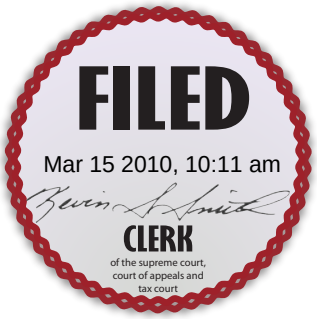

ATTORNEY FOR APPELLANT:

MATTHEW D. BARRETT
Logansport, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

HENRY A. FLORES, JR.
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JULIE VAN ORDEN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 09A05-0907-CR-428
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CASS SUPERIOR COURT 2
The Honorable Richard Maughmer, Judge
Cause No. 09D02-0608-MR-1

March 15, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Julie Van Orden (Van Orden), appeals her conviction for attempted murder, a Class A felony, Ind. Code §§ 35-42-1-1; 35-41-5-1.

We affirm.

ISSUES

Van Orden presents two issues for our review, which we restate as:

(1) Whether the prosecutor committed misconduct which placed her in a position of grave peril; and

(2) Whether she presented evidence from which the jury should have concluded that she was insane at the time of the attempted murder.

FACTS AND PROCEDURAL HISTORY

Van Orden has a long history of mental illness, and has spent the majority of her life institutionalized since she fatally shot the former Evansville Mayor in 1980. In 2006, Van Orden was hospitalized at the Logansport State Hospital. On August 22, 2006, Van Orden had the duty of assisting with making breakfast for her and other patients that morning and was under the supervision of Barbra Flatt, a transitional care specialist. Van Orden arrived in the kitchen shortly after Flatt. At that time, Van Orden began yelling that Flatt "was going to go to the office and write up in [Van Orden's] chart how she had not come back as soon as [Flatt] had asked her to." (Transcript Volume 24, p. 44). Flatt tried to tell Van Orden that she was not going to write on her chart, but Van Orden continued to be argumentative, so much so that Flatt left the kitchen to speak with her supervisor, Rick Ricks (Ricks). Ricks

called another supervisor, Sue Bennett (Bennett), and informed her that the transitional care unit was not working out for Van Orden and she needed to be moved to a unit called "Dodd's," a more restrictive unit. (Tr. Vol. 24, p. 105). Bennett agreed and arranged for Van Orden to be moved after breakfast. Ricks went to the kitchen and told Van Orden. Van Orden angrily tensed up, but relaxed after a moment and Ricks "thought [they] had averted any crisis [they] were going to have." (Tr. Vol. 24, p. 105).

Flatt asked her co-worker, Ted Shriver (Shriver), to supervise Van Orden. Shriver entered the kitchen and observed Van Orden eating her breakfast. Shriver walked around the table where Van Orden was sitting. Van Orden stood up and slammed her plate down. She reached into a silverware drawer, pulled out a steak knife and a paring knife, and held one in each hand. Van Orden went at Shriver and said, "I'm going to kill you, I'm going to kill you." (Tr. Vol. 24, p. 76). Shriver put his arm up to protect his face, and Van Orden stabbed him in the chest, arm, and side near his spleen. Shriver grabbed her hand, and the paring knife fell to the floor. Van Orden began to bite Shriver's left arm. Ricks and other workers arrived at the scene. Ricks grabbed Van Orden's arm, she dropped the knife she was still holding, and said, "I'm done." (Tr. Vol. 24, p. 49).

Candice Field (Field), a psychiatric attendant at the hospital escorted Van Orden away from the scene of the crime to the Dodd's Unit. In the vehicle on the way to the more restrictive unit, Van Orden explained that she originally intended to hurt another patient, but Shriver had gotten in the way and "she just figured she would do Ted first." (Tr. Vol. 24, p. 121). Later, after Field and Van Orden arrived at Dodd's Unit, Field assisted in searching

Van Orden. During the search, Van Orden stated that the knife did not work because it bent, and said it was "lucky for Ted and giggled." (Tr. Vol. 24, p. 121).

On August 24, 2006, the State charged Van Orden with attempted murder, a Class A felony. On December 5, 2006, Van Orden filed a Notice of Mental Disease or Defect. On December 7, 2006, the trial court ordered a psychiatric evaluation of Van Orden's competency to stand trial and appointed Dr. Muniz Shah (Dr. Shah), and Dr. John Yarling (Dr. Yarling) to evaluate Van Orden and provide written reports.

On March 29, 2007, Dr. Yarling submitted a letter wherein he noted that Van Orden has been diagnosed with chronic paranoid schizophrenia. He concluded that "[b]ased upon information available to me and my evaluation of [] Van Orden, it is my opinion that she does intermittently meet the criteria for insanity . . . and that further, on the day of the alleged attempted murder, she again met the criteria for insanity." (Appellant's "Green" App. p. 32).

On April 4, 2007, Dr. Shah submitted a letter explaining that Van Orden refused to comply with the interview process and became agitated and belligerent. He stated that "[i]t is difficult for me to say that [] Van Orden is able to rationally think today or was rationally thinking at the time of the alleged offense. However, as evident from her previous history, [there] is a great possibility that she was paranoid and acting upon her delusional paranoid behavior the day of the incident." (Appellant's "Green" App. p. 26).

At some point, the trial court appointed Dr. Douglas Babcock (Dr. Babcock), a clinical psychologist, to also evaluate Van Orden. On June 29, 2007, Dr. Babcock issued a report concluding that Van Orden:

> is competent to stand trial, and at the time of the alleged offense she displayed the ability to distinguish right from wrong. While her ability to control her behavior was diminished by maladaptive personality characteristics, she was not acting out of psychosis, and in my judgment she was capable of exerting self-control over her behavior.

(Appellant's "Green" App. p. 24).

On October 12, 2007, based on the mental health evaluations, the trial court concluded that Van Orden was incompetent to stand trial at that time. The trial court committed Van Orden to the Division of Mental Health and Addiction of the Indiana Family and Social Services Administration. On December 11, 2007, the Superintendent of Logansport State Hospital filed a report to the trial court stating that Van Orden's medications had been altered and that she had regained competency to stand trial.

Van Orden moved for a hearing on her competency to stand trial. On May 8, 2008, the trial court ordered a second round of evaluations by Drs. Shah, Yarling, and Babcock. The trial court modified that order on June 11, 2008, by requesting an evaluation by Dr. Don Olive (Dr. Olive).

In a June 27, 2008 letter, Dr. Shah determined that Van Orden did not have the capacity to aid in her defense because of delusions. Due to these delusions, Dr. Shah concluded that she could not testify relevantly, disclose pertinent facts to her defense counsel, or challenge the State's witnesses. Nevertheless, Dr. Shah concluded that Van Orden could understand the court procedures and appreciate the charges she was facing, but "does not appreciate the range and nature of the possible penalties." (Appellant's "Green" App. p. 6).

In a letter dated June 25, 2008, Dr. Yarling explained that he had reevaluated Van Orden, and concluded that she:

> [I]s capable of understanding the proceedings of the Court and of assisting Defense Counsel in the preparation of a defense. I base this opinion on her ability to respond appropriately to the majority of my questions although I acknowledge that a number of her responses were tangential or circumstantial. It is again my opinion that she represents a serious risk of harming someone else at some future date and that it would be prudent for those responsible for her psychiatric care to exercise caution in their interactions with her and in the process of disposition planning.

(Appellant's "Green" App. p. 13).

On July 30, 2008, Dr. Olive issued a letter with the following conclusions:

> [Van Orden] can communicate pertinent details associated with the alleged offense to her attorney; seek advice from defense counsel as appropriate, and make reasonable decisions based upon such advice; monitor testimony for potential errors and inconsistencies; and, if indicated, testify relevantly and withstand cross-examination. Given that [] Van Orden displayed no significant psychotic signs at mental status examination, in specific, persecutory delusions or auditory hallucinations, she appears to be responding favorably to her psychotropic regimen. Although she does display mild deficits in attention and concentration, these deficits do not appear to be of such severity as to significantly compromise the current competencies at issue. Thus, my opinion is that [] Van Orden does possess sufficient present ability to consult with her attorney with a reasonable degree of rational understanding, and a rational, as well as factual, understanding of the proceedings against her, i.e., she is competent.

(Appellant's "Green" App. pp. 4-5). Based on these evaluations, the trial court determined that Van Orden was competent to stand trial.

On May 27 and 28, 2009, the trial court conducted a jury trial. The jury heard evidence regarding Van Orden's actions on the morning of August 22, 2006, and her sanity at that time. The jury determined that Van Orden was guilty of attempted murder, but mentally

ill. The trial court accepted the jury's verdict and sentenced Van Orden to fifty years in the Department of Correction.

Van Orden now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Prosecutorial Misconduct*

Van Orden argues that the prosecutor engaged in misconduct when making closing arguments. When we review a claim of prosecutorial misconduct, we employ a two-step analysis. *Reynolds v. State*, 797 N.E.2d 864, 868 (Ind. Ct. App. 2003). We consider all the circumstances of the case to determine whether the misconduct placed the defendant in a position of grave peril to which she should not have been subjected. *Id*. The gravity of peril is determined by considering the probable persuasive effect of the misconduct on the jury's decision, rather than the degree of impropriety of the conduct. *Id*.

For all but one of the instances which Van Orden contends were prosecutorial misconduct, Van Orden failed to object during the trial. "Generally, a failure to object during the trial court proceeding results in waiver of that issue for appeal unless the unpreserved error constitutes fundamental error." *Phelps v. State*, 914 N.E.2d 283, 290 (Ind. Ct. App. 2009). The fundamental error exception is extremely narrow. *Stokes v. State*, 908 N.E.2d 295, 301 (Ind. Ct. App. 2009), *trans. denied*.

> To qualify as fundamental, an error must be so prejudicial to the rights of the defendant as to make a fair trial impossible. The error must amount to a blatant violation of basic principles, the harm or potential for harm must be substantial, and the resulting error must deny the defendant fundamental due process.

Id. (citations and punctuation omitted). "When a prosecutor's conduct subjects a defendant to grave peril and has a probable persuasive effect on the jury's decision, it may amount to fundamental error." *Boatright v. State*, 759 N.E.2d 1038, 1043 (Ind. Ct. App. 2001).

A. *Self-Incrimination*

Van Orden contends that certain comments made by the prosecutor should be interpreted as a reference to Van Orden's decision to invoke her right to remain silent. The specific phrases which Van Orden argues referred to her decision to not testify at the trial were the following: "You judge them by their words. That's all we have to go on. Did she know it was wrong?" (Tr. Vol. 25, p. 345).

In relevant part, the Fifth Amendment to the United States Constitution provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." Similarly, the Indiana Constitution Article 1, Section 14 provides: "No person, in any criminal prosecution, shall be compelled to testify against himself." We have stated that "[t]he Fifth Amendment privilege against compulsory self-incrimination is violated when a prosecutor makes a statement that is subject to reasonable interpretation by a jury as an invitation to draw an adverse inference from a defendant's silence." *Boatright*, 759 N.E.2d at 1043. If in its totality, however, the comment is addressed to other evidence rather than the defendant's failure to testify, it is not grounds for reversal. *Id*. (citing *Hopkins v. State*, 582 N.E.2d 345, 348 (Ind. 1991).

Here, we conclude that the prosecutor's comment was addressed to other evidence rather than the defendant's decision to not testify. The prosecutor explicitly provided context

for his comment "[y]ou judge them by their words." (Tr. Vol. 25, p. 345). He reminded the jury that Van Orden had made comments to Field shortly after the stabbing and encouraged the jury to judge whether Van Orden understood her actions by considering her own comments.[1] Therefore, the prosecutor's statement "[y]ou judge them by their words" was directed to other evidence, not Van Orden's exercise of her privilege to remain silent, and, therefore, did not constitute misconduct.

B. *Failure to Call Witnesses*[2]

Van Orden contends that the prosecutor committed misconduct by referring to the dearth of witnesses she called to testify. To develop this argument, she cites to *Wright v. State*, 690 N.E.2d 1098, 112 (Ind. 1997), for the proposition that "[w]hile the State may argue

[1] During closing argument, the prosecutor made the following statements:

> Now counsel says that the State's case revolves around the facts of what happened that morning. I couldn't agree more. It absolutely does. The whole case does and it ought to. That's what we are supposed to be concentrating on right here. What [is] the context? What's the rationale? You judge what people think and what they intend by what they do. You judge them by their actions. You judge them by their words. That's all we have to go on. Did she know it was wrong? Counsel says some of these statements that we put into evidence we don't really have a context for. Well, the people testified. Candace Field now known as Candice Cogdill was on Dodd's, she wasn't there when the stabbing occurred but when the code blue was called she went. She was in the vehicle that transported the defendant right back to Dodd's after the attack. That the defendant's talking about what happened. She's one of the people that searched her in the bathroom and was with her after the search was over on Dodd's. And what does she say? What does the defendant say to Candace Field? And this is from her testimony that this happened over spilled food. That she wanted to kill Joyce but that Ted got in the way. So she thought she'd do Ted first. And to do Ted first was an exact quote. Too bad for me and lucky for him that she didn't get the job done that she didn't get it done because the knife bent.

(Tr. Vol. 25, pp. 345-46).

[2] Van Orden also comments in this section of her Appellant's Brief that remarks made by the prosecutor during opening statements misled the jury. Specifically, the prosecutor said that he was going to ask the jury to find Van Orden "guilty but mentally ill for certainly she had a mental illness." (Tr. Vol. 24, p. 22). But then, at the close of evidence, the prosecutor requested that the jury be given verdict slips that omitted any reference to mental illness. Nevertheless, since the jury found Van Orden guilty but mentally ill, we fail to see how any confusion caused by this change of direction by the prosecutor could have caused reversible error.

to the jury the uncontradicted nature of its own case, the State may not suggest that the defendant has the burden of proof by inquiring in closing argument why the defendant did not call witnesses to testify on his behalf." (Appellant's Br. p. 13).

We first note that in *Wright*, our supreme court acknowledged the prosecutor's improper comment about the defendant's failure to call his girlfriend as a witness, but found that in the context of jury "instructions, the weight of the evidence, and the *de minimis* nature of this impropriety, the prosecutor's comment certainly did not place the defendant in a position of grave peril." *Wright*, 690 N.E.2d at 1112. We similarly find that the prosecutor's comment that Van Orden did not call certain witnesses did not place her in grave peril, but for another reason.

The statement by the prosecutor which Van Orden contends we should conclude was misconduct was as follows:

> Now there are several mental health professionals who evaluated [Van Orden]. You heard Dr. Yarling say that he was one of three appointed by the court to do the evaluations. There were several in Logansport State Hospital who also did that. We talked to Dr. Rogers and I asked her is there any evidence of delusion or grossly impaired perception in [Van Orden] as of August 22, 2006 on the day that she stabbed Ted at the time she did it. And no, she said there is no evidence that that existed at all.
>
> * * *
>
> You know that from Dr. Yarling's testimony there are psychiatrists at the Logansport State Hospital who examined her in addition to Dr. Rogers. The evidence shows that these people exist. The evidence shows they examined [Van Orden] in relation to this case. The defense has the burden of showing you that she's not sane. They only called Dr. Yarling to give you this one piece.

* * *

> You only have one piece of the puzzle. You don't have all these other opinions. You don't have them. They are not here.

(Tr. Vol. 25, pp. 313-14, 339, 341). Van Orden's counsel objected to the prosecutor's argument at one point, and the trial court issued a statement to the jury after a bench conference.[3]

> [TRIAL COURT]: Members of the jury, I need to tell you that the instruction that I gave you talks about the court appointing disinterested psychiatrist and psychologists. And the court has done that in fact I think I looked at the records here and I've had five different medical professionals deal with this case. In various aspects some saw this individual a couple of times and you need to understand that it[']s my responsibility—the court to require those people to come here to testify[].[] Either party could have had them come. All right? But it was the court's responsibility to have those medical professionals to appear before you.

(Tr. Vol. 25, p. 340). Because of this statement by the trial court, we conclude that the prosecutor's reference to the fact that only one of several mental health professionals testified did not put Van Orden in a position of grave peril.

Moreover, the prosecutor's comments here did not effectuate an improper burden shifting. As opposed to the underlying elements of the crime charged, Van Orden carried the burden of demonstrating her affirmative defense of insanity, which she clearly advanced. I.C. § 35-41-4-1. The prosecutor's comments were directed solely at the production of witnesses to address Van Orden's sanity at the time of her offense, and, therefore, were not misconduct.

C. *Facts Not in Evidence*

Van Orden contends that the prosecutor committed misconduct by referring to facts not admitted as evidence. Van Orden specifically argues that the following statement by the prosecutor during closing arguments did not have a basis in the evidence:

> [Van Orden] plunged that knife as far as she could get it and if [Shriver] hadn't been fighting her and if she hadn't been pulled off she would have kept doing it. If he hadn't had the training, if he'd back up or run away and she plunged that knife in, ladies and gentlemen, I submit the evidence shows you that [] it goes in deeper. But his actions and the actions of the people who helped him prevent this from happening.

(Tr. Vol. 25, pp. 296-97). The State responds by contending that these comments were conclusions that the prosecutor reasonably made from the evidence.

"As a general proposition, the prosecutor must confine closing argument to comments based upon the evidence presented in the record. The prosecutor may argue both law and facts and propound conclusions based upon his or her analysis of the evidence." *Lambert v. State*, 743 N.E.2d 719, 734 (Ind. 2001), *cert. denied*, 534 U.S. 1136 (2002). The evidence which the State contends supports the prosecutor's comments included the following: (1) Shriver testified that Van Orden said "I'm going to kill you" in a loud boisterous voice just prior to stabbing him; (2) Shriver attempted to block Van Orden's thrusts of the knife, but she was still able to stab him twice in the chest and once in the side near his spleen; (3) both of the knives were straight prior to the attack, but were bent after; (4) a witness heard Van

[3] The comments made during the bench conference were not transcribed for the record, and since Van Orden's counsel did not preserve any further objection to the trial court's statement or the prosecutor's continued comments, we must assume that Van Orden was satisfied with the curative effect of the trial court's statement.

Orden say that the reason she did not kill Shriver was because the knife bent; and (5) another witness heard Van Orden say that the knife bent, and that was "[t]oo bad for her, lucky for [Shriver]." (Tr. Vol. 24, pp. 76, 121).

Because of Van Orden's statements and the multiple stab wounds that Shriver received, we are hard pressed to say that the prosecutor's comment exceeded conclusions supported by the evidence. Nevertheless, the prosecutor's comments were directed at the nature and extent of Van Orden's actions, and Van Orden did not challenge those actions at trial, but rather pursued an insanity defense. During closing arguments, her counsel stated: "Her actions are not in question. Why she did what she did is what is in question. Why is she saying [I'm going to kill you]? If she says that does she really understand the consequences of her actions? Is she able to rationalize?" (Tr. Vol. 25, p. 319). Therefore, we conclude that even if the prosecutor's comments were not conclusions reasonably derived from the evidence as presented, those comments did not put Van Orden in a position of grave peril.

D. *Passions of the Jury*

Van Orden argues that the prosecutor committed misconduct by playing on the passions of the jury. Specifically, Van Orden contends that the prosecutor's detailed summary of the anatomy of Shriver's injuries was unnecessary to prove the elements of the charged crime because it was cumulative of other evidence, and, therefore, was submitted solely for the purpose of inflaming the passions of the jury.

"It is misconduct to phrase final argument in a manner calculated to inflame the passions or prejudice of the jury." *Gasaway v. State*, 547 N.E.2d 898, 901 (Ind. Ct. App. 1989). Yet, our adversary system permits a prosecutor to advocate with "earnest and vigor." *Id*. (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)). "In doing so hard blows cannot be avoided." *Id*. The line between acceptable and offensive advocacy is not easily drawn; the question is whether the defendant was deprived of a fair trial. *Id*. (citing *United States v. Young*, 470 U.S. 1, 7 (1985); *United States v. Dominguez*, 835 F.2d 694, 699 (7th Cir. 1987), *cert. denied*, 485 U.S. 965 (1988)).

The comments made by the prosecutor regarding the injuries which Shriver sustained were as follows:

> Now Ted told you and Ted's medical records will also tell you if you care to look that these wounds were all superficial. He said that one came close to his spleen. And you'll find I believe that's in State's Exhibit 44 . . . it talks about the wounds Ted has. 1 cm superficial laceration of left upper chest, 6 cm long right lower chest wall abrasion, 2.5 cm laceration to lower chest wall close to the abdominal wall. Upper chest laceration is 1 cm long. 0.25 cm wide and deep. Left lower chest wall laceration is 2.5 cm long, 1 cm wide and about 3 cm deep.
>
> * * *
>
> So how much is 3 cm? That's just shy of an inch and a quarter. I don't know about you but I don't want anybody stabbing me going in an inch and a quarter. Even if it's right here where I have the most padding, not very comfortable with that. And I understand that the knife did miss the spleen it didn't hit the liver, it didn't hit his intestines. It didn't hit any vital organ. I'm thankful for that and he's grateful for that and that was just luck because the intent was there and if that's 1 cm wide- - -you'd take a look at the height of each of those blades.
>
> * * *

> This wasn't just intent to scratch or her saying just to stay away from me. It wasn't play. Not even close. It was violent and it was inten[ded] to end the life of Ted Shriver.

(Tr. Vol. 25, pp. 295-97).

We disagree with Van Orden's contention that this line of argument was submitted to inflame the passions of the jury. Van Orden was charged with attempted murder which requires the state to prove beyond a reasonable doubt that the defendant intended to kill. "Intent to kill may be inferred from the use of a deadly weapon in a manner likely to cause death or great bodily injury, in addition to the nature of the attack and circumstances surrounding the crime." *Corbin v. State*, 811 N.E.2d 969, 975 (Ind. Ct. App. 2004). And although Van Orden was heard saying "I'm going to kill you," we have previously permitted evidence of the manner in which a deadly weapon is used, *in addition to* the statement by the defendant expressing intent to kill. *See id*. ("Intent to kill may be further established by a defendant's use of a deadly weapon against the victim coupled with an announced intention to kill." (citing *Schilling v. State*, 268 Ind. 534, 536, 376 N.E.2d 1142, 1143 (1978))). Therefore, we conclude that the prosecutor did not commit misconduct by describing the nature and extent of Shriver's wounds during closing argument.

E. *Cumulative Effect*

Van Orden proposes that even if we conclude that none of her contended points of prosecutorial misconduct rose to the level of placing her in grave peril individually, that we view them cumulatively to conclude that she was placed in grave peril. However, since we have concluded that three of the four points which Van Orden advances as being misconduct

were not misconduct, and that even if the remaining point were misconduct it did not place her in a position of grave peril, we conclude that no cumulative effect exists.

II. *Sufficiency of Evidence*

Van Orden argues that she presented sufficient evidence to prove that she was insane at the time of the attack on Shriver. "A person is not responsible for having engaged in prohibited conduct if, as a result of mental disease or defect, he was unable to appreciate the wrongfulness of the conduct at the time of the offense." I.C. § 35-41-3-6(a). A "mental disease or defect" is a "severely abnormal mental condition that grossly and demonstrably impairs a person's perception, but the term does not include an abnormality manifested only by repeated unlawful or antisocial behavior." I.C. § 35-41-3-6(b). Insanity is an affirmative defense, for which the defendant bears the burden of proof by a preponderance of the evidence. I.C. § 35-41-4-1.

The determination of sanity is a question for the trier of fact. *Maxwell v. State*, 731 N.E.2d 459, 463 (Ind. Ct. App. 2000), *trans. denied*. In making this determination, the trier of fact may disregard experts and rely upon the testimony of other witnesses. *Id*. "We will reverse the trier of fact's determination only if the evidence is without conflict and leads to but one conclusion and the trier of fact has reached an opposite conclusion." *Id*. (citing *Weeks v. State*, 697 N.E.2d 28, 29 (Ind. 1998)).

Here, the jury was provided with conflicting expert opinions as to Van Orden's sanity at the time of her crime. Dr. Yarling testified that she was insane, but another psychiatrist gave the jury a differing opinion. Dr. Lori Rogers (Dr. Rogers), a staff psychiatrist at the

Logansport State Hospital who was Van Orden's "day to day" psychiatrist since 2006, testified that Van Orden had explained what happened on the morning she attacked Shriver. (Tr. Vol. 25, p. 263). Van Orden told Dr. Rogers that she decided to kill another patient who she felt was intentionally making a mess by dropping food. However, Shriver got in her way and she stabbed him instead. Van Orden further explained that she felt bad about it because Shriver had always been nice to her. Dr. Rogers concluded that Van Orden appreciated the wrongfulness of her conduct and that there was no evidence that a mental condition grossly or demonstratively impaired her perception when she attacked Shriver. Thus, there is conflicting evidence and we cannot invade the province of the fact-finding jury.

CONCLUSION

Based on the foregoing, we conclude that the prosecutor did not commit misconduct which placed Van Orden in a position of grave peril, and that evidence supports the jury's conclusion that Van Orden was not insane, but mentally ill when she committed her crime.

Affirmed.

VAIDIK, J., and CRONE, J., concur.