and made observations regarding Henderson's mental health at other proceedings, our review is limited to the evidence adduced at trial. Neither the parties nor the trial court signaled on the record that the trial court intended to take judicial notice of any of the occurrences of a prior proceeding. Judicial notice, moreover, is a practice designed to facilitate efficiency by bypassing the usual evidentiary requirements for facts that cannot be reasonably disputed and are not subject to interpretation. *See* Ind. Evidence Rule 201; *see also In re P.B.*, 199 N.E.3d 790, 796–97 (Ind. Ct. App. 2022) (quoting *Matter of D.P.*, 72 N.E.3d 976, 983 (Ind. Ct. App. 2017) ("'Even if court records may be judicially noticed, facts recited within the pleadings and filings that are not capable of ready and accurate determination are not suitable for judicial notice.'" (internal quotation omitted)). We fear that to allow trial courts to consider, for example, records from a prior competency hearing, or behavior of a criminal defendant in an initial hearing, *when no evidence thereof is produced at trial*, would create an untenable risk. Parties would not be afforded the opportunity to raise objections, confront and cross-examine witnesses, or present rebuttal evidence including evidence regarding alternative interpretations of the prior-proceeding facts.

regarding Henderson's conduct is consistent with explanations other than insanity, meaning that a trier of fact could have rightfully concluded that Henderson was not insane. Iteen, for example, testified that Henderson seemed "under the influence[,]" which the trial court could reasonably have understood to mean under the influence of drugs or alcohol. Tr. Vol. 2 p. 138. Henderson was also in possession of a syringe at the time of her arrest. An alternate explanation for Henderson's behavior—by definition—means that the evidence does not lead to a single explanation, as our standard of review requires. Accordingly, the trial court did not err in rejecting her insanity defense.

[12] Affirmed.

Robb, J., concurs.
Mathias, J., dissents with opinion.

Mathias, J., dissenting.

[13] I respectfully dissent. As explained in detail below, the record is without conflict, and the only reasonable conclusion from the record is that Henderson established by a preponderance of the evidence that she suffered from an obvious and serious mental illness at the time of the alleged offenses and also that her mental illness prohibited her from appreciating the wrongfulness of her conduct. Henderson needs to be committed, not incarcerated. At a bare minimum, the court's finding that Henderson was guilty should be modified to a finding of guilty but mentally ill.[9]

Facts and Procedural History

[14] The following facts are not disputed. On January 24, 2021, Henderson was walking near the apartment of Tiffany Wells and Jerry Iteen in Madison County. Henderson "hear[d] in [her] head, [a] speaker, a black . . . male's voice say there!" Tr. p. 166. Henderson then entered the apartment and began picking up items that she attributed to a friend or a grandparent. As Henderson described it, "something come through me and said there and I was . . . told that I would know that when the time was right, I would know when it was

[9] The difference between being found not guilty by reason of insanity and being found guilty but mentally ill is significant. A finding of not guilty by reason of insanity requires the State to immediately initiate commitment proceedings, and the defendant might never emerge from the mental-health system. *See* I.C. § 35-36-2-4(a). A finding of guilty but mentally ill, by contrast, qualifies the defendant for mandatory evaluation and treatment "in such a manner as is psychiatrically indicated for the defendant's mental illness," which may occur at a state mental-health facility. I.C. § 35-36-2-5(c).

mine." *Id.* at 167. Henderson saw that there "were all open boxes and stuff like that like they were having like an open house and people from, and people were just like, you know, coming in and out bringing boxes to this apartment." *Id.* at 168. Henderson "turned around and I had said hello a few times and I didn't hear anybody or nothing." *Id.*

[15] Eventually, Wells and Iteen returned to their apartment from a nearby storage unit and found Henderson inside. Wells and Iteen confronted Henderson, and Iteen thought Henderson "seemed like she was under the influence." *Id.* at 138. Henderson said the apartment was her grandparent's and the items inside were hers. *Id.* at 138-39. When Wells and Iteen made clear that it was their apartment and the items were theirs, however, Henderson thought, "maybe it's not my apartment," and, while still holding items in her hand, she fled. *Id.* at 131, 169. Wells and her mother, who was also there, attempted to stop Henderson, and Henderson responded by attacking Wells and her mother. Iteen, meanwhile, called the police. Wells's mother held Henderson "to the ground" until the police could arrive; as she did so, Henderson "was going crazy." *Id.* at 151.

[16] Elwood Police Department Officers Jerry Branson and Caleb Smith arrived at the scene in response to Iteen's phone call. Upon arriving, Officer Branson observed Henderson "screaming" and "very manic"; she was "very excited," and she appeared to have "excited delirium." *Id.* at 155-56. Officer Smith observed Henderson to be "very erratic" and "making very random statements that didn't apply to anything that was going on." *Id.* at 162. Henderson was

"extremely combative," and she did not allow the officers "an opportunity to talk and try to . . . reason with her." *Id.* at 158. Officer Branson read Henderson her *Miranda* rights, but he did not believe that she "understood" them, and so the officers properly refused to "ask her any questions." *Id.* at 157-58.

[17] Officer Branson called paramedics to assist with Henderson. Henderson "was combative to the paramedics" and "resist[ed] the[ir] attempts to assist her." *Id.* at 156. The paramedics "confirmed that she was fine" physically and "did not" take Henderson for medical treatment. *Id.* Accordingly, the officers took Henderson into custody and transported her to the Madison County Jail.

[18] The State charged Henderson, and the trial court held Henderson's initial hearing the next day. At that hearing, the presiding magistrate informed Henderson that the State would be required to prove its charges by proof beyond a reasonable doubt. Henderson responded, "I'm homeless. That's the reasonable doubt probably." *Id.* at 5. After the magistrate attempted to inform Henderson of her other rights, Henderson told the court that "[t]here will be no 'yes' or 'no'" answers from her. *Id.* at 6. When asked if she had seen the charging information, she responded, "Mm hm." *Id.* at 7. The magistrate asked her if that was a "yes," and Henderson asked, "A 'yes' to what? That I agree?" *Id.* When informed that the burglary charge was premised on a purported intent "to commit a theft" inside the apartment, Henderson responded, "I can't totally commit until what exactly is that." *Id.* at 8.

[19] Henderson then began repeatedly talking over the presiding magistrate. She said, "I'm going to get paid. I'm dealing with my feet"; she was unable to say what day of the week it was; she thought the year was 2020 and was surprised to learn it was 2021; when asked what city she was in, she initially responded that she did not know, and she then responded, "I'm back to the angry native of last night"; and she refused to comply with the magistrate's instructions to cease talking and instead began talking about exiting the apartment "with a light." *Id.* at 8-10. The magistrate stated that Henderson was not "understanding the events of today" but nonetheless found Henderson to be in contempt, albeit without any sanction. *Id.* at 10. The court then continued the initial hearing to the next day and remanded Henderson into custody. The record does not reflect that the initial hearing was completed the next day or thereafter.

[20] One week later on February 3, Henderson's appointed counsel filed a notice of mental disease or defect and a request for a mental competency evaluation at public expense. The trial court held a hearing on Henderson's motion twenty days later. Henderson, who was still in custody at the county jail, appeared at that hearing and informed the court that she objected to her counsel's motion because she did not "want to talk to somebody" and "because I know I'm correct." *Id.* at 18. Henderson added that she had "reasons" for not cooperating with mental-health professionals, but she refused to elaborate on those reasons for the court. *Id.* at 19. The court attempted to discern Henderson's understanding of the proceedings, and it was clear that Henderson did not understand what was going on. *Id.* at 19-21.

[21] The court granted the motion for a mental-health evaluation. In doing so, the court appointed two psychologists to determine both Henderson's competency to stand trial along with her "mental status" at the time of the alleged offenses. Appellant's App. Vol. 2, p. 88.

[22] The first psychologist, Dr. Carrie Dixon, arrived at the Madison County Jail to meet with Henderson approximately one month later on March 17. However, Henderson "refused" to meet with Dr. Dixon, and, thus, Dr. Dixon "could not conduct the evaluation" or render any opinions on Henderson's mental status. *Id.* at 92. The second psychologist, Dr. Frank Krause, arrived at the Madison County Jail one week later, on March 24. Again, Henderson "was adamant that she needed to speak with an attorney before she agreed to undergo a psychological assessment." *Id.* at 95. Thus, Dr. Krause was also "unable to provide" a professional opinion about Henderson's mental status "due to [her] refusal to cooperate." *Id.*

[23] The trial court received the psychologists' reports and confirmed with the Madison County Jail that Henderson had not received any mental-health treatment while in custody. The court then took no further action to discern Henderson's mental status at the time of the alleged offenses. Instead, the court turned to prospective concerns and held a hearing to determine Henderson's competency to stand trial. After that hearing, the court found as follows:

> 1. [Henderson] refused to submit to any mental or competency evaluation after the court had ordered said evaluations to take place. [Henderson] continues to maintain that she will not cooperate.

> 2. [Henderson] refuses to speak or meet with her attorney.
>
> 3. [Henderson] has struggled with answering questions from the court and instead is either combative, non-responsive, nonsensical, argumentative, emotional, and agitated in her responses. The court has also observed [Henderson's] body language to be fidgety, gestures with her hands as if using a form of sign language[,] and moves from sitting to standing at random times during the court hearings.
>
> 4. [Henderson] has refused any attempts for her to be evaluated or treated for mental health issues at the jail as evidenced by her medical records provided by the jail.
>
> 5. Without [Henderson's] compliance [being] further evaluated, the court is unable to continue with her proceedings without an understanding as to the extent of her competency and mental health conditions.

Id. at 117-18. The trial court then ordered Henderson committed to the Indiana Family and Social Services Administration's Division of Mental Health and Addiction at the Richmond State Hospital. In ordering Henderson's commitment, the court directed the State Hospital to determine Henderson's competency to stand trial and engage in any necessary restoration services within ninety days.

[24] Although no formal diagnosis is in the record, while Henderson was in the care of the State Hospital, she was prescribed lithium and Zyprexa with positive effect. Tr. pp. 45-46. According to the Mayo Clinic:[10]

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[10] This Court may "take judicial notice of the Mayo Clinic's website of general facts relating to diseases, their symptoms, and their common medications." *Williams v. Ind. Dep't of Corr.*, 142 N.E.3d 986, 991 n.2 (Ind. Ct. App.), *clarified on other grounds on reh'g*, 142 N.E.3d 1009, 1009-10 (2020); *see also* Ind. Evidence Rule 201(a)(1)(B).

> Lithium is used to treat mania that is part of bipolar disorder (manic-depressive illness). It is also used on a daily basis to reduce the frequency and severity of manic episodes. Manic-depressive patients experience severe mood changes, ranging from an excited or manic state (eg, unusual anger or irritability or a false sense of well-being) to depression or sadness.

Lithium (Oral Route), https://www.mayoclinic.org/drugs-supplements/lithium-oral-route/side-effects/drg-20064603?p=1 (last visited on Feb. 10, 2023). Zyprexa, meanwhile, "is used to treat schizophrenia. It may also be used alone or with other medicines (eg, lithium or valproate) to treat mania or mixed episodes that is part of bipolar disorder (manic-depressive illness)." Olanzapine (Oral Route), https://www.mayoclinic.org/drugs-supplements/olanzapine-oral-route/description/drg-20071350 (last visited on Feb. 10, 2023).

[25] In September, eight months after her arrest, the State Hospital informed the court that Henderson had "attained the ability to understand the proceedings and assist in the preparation of her defense." Appellant's App. Vol. 2, p. 126. The State Hospital submitted a ninety-day report to the court, which summarized Henderson's behaviors at the hospital as follows:

> Ms. Henderson came to the Richmond State Hospital on July 14, 2021. During her first week, it was noted that she was "disruptive to unit, yelling, upsetting others. Refused EKG." She was agitated and threatening others following her admission.
>
> During her second week, it was noted that Ms. Henderson was, "Still disruptive, agitated, difficult to treat and she does not believe she has any mental illness." Staff were focusing on keeping her and other staff safe while trying to address her needs and concerns.

At the three-week mark, Ms. Henderson was seen by the psychiatrist again who reviewed her chart and discussed her care with the team. There were no significant changes in her presentation. She appeared tense, agitated, not having much insight into her hospital stay.

Ms. Henderson displayed no significant changes at one month. She was refusing medication and was in denial that she had any mental illness. She displayed no insight four weeks into treatment.

During the fifth week of treatment, Ms. Henderson was still refusing classes, was showing no insight into hospitalization, and refused medication. She yelled at the psychiatrist, "My problem is in my vagina, not in my head!" She broke a door on her desk and also broke her clock radio. When asked why she did this, she first said it was none of the staff's business, then she denied doing it. The psychiatrist informed her that he recommends medications for her mental health, and she told him that he had a mental health condition. She then "cursed out the clerk," and left the interview.

At six weeks, Ms. Henderson cooperated with medication and reported that her regimen "was fine," but then yelled at the psychiatrist and said she did not have a mental health problem and demanded to be discharged. She cursed at the clerk, cursed at the psychiatrist, and stated that staff do not know anything and do not know what they are doing. The psychiatrist discussed the risks and benefits of medication which she was then taking willingly.

At seven weeks, Ms. Henderson was compliant with medication. She denied any side effects to her regimen. She continued to believe that she had no mental illness. Staff stated that she was trying her best to get along with people but is just so adversarial in nature that it is hard for her.

At the two-month mark, Ms. Henderson requested to be seen by medical team for [an infection]. She was still lacking insight into her commitment. *Medications appeared to be helping, staff write, for example, "instead of cursing people out just a few moments into a conversation, patient is able to keep her composure now for a few*

> *minutes.["] But when asked about competency issues she would start to get more agitated.*
>
> *At nine weeks, Ms. Henderson was being much more cooperative and was participating in treatment with her peers*. She demonstrated good legal knowledge to treatment staff. Her team recommended her for evaluation.

Id. at 128-29 (emphasis added).

[26] Upon receiving the State Hospital's report, the court attempted to have Henderson assessed for a possible transfer to a problem-solving court. However, when that assessment took place a few weeks later, Henderson was again uncooperative. Henderson's counsel then informed the court that he continued to believe that she should be evaluated for her mental status at the time of the alleged offenses, but he acknowledged that Henderson refused to be evaluated, and that she was insistent on a trial date. Tr. pp. 61-62, 65-71. The court scheduled Henderson's case for a bench trial. At the final pretrial hearing, Henderson's counsel repeated that he would seek additional mental evaluations for Henderson regarding her trial defense if she would cooperate, but she refused. *Id.* at 76-77.

[27] The court then held Henderson's bench trial. At the commencement of the trial, Henderson's counsel again reminded the court that he was pursuing the insanity defense, of the case's procedural history with respect to Henderson's apparent mental illnesses, and Henderson's repeated refusal to cooperate with evaluations. *Id.* at 126. The court then heard testimony from Wells, Iteen, Wells's mother, Officers Branson and Smith, and Henderson.

[28] After hearing the evidence and arguments, the court stated and found as follows:

> really the issue is Ms. Henderson's state of mind at the time that these events took place on January [24, 2021]. And the Court is left I think much like others that are in the courtroom that *the Court has concerns for Ms. Henderson, has had concerns for Ms. Henderson's overall mental and emotional well-being since this case was filed. I think that's clear from the record and the different attempts that the criminal justice system has tried to provide some intervention not only [to] Ms. Henderson personally but also to provide the Court and her counsel more information that might be able to substantiate and help better explain the events that happened in January [2021,]* but in large part[] due to Ms. Henderson's refusal to cooperate and[/]or her steadfastness that she doesn't either think she has a mental illness or doesn't want to talk further to explore whether or not there may be something there or something that could be treated to help her and given some of the other actions [sic]. Paramedics were called out on the scene. An officer testified that they cleared her to be able to be transported to the jail. *I think [an]other statement that she made on scene plus that she made here, a lot of the behavior that took place [on January 24] seems to be similar behavior that she exhibited when she went to the State Hospital after the Court had entered the order of commitment* and even from Defendant's exhibit A[, the State Hospital's report], it never was very clear to the Court, again given her lack of cooperation at the State Hospital, whether an actual clear diagnosis or understanding as to her behavior was really not dispositive for the Court there, either; therefore, based on the evidence that's been presented to the Court today, the Court finds that the State has proven its case beyond a reasonable doubt and the Court finds the defendant guilty . . . .

Id. at 178-79 (emphases added).

Standard of Review

[29] On appeal, Henderson contends that the trial court erred when it rejected her insanity defense. "To sustain a conviction, the State must prove each element of the charged offense beyond a reasonable doubt." *Galloway v. State*, 938 N.E.2d 699, 708 (Ind. 2010). This includes demonstrating that the defendant possessed "the requisite criminal intent" for each of the charged offenses. *Id.* at 708 n.6. Thus, a defendant can "avoid criminal responsibility by successfully raising and establishing the 'insanity defense,'" which, when established, negates criminal intent. *Id.* at 708.

[30] As our Supreme Court has explained:

> Defendants are insane when, "as a result of mental disease or defect," they are "unable to appreciate the wrongfulness of th[eir] conduct at the time of the offense." I.C. § 35-41-3-6(a). A "mental disease or defect" means "a severely abnormal mental condition that grossly and demonstrably impairs a person's perception," but not "an abnormality manifested only by repeated unlawful or antisocial conduct." I.C. 35-41-3-6(b). Defendants are guilty but mentally ill if the [the fact-finder] finds they have committed the charged offense while "having a psychiatric disorder which substantially disturbs [their] thinking, feeling, or behavior and impairs [their] ability to function . . . including having any mental retardation." I.C. § 35-36-1-1. . . .

Satterfield v. State, 33 N.E.3d 344, 248 (Ind. 2015) (internal alterations and omission original to *Satterfield*).

[31] Further:

> The defendant bears the burden of establishing the insanity defense by a preponderance of the evidence. I.C. § 35-41-4-1(b). To meet this burden, the defendant must establish both (1) that he or she suffers from a mental illness and (2) that the mental

illness rendered him or her unable to appreciate the wrongfulness of his or her conduct at the time of the offense. *See* I.C. § 35-41-3-6(a). Thus, mental illness alone is not sufficient to relieve criminal responsibility. *See Weeks v. State*, 697 N.E.2d 28, 29 (Ind. 1998). Rather, a defendant who is mentally ill but fails to establish that he or she was unable to appreciate the wrongfulness of his or her conduct may be found guilty but mentally ill . . . . *See, e.g.*, *Taylor v. State*, 440 N.E.2d 1109, 1112 (Ind. 1982).

Whether a defendant appreciated the wrongfulness of his or her conduct at the time of the offense is a question for the trier of fact. *Thompson v. State*, 804 N.E.2d 1146, 1149 (Ind. 2004). Indiana Code section 35-36-2-2 provides for the use of expert testimony to assist the trier of fact in determining the defendant's insanity. Such expert testimony, however, is merely advisory, and even unanimous expert testimony is not conclusive on the issue of sanity. *Cate v. State*, 644 N.E.2d 546, 547 (Ind. 1994). The trier of fact is free to disregard the unanimous testimony of experts and rely on conflicting testimony by lay witnesses. *Barany v. State*, 658 N.E.2d 60, 63 (Ind. 1995). And even if there is no conflicting lay testimony, the trier of fact is free to disregard or discredit the expert testimony. *Thompson*, 804 N.E.2d at 1149.

Because it is the trier of fact's province to weigh the evidence and assess witness credibility, a finding that a defendant was not insane at the time of the offense warrants substantial deference from reviewing courts. *See Barany*, 658 N.E.2d at 63. A defendant claiming the insanity defense should have prevailed at trial faces a heavy burden because he or she "is in the position of one appealing from a negative judgment." *Thompson*, 804 N.E.2d at 1149. A court on review will not reweigh evidence, reassess witness credibility, or disturb reasonable inferences made by the trier of fact (even though "more reasonable" inferences could have been made). *Id.* at 1149-50.

Although this standard of review is deferential, it is not impossible, nor can it be. The Indiana Constitution guarantees "in all cases an absolute right to one appeal." Ind. Const. art. VII, § 6. An impossible standard of review under which appellate courts merely "rubber stamp" the fact finder's determinations, no matter how unreasonable, would raise serious constitutional concerns because it would make the right to an appeal illusory.

> *Cf. Serino v. State*, 798 N.E.2d 852, 856 (Ind. 2003) (standard of review for sentencing claims so high that it risked impinging upon the constitutional right to appeal). As such, this Court has long held that where the defendant claims the insanity defense should have prevailed, the conviction will be set aside "when the evidence is without conflict and leads only to the conclusion that the defendant was insane when the crime was committed." *Thompson*, 804 N.E.2d at 1149 (emphasis added); *see also Barany*, 658 N.E.2d at 63-64 (citation omitted).

Galloway, 938 N.E.2d at 708-10 (footnotes omitted).

The evidence at the bench trial included the substance of the pretrial hearings.

[32] As an initial matter, I do not agree with the majority's reading of the record because its analysis restricts its review to the testimony presented at Henderson's bench trial. But as I read the trial court's and defense counsel's comments at Henderson's bench trial, I conclude that the court took judicial notice, without objection from the State, of the numerous prior hearings and evidence before it. That evidence included not only the fact that those hearings took place. The court specifically referred to Henderson's behavior at those hearings and not just her insanity defense.

[33] For example, the court opened Henderson's bench trial by stating, "the Court wants to go ahead and just *make record on, I think the record again speaks for itself* that . . . Henderson's been before the Court multiple times." Tr. at 114 (emphasis added). The court then noticed Henderson's prior hearings on the competency evaluations and her meetings with court-appointed psychologists. *Id.* at 114-15. The court noticed that defense counsel had, over "multiple

hearings" before the court, "made record as well with Ms. Henderson in her position regarding . . . having further assessments done . . . ." *Id.* at 115. Significantly, when the court asked defense counsel if he had anything to add, he stated, "[w]e've had different hearings on [the insanity defense] and again, *those are designed to assist the Court in . . . [that] defense*." *Id.* at 116 (emphasis added).

[34] Similarly, after the court heard the testimony of witnesses at the bench trial, defense counsel again asked the court to "take into consideration" not just the day's testimony but also Henderson's "behavior . . . shortly after . . . her arrest" and her "encounters with . . . medical . . . professionals" over the course of the year. *Id.* at 177. And, in announcing its judgment, the court reiterated the evidence it had considered, including the court's "concerns for Ms. Henderson's overall mental and emotional well-being *since this case was filed*" and the numerous "attempts that the criminal justice system has tried to provide some intervention" to assist defense counsel "to substantiate" the defense and "help better explain the events" alleged. *Id.* at 178-79 (emphasis added). The court also explicitly referenced statements made by Henderson "here," i.e., in the courtroom, contemporaneous with her arrest, which statements seemed "to be similar behavior that she exhibited when she went to the State Hospital after the Court had entered the order of commitment." *Id.* at 179. Thus, I read the court's bench-trial references to the evidence presented "today" to be a cumulative assessment of the evidence that had been repeatedly presented to the

court over multiple hearings and noticed at the bench trial without objection from the State. *See id.*

The only reasonable conclusion from the record is that Henderson suffered from a mental illness at the time of the alleged offenses.

[35] As for applying the record to the law, the first prong of Henderson's affirmative defense required her to show by a preponderance of the evidence that, at the time of the alleged offenses, she suffered from a mental illness that substantially disturbed her "thinking, feeling, or behavior" and impaired her "ability to function." *Satterfield*, 33 N.E.3d at 348. There is simply no question that Henderson met that burden.

[36] Prior to entering the apartment, Henderson heard a disembodied voice that instructed her to enter. Inside, "something come through [her]" and "[she] was told that [she] would know that when the time was right, [she] would know when it was [hers]." Tr. p. 167. She thought "people were . . . coming in and out bringing boxes" even though she was alone. *Id.* at 168. She "turned around" and "said hello a few times" to no one. *Id.* She thought the apartment belonged to a friend or a grandparent and she thought at least some of the items inside the apartment were hers. *Id.* at 138-39. She later described leaving the apartment "with a light." *Id.* at 8-10.

[37] When Iteen observed Henderson in the apartment, he thought she "seemed like she was under the influence," an apt lay description of someone suffering from

active delusions.[11] *Id.* at 138. As Henderson attempted to flee and was held to the ground by Wells's mother, those nearby, including Officers Branson and Smith, observed Henderson's behavior to be "crazy," "very manic," "very erratic," and "very excited"; she was "screaming," "making very random statements that didn't apply to anything that was going on," was "extremely combative," and appeared to be suffering from "excited delirium." *Id.* at 151, 155, 158, 162. The officers could not "reason with her," and, questioning her understanding of the moment, they refused to "ask her any questions" despite having read her her *Miranda* rights. *Id.* at 157-58.

[38] Less than twenty-four hours later at Henderson's initial hearing, the presiding magistrate observed Henderson behaving erratically and giving nonsensical responses to questions. Henderson said, "I'm going to get paid. I'm dealing with my feet"; she was unable to say what day of the week it was; she thought the year was 2020 and was surprised to learn it was 2021; when asked what city she was in, she initially responded that she did not know, and she then responded, "I'm back to the angry native of last night." *Id.* at 8-10. The presiding magistrate concluded that Henderson was not "understanding the events of today." *Id.* at 10.

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[11] The majority concludes that Henderson's possession of a syringe is enough to support a conclusion that she may have simply been intoxicated. But there is no evidence that the syringe had been used or that Henderson possessed a controlled substance. More significantly, there is no reason to conclude that her persistent, year-long behavior was attributable to temporary intoxication.

[39] These facts are not disputed. And they were contemporaneous with, or within twenty-four hours of, the alleged offenses. There is simply no question that that evidence demonstrates that Henderson was suffering from an obvious and serious mental illness at the time of the alleged offenses. And there is equally no reasonable question that her mental illness substantially disturbed her "thinking, feeling, or behavior" and impaired her "ability to function" on January 24, 2021. *Satterfield*, 33 N.E.3d at 348.

[40] Further, no reasonable fact-finder would conclude that Henderson was feigning or malingering. Her mental illness was observed by everyone who came into contact with her from the moment Wells and Iteen returned to their apartment. Indeed, her obvious mental illness persisted for more than one year, from January 24, 2021, to her bench trial on March 1, 2022. And her mental illness became manageable only after she had become acclimated to medications relating to schizophrenia, mania, and bipolar disorder provided to her while she was at the State Hospital, medications administered to her after the trial court had ordered her to be committed for ninety days based on the court's own repeated observations of her. Thus, Henderson readily met the first prong of her affirmative defense, and, based on that alone, her convictions should be modified to guilty but mentally ill. *See Galloway*, 938 N.E.2d at 708.

[41] Still, in its brief on appeal, the State asserts that "[t]here was absolutely no evidence to show that Henderson had a mental disease or defect." Appellee's Br. at 12. The State adds, "[i]n fact, Henderson maintained throughout the proceedings that she had not been diagnosed with a mental illness and that she

did not suffer from one." *Id.* But the State's argument is not reasonable because it ignores the undisputed evidence. Henderson also admitted to hearing disembodied voices, talking to persons who were not there, and following unseen lights. And the contemporaneous observations of the victims, the arresting officers, and the presiding magistrate at the initial hearing, along with trial judge's own observations throughout the ensuing hearings and at Henderson's trial, all confirm that Henderson was suffering from an obvious and serious mental illness, despite her own assertions to the contrary. Once again, and at a minimum, Henderson should have been found guilty but mentally ill. *See Galloway*, 938 N.E.2d at 708.

The only reasonable conclusion from the record is that Henderson's mental illness prevented her from appreciating the wrongfulness of her conduct at the time of the alleged offenses.

[42] The undisputed facts do more than show that Henderson suffered from an obvious and serious mental illness—they show that her mental illness prevented her from appreciating the wrongfulness of her conduct at the time of the alleged offenses. Acting on disembodied voices and delusions, she entered an apartment that she believed, through a nonexistent relationship, she had the right to enter. There, again acting on disembodied voices and delusions, she took possession of items she thought she had the right to possess. When confronted by the true owners, Henderson who was obviously mentally ill and who was suffering active delusions, fled. When pinned to the ground, she saw herself as an "angry native" and attempted to free herself. Tr. p. 9. None of this

supports an inference that Henderson understood the wrongfulness of her conduct at the time of the alleged offenses. To the contrary, the record makes clear she did not and could not appreciate the wrongfulness of her conduct.

[43] The State asserts that the record supports the trial court's conclusion that Henderson did appreciate the wrongfulness of her conduct. The State first argues that the court's conclusion is supported by the lack of expert testimony. But no expert testimony was required on this record, which demonstrates only one reasonable conclusion. Further, expert testimony is not mandatory either way with respect to a fact-finder's assessment of a defendant's ability to appreciate the wrongfulness of her conduct. In a related argument, the State asserts that no witnesses were "familiar with" Henderson and they therefore could not say whether Henderson's behavior was sincere. Appellee's Br. at 14-15. But the multiple, contemporaneous eyewitness observations were consistent and credible. And sadly, Henderson's obvious mental illness persisted well after January 24, 2021.

[44] The State also argues that Henderson's flight from the apartment and attempt to use "physical violence" to escape Wells and her mother supports an inference that Henderson knew her conduct was wrongful. Appellee's Br. at 13. Similarly, the State argues that Henderson's description of her delusions was not consistent, with her sometimes attributing the apartment to a friend and other times to a grandparent. According to the State, this inconsistency supports an inference that Henderson was not sincere.

[45] In a vacuum, acts of fleeing or resisting, or inconsistencies in the details of a purported delusion, might support rejection of a defendant's insanity defense. But on this record, those facts are not probative and are thus insufficient to support the State's position. What is clear from this record is that, at the time of the alleged offenses, Henderson was suffering from serious and active delusions. Based on that unavoidable conclusion, a fact-finder would not be able to do more than speculate that Henderson's acts of fleeing and resisting were somehow inconsistent with her delusions. Likewise, there is nothing in the record to suggest that the behavior of an obviously mentally ill person like Henderson, who inconsistently described details of her delusions, is abnormal for such a person.

[46] On this record, I am compelled to conclude that the evidence points to one and only one conclusion: Henderson was suffering from a serious mental illness at the time of the alleged offenses, and her mental illness prohibited her from appreciating the wrongfulness of her conduct. The trial court committed reversible error when it reached the opposite conclusion. We should reverse Henderson's convictions and direct the State to commence commitment proceedings.

[47] The circumstances of Henderson's case demonstrate "the clear failure, yet again, of our criminal justice system to adequately and properly respond to and treat those with mental health issues." *Wampler v. State*, 67 N.E.3d 633, 634 (Ind. 2017) (quoting *Wampler v. State*, 57 N.E.3d 884, 890 (Ind. Ct. App. 2016) (Mathias, J., dissenting)). As noted before, there is a "large and ironic lapse in

the logic of our criminal justice system," in which the "initial imperative is to determine the competency of defendants prospectively, to assist counsel at trial," not to promptly consider whether the defendant was competent at the time the crime was committed. *Habibzadah v. State*, 904 N.E.2d 367, 370-71 (Ind. Ct. App. 2009) (Mathias, J., concurring); *see also A.J. v. Logansport State Hosp.*, 956 N.E.2d 96, 117-18 (Ind. Ct. App. 2011) (Mathias, J., concurring); *Gross v. State*, 41 N.E.3d 1043, 1051-52 (Ind. Ct. App. 2015) (Mathias, J., concurring); *Robinson v. State*, 53 N.E.3d 1236, 1243-44 (Ind. Ct. App. 2016) (Mathias, J., concurring) (all citing *Habibzadah*).

[48] "I continue to believe that our criminal procedure should permit a psychiatric examination of a defendant who likely suffers from serious mental illness very early after arrest to determine whether the defendant could have possibly had the requisite scienter or mens rea at the time of the crime." *Gross*, 41 N.E.3d at 1052 (Mathias, J., concurring).

> Our criminal justice system needs an earlier and intervening procedure to determine competency retroactively to the time of the alleged crime. Perhaps we as a society need to consider the concept of a defendant being unchargeable because of mental illness under Indiana Code section 35-41-3-6, and not just guilty but mentally ill under Indiana Code section 35-36-2-1, *et seq.* In either case, the commitment proceedings provided for in Indiana Code section 35-36-2-4 would both protect society and best care for the defendant involved.
>
> [I]t is time for the truly long-term, incompetent criminal defendant to have an earlier and intervening opportunity for a determination of his or her competency at the time of the crime alleged. Such a procedure convened soon after arrest, rather than years later when stale evidence and dim or non-existent

> memories are all that are left, or never, would best serve society and the defendant.

Wampler, 57 N.E.3d at 890 (Mathias, J., dissenting) (quoting *Habibzadah*, 904 N.E.2d at 371 (Mathias, J., concurring)).

Conclusion

[49] For all of the above-stated reasons, I would reverse Henderson's convictions and remand with instructions for the State to initiate commitment proceedings.