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STATE OF MICHIGAN
SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

CINECCA DAQUAN MADISON

Defendant-Appellant.

Supreme Court No. 167120

Court of Appeals No. 369559

20th Circuit Court No. 22-45611-FC

Sarah F. Matwiejczyk (P59965)
Ottawa County Prosecutor
85 West 8th Street
Holland, MI 49423
616-392-1446
smatwiejczyk@miottawa.org

Christopher M. Wirth (P70174)
CORE LEGAL PLC
250 Monroe Avenue NW, Ste 400
Grand Rapids, MI 49503
616-855-2145
CWirth@CoreLegalPLC.com

DEFENDANT-APPELLANT'S SUPPLEMENTAL BRIEF SUBMITTED PURSUANT TO THE COURT'S ORDERS DATED OCTOBER 30, 2024 AND DECEMBER 11, 2024

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QUESTIONS PRESENTED

(1) Whether *People v Carpenter*, 464 Mich 223, 241 (2001) was correctly decided.

a. Defendant-Appellant states that *Carpenter* was wrongly decided and should be overruled because the statute at issue neither expressly nor impliedly abolishes diminished capacity.

b. Defendant-Appellant states that *Carpenter* was wrongly decided and should be overruled because the statute at issue does not occupy the field.

(2) Whether *Carpenter* should nonetheless be retained under principles of stare decisis, *Coldwater v Consumers Energy Co*, 500 Mich 158, 172-174 (2017).

a. Defendant-Appellant states that *Carpenter* should be overruled irrespective of stare decisis.

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SUPPLEMENTAL ARGUMENT

In *People v. Carpenter*, the Michigan Supreme Court held that the legislature abolished the defense of diminished capacity by enacting MCL 768.21a. 464 Mich 233, 225-226; 627 NW2d 276 (2001).

In July of 2023, Justice Cavanagh issued a compelling dissent in a diminished capacity case before the Court articulating why *Carpenter* was wrongly decided. *People v Tyson*, 511 Mich 1080; 992 NW2d 293 (2023). Justices Welch and Bolden joined in the dissent. Justice Clement agreed with the dissent that *Carpenter* is wrongly decided but opined that the issue had not been properly preserved in the trial court to be considered on appeal.

I. *Carpenter* was wrongly decided and should be overruled because the statute at issue neither expressly nor impliedly abolishes diminished capacity.

"[S]tatutes in derogation of the common law must be strictly construed," *Rusinek v. Schultz, Snyder & Steele Lumber Co*., 411 Mich 502, 507–08; 309 NW2d 163, 166 (1981) citing *Morgan v. McDermott*, 382 Mich 333; 169 NW2d 897 (1969), and "will not be extended by implication to abrogate established rules of common law," citing *Bandfield v. Bandfield*, 117 Mich 80; 75 NW 287 (1898). See also *People v Moreno*, 491 Mich 38, 46; 814 NW2d 624 (2012).

MCL 768.21a does not expressly preempt or abolish diminished capacity. This point was conceded by Justice Viviano during the oral argument in *Tyson*. Further, even the *Carpenter* Court recognized that diminished capacity is not expressly addressed in MCL 768.21a. *Carpenter* at 235.

Statutory interpretation begins "by construing the language of the statute itself." *People v Wood*, 506 Mich 114, 123 (2020)(internal citations omitted). MCL 768.21a merely codified legal insanity, stating

> (1) It is an affirmative defense to a prosecution for a criminal offense that the defendant was legally insane when he or she committed the acts constituting the offense. An individual is legally insane if, as a result of mental illness as defined in section 400 of the mental health code, 1974 PA 258, MCL 330.1400, or as a result of having an intellectual disability as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b, that person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law. Mental illness or having an intellectual disability does not otherwise constitute a **defense of legal insanity**. MCL 768.21a. emphasis added.

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The defense of legal insanity already coexisted with diminished capacity[1] when the Legislature drafted MCL 768.21a in 1975. See *People v Durfee*, 62 Mich 487, 29 NW (1886) and *People v Lynch*, 47 Mich App 8, 208, 208 NW2d 656 (1973). *Durfee* provided the two part common law test for legal insanity: (1) whether defendant knew what he was doing was right or wrong; and, (2) if he did, did he have the power, the will power, to resist doing the wrongful act? *Lynch* identified that legal insanity is not all or nothing because proof of diminished capacity is admissible as ‘‘bearing on intent generally or at least on those special states of the state of mind”.

In a world where both defenses existed, the statutory language of MCL 768.21a is self-limiting and bookended by its first and last sentences. It begins that “[i]t is an affirmative defense…that the defendant was **legally insane**” and ends with “[m]ental illness or having an intellectual disability does not otherwise constitute a **defense of legal insanity**.”

The opening sentence announces what the statute applies to -- the affirmative defense of legal insanity; not the defense of diminished capacity and not other defenses arising from mental illness or intellectual disability. Indeed, the test for legal insanity that next follows nearly mirrors the *Durfee* test. The closing sentence then again reiterates that the statute applies to what constitutes legal insanity – that the statute requires that the retooled *Durfee* test be satisfied. It does not state that mental illness or having an intellectual disability does not otherwise constitute **any defense**.

But the *Carpenter* Court, on a procedural irregularity[2], reasoned that the statute (though it only mentions one affirmative defense) somehow reflected the “Legislature’s enactment of a comprehensive statutory scheme concerning defenses [plural] based on either mental illness or mental retardation.” *Carpenter* at 236.

Surely had the 1975 Legislature, passing MCL 768.21a at a time when *Durfee* coexisted with *Lynch*, or even more directly intending the statute to be in response to *Lynch* (decided just

[1] Under Sixth Circuit precedent, evidence of diminished capacity may be admissible in both specific intent and some general intent prosecutions. See *United States v. Odeh*, 815 F.3d 968, 978–79 (6th Cir. 2016), *United States v. Stone*, 543 F. Supp. 3d 535, 540–41 (W.D. Ky. 2021).

[2] Leave was granted on the issue of burden. The prosecution reframed the subject to question diminished capacity entirely. The Court denied defense’s motion to strike the prosecution’s brief and decided the issue of diminished capacity.

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two years earlier), it would have concluded the section comprehensively saying "[m]ental illness or having an intellectual disability does not otherwise constitute a defense". It did not. Instead, the Legislature expressly clarified it was addressing the affirmative defense of legal insanity. Justice Cavanagh addressed the same in her *Tyson* dissent, stating:

> To begin, the Carpenter Court improperly read meaning into the Legislature's silence. We "determine the Legislature's intent from its words, not from its silence." *Donajkowski v Alpena Power Co*, 460 Mich 243, 261; 596 N.W.2d 574 (1999). While the Legislature certainly "has the authority to abrogate the common law, . . . [w]hen it does so, it should speak in no uncertain terms." *Hoerstman Gen Contracting, Inc v Hahn*, 474 Mich 66, 74; 711 N.W.2d 340 (2006). The Legislature has never abolished the diminished-capacity defense or expressed any unambiguous intent to preclude a defendant from producing evidence of diminished capacity. This makes sense because it is well-settled that "[t]he prosecution must carry the burden of proving every element beyond a reasonable doubt . . . ." *People v Mills*, 450 Mich. 61, 69-70, 537 N.W.2d 909, (1995), mod 450 Mich 1212, 539 N.W.2d 504 (1995). This necessarily includes the mens rea of an offense, and diminished-capacity evidence may be used to negate a specific-intent mens rea.
>
> The last sentence of MCL 768.21a(1), while providing that mental illness or intellectual disability short of the statutory standard did not constitute a legal insanity defense, is silent as to whether mental illness or intellectual disability may be admitted to negate specific intent. As one commentator has persuasively explained:
>
> > Contrary to clear rules of statutory construction, the Michigan Supreme Court's reading pretends that the last three words of this sentence do not exist. The legislature expressly defined exclusivity and left open the possibility that other defenses, like diminished capacity, might rest on mental conditions. If the legislature actually wanted to eliminate the diminished capacity defense, it could have done so simply by omitting the words "of legal insanity." That would have expressly channeled all mental illness evidence into the insanity defense. [Vars, When God Spikes Your Drink: Guilty [***16] Without Mens Rea, 4 Cal L Rev Circuit 209, 211 (2013).]

II. *Carpenter* was wrongly decided and should be overruled because the statute at issue does not occupy the field.

At its core, *Carpenter* is a tortured field preemption analysis. The *Carpenter* Court argued that MCL 768.21a "demonstrates the Legislature's intent to preclude the use of any evidence of a defendant's lack of mental capacity short of legal insanity to avoid or reduce criminal responsibility by negating specific intent." *Carpenter* at 236. In the *Tyson* oral argument, the "occupies the field" analysis was at the core of Justice Viviano's inquiry into whether MCL 768.21a (legal insanity),

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and more specifically MCL 768.36(3)(guilty but mentally ill, GBMI), encompasses essentially all iterations of a defendant having mental illness or intellectual disability. But Justice Viviano's query runs counter to the legislative analysis that inextricably ties GBMI to when "a defendant presented an insanity defense." 1975 House Legislative Analysis, House Bill 4363, July 1, 1975.

MCL 768.36(3) only applies to a mentally ill person after failing to succeed on the affirmative defense of legal insanity. In pertinent part, the statute reads:

> (1) If the defendant asserts a defense of insanity in compliance with section 20a of this chapter, the defendant may be found "guilty but mentally ill" if, after trial, the trier of fact finds all of the following:
>
> (a) The defendant is guilty beyond a reasonable doubt of an offense.
>
> (b) The defendant has proven by a preponderance of the evidence that he or she was mentally ill at the time of the commission of that offense.
>
> (c) The defendant has not established by a preponderance of the evidence that he or she lacked the substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law.

Moreover, alternative scenarios exist in which a trier of fact could find mental illness or intellectual disability to negate specific intent[3], but not necessarily negates all criminal liability in the way that legal insanity results. "Mental illness and malice aforethought are not mutually exclusive mental conditions. While mental illness may factually negate a finding of malice aforethought in a particular case, it does not follow as a matter of law that a finding of mental illness necessitates a finding of not guilty of murder." *People v Ramsey*, 89 Mich App 468, 472 (1979) (internal citation omitted).

In other words, the individual on trial could still be convicted of an offense but without a specific intent element. That result is clear in the case before the Court per the analysis of the three psychologists who examined Cinecca Madison:

- This does not change my ultimate opinion the Mr. Madison was not legally insane. **Although it is entirely possible, given his report to CMH prior to the alleged offense of hearing, seeing and believing things that are not real, that Mr. Madison could have *imagined* that the alleged victims were talking about him and planning to kill him, potentially impairing his capacity to appreciate the nature, quality or wrongfulness of his behavior, as well as the capacity to**

[3] See *Miller v. Alabama*, 567 US 460 (2012) where the United States Supreme Court discussed advancements in mental health and brain science. See also the *Tyson* amicus brief by the APA dated April 21, 2023, titled Brief Amici Curiae Of The American Psychological Association; The Michigan Psychological Association; And The National Association Of Social Workers, Including Its Michigan Chapter.

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conform his behavior to the requirements of the law, thus causing him to act in what he believed was genuine self-defense, this cannot be shown to be true within reasonable medical or clinical certainty due to lack of available corroborating information. [Emphasis added]. Dr. Michelle Hill, Page 11 and Exhibit 4 of Defendant-Appellant's Application For Leave To Appeal.

- Cinecca and I talked at length about his frame of mind prior to, during, and after the alleged offenses. His description indicates he was actively mentally ill at the time of the alleged offense. However, his description and other data in the records did not point to his choice of behavior and actions as a direct manifestation of the effects of the symptoms of his mental illness. **In essence, he described a scenario where in his perception he acted in self-defense.** [Emphasis added]. Dr. Jeffrey Kieliszweski, Page 11 and Exhibit 5 of Defendant-Appellant's Application For Leave To Appeal.

- [Defendant] knew the individuals who were involved in this case. He knew that they had intent to commit a theft, but then became more suspicious of their behaviors, thinking that they might be out to attack him in some way. These qualities are certainly probable if not quite common in psychotic disorders where there was fear of others being out to harm them. **In combination with intellectual disability, it would be harder for him, in comparison to someone else in his age group, to combat the confusion that he was experiencing at and around the time of the alleged criminal activity**. [Emphasis added]. Dr. Michael Wolff, Page 12 and Exhibit 6 of Defendant-Appellant's Application For Leave To Appeal.

Nor does MCL 768.36(3) begin to address a defendant, such as Cinecca Madison, who in addition to his mental illness has an intellectual disability. As opined to by Dr. Michael Wolff, "[i]n combination with intellectual disability [IQ of 66], it would be harder for [Cinecca Madison], in comparison to someone else in his age group, to combat the confusion that he was experiencing at and around the time of the alleged criminal activity[4]. Nor does it address the individual who suffers only from intellectual disability without substantial mental illness.

Again, these points were addressed in Justice Cavanagh's *Tyson* dissent:

> Similarly, the ability to present diminished-capacity evidence to negate specific intent does not render the GBMI verdict nugatory. For example, a defendant charged with first-degree murder might raise both an affirmative insanity defense and also make a diminished-capacity argument. The finder of fact could find the defendant guilty but mentally ill if it believes that the defendant proved mental illness by a preponderance of the evidence and that the prosecution had proven all the elements of the crime, including specific intent, beyond a reasonable doubt. On the other hand, a fact-finder could instead conclude that because of the defendant's mental illness (diminished capacity), the prosecution did not

[4] See Page 12 and Exhibit 6 of Defendant-Appellant's Application For Leave To Appeal.

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> prove the specific intent necessary for first-degree murder and instead find the defendant guilty of second-degree depraved-heart murder, a general-intent crime. See *People v Goecke*, 457 Mich 442, 466; 579 N.W.2d 868 (1998). Because diminished capacity is not mutually exclusive or in direct conflict with the GBMI verdict, the *Carpenter* Court erred when it held that existence of the GBMI verdict prohibited the introduction of diminished-capacity evidence. *Smith*, 124 Mich at 35.

In that regard, diminished capacity is more in harmony with the Legislature's intent in drafting MCL 768.36 -- the "apparent problem" that "defendants were abusing the legal insanity defense," and therefore escaping culpability. 2001 House Legislative Analysis, House Bill 5298, First Analysis, January 24, 2002. It can also be argued that MCL 768.36 was designed to backstop juries by offering an alternative for them to recoil at the notion of a legally insane acquittal and relieve a social perception that defendants were abusing the legal insanity defense.

III. *Carpenter* should be overruled irrespective of stare decisis.

Even though it is clear that *Carpenter* was wrongly decided, the Court may ask whether it should be overruled under *stare decisis*. "The application of stare decisis is generally the preferred course, because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *People v Tanner*, 496 Mich 199, 250; 853 NW2d 653 (2014) (citation and quotation marks omitted).

"*Stare decisis* is a 'principle of policy' rather than 'an inexorable command,'" *Robinson v City of Detroit*, 462 Mich 439, 464; 613 NW2d 307 (2000); see also *Ramos v. Louisiana*, 140 SCt 1390, 1404–05; 206 LEd2d 583 (2020).

The Court considers three factors: (1) whether reliance would work an undue hardship if overruled, (2) whether changes in the law or facts no longer justify the decision, and (3) whether the decision defies practical workability. *Robinson*, 462 Mich at 464.

But the analysis should not be "applied mechanically". *Coldwater v. Consumers Energy Co*., 500 Mich 158, 173; 895 NW2d 154 (2017). This Court has also emphasized that the primary question is 'whether the earlier decision was wrongly decided.' See *North American Brokers, LLC v. Howell Public Schools*, 502 Mich 882; 913 NW2d 638, 641 (2018) (McCormack, CJ, concurring) (citing *Robinson v. City of Detroit*, 462 Mich 439, 464–66; 613 NW2d 307, 320–21 (2000)).

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(1) Whether reliance would work an undue hardship if overruled.

The question is "whether the previous decision has become so embedded, so accepted, so fundamental, to everyone's expectations that to change it would produce not just readjustments, but practical real-world dislocations." *Coldwater*, 500 Mich at 173 (citations omitted). *Carpenter* may produce readjustments, but not "practical real-world dislocations." Virtually no caselaw has developed beyond or relied upon *Carpenter* substantively. In fact, despite the caselaw touching on other areas[5] of diminished capacity evidence, the Chief Prosecutor in the instant case has continued to incorrectly assert *Carpenter* in opposition to Defendant-Appellant's expert witnesses, challenge to custodial interrogation, perception under his self-defense claim, and other areas of diminished capacity evidence that is not controlled by *Carpenter*. In that regard, overruling *Carpenter* would not only cure a wrongfully decided case but also relax the tension between *Carpenter* and the legal areas in which evidence of diminished capacity remains admissible.

(2) Whether changes in the law or facts no longer justify the decision.

The Court need look no further than the three opinions of the psychologists who assessed Cinecca Madison to see the conflict between the *Carpenter* decision and what we know about mental health and brain science more than twenty years later. See also *Miller v. Alabama*, 567 US 460 (2012) where the United States Supreme Court discussed advancements in mental health and brain science. See also the *Tyson* amicus brief by the APA dated April 21, 2023, titled Brief Amici Curiae Of The American Psychological Association; The Michigan Psychological Association; And The National Association Of Social Workers, Including Its Michigan Chapter.

(3) Whether the decision defies practical workability.

"[A] rule of decision defies practical workability if it has proved difficult to apply or implement." *In re Ferranti*, 504 Mich 1, 26; 934 NW2d 610 (2019). The *Carpenter* rule is both wrong and unworkable, as well as wrong and workable. But in any event wrong. On the one hand it is wrong and unworkable because it prohibits raising a defense in defiance of due process, while confusing other areas in which evidence of diminished capacity is admissible (example *supra*). On the other hand, it is workable in that it has readily been applied and resulted in the defense not being raised in the trial courts for twenty years. But it is wrong.

[5] *People v. Yost,* 278 Mich App 341; 749 NW2d 753 (2008); *People v Daoud,* 462 Mich 621, 614 NW2d 152 (2000); *Miller v Alabama*, 567 US 460 (20120; *Montgomery v Louisiana*, 577 US 190 (2016); *People v Parks,* 510 Mich. 225 (2022) and *People v. Orlewicz*, 293 Mich. App. 96, 102; 809 N.W.2d 194 (2011).

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CONCLUSION

Defendant-Appellant concludes that *People v Carpenter* is wrongly decided and should be overruled despite the principal of stare decisis. Defendant-Appellant requests that the Court overrule *People v Carpenter* and grant Defendant-Appellant the requested relief in his Application.

Date: January 5, 2025

Respectfully submitted,



Christopher M. Wirth (P70174)
CORE LEGAL PLC
250 Monroe Ave. NW, Ste. 400
Grand Rapids, MI 49503
(616) 855-2145

*According to the word count of the word-processing system used to prepare this Defendant-Appellant's Supplemental Brief Submitted Pursuant To The Court's Orders Dated October 30, 2024 And December 11, 2024 this document contain 3,683 words.