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State of Michigan

In the Supreme Court

People of the State of Michigan,

Plaintiff-Appellee,

v

Cinneca Daquan Madison,

Defendant-Appellant.
_____/

Michigan Supreme Court: **167120**

Court of Appeals: 369559

Ottawa County Circuit Court:
Case No.: 22-045611-FC

Honorable Karen J. Miedema

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Plaintiff-Appellee's Supplemental Brief in Opposition to Defendant-Appellant's Application for Leave to Appeal (interlocutory)

Prepared by the Office of the Ottawa County Prosecuting Attorney: February 26, 2025

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Order Appealed from and Relief Sought

Defendant-Appellant sought leave to appeal the Court of Appeals' May 10, 2024 order that denied Defendant-Appellant's Application for leave to appeal for failure to persuade the Court of Appeals of the need for immediate appellate review. On July 5, 2024, this Honorable Court directed Plaintiff-Appellee to answer Defendant-Appellant's Application for Leave to Appeal. Having received Plaintiff-Appellee's answer, on October 30, 2024 this Honorable Court granted Defendant-Appellant's motion to stay the trial court proceedings, directed oral argument on Defendant-Appellant's Application and directed the Parties to file supplemental briefs addressing two questions:

1. Was *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001) correctly decided by this Court?

People v Carpenter was correctly decided by this Honorable Court and should not be overruled. In *Carpenter*, the Court analyzed the statutory scheme enacted by the Legislature, as it was necessary to resolve the issue raised by the defendant—whether the Legislature intended the defendant to carry the burden of proof in a diminished capacity defense—and concluded that the Legislature intended to restrict any defense based on mental illness or mental retardation (*current version of the statute uses the term "intellectual disability" instead of "mental retardation"*) to that approved of by the statutory scheme. Thus, the burden is on the defendant to establish by a preponderance of the evidence that, as a result of mental illness or intellectual disability, as defined in the Mental Health Code, they lacked "substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or 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 (1), (3).

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The holding that a defense based on mental illness (*including mental illness that reduces one's capacity to possess specific intent*) must be pursued under MCL 768.21a as legal insanity, should be retained. The interpretation of the statutory scheme by the Court in *Carpenter* is a rational application of the statutes passed by the Legislature in 1975 and 1994. The case law established over the past twenty-four (24) years has shown this is a workable scheme and does not run afoul of the public policy chosen by the Legislature to address the treatment of mentally ill or intellectually disabled offenders accused of crime, whether they be convicted or acquitted.

2. If *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001) was not correctly decided by this Court, should it nonetheless be retained under the principle of *stare decisis*?

Should this Court believe that *Carpenter* was not correctly decided, the decision should nonetheless be retained under the principle of *stare decisis*. *Carpenter's* statutory interpretation was rational and coherent. The ruling has not defied practical workability over the past twenty-four (24) years, and the Legislature has not seen fit to alter the Court's application of the statutory scheme. While undue hardship resulting from a change of course would not be insurmountable, there is no reason to supplant *Carpenter* with a new interpretation. Where the statutory scheme does not violate Constitutional rights, the Court should leave it to the Legislature to enact or alter laws based on considerations of public policy. Additionally, a defendant may introduce evidence that they suffered under a mental illness or mental deficiency that explained their behavior at the time of the offense, as applied by the Court of Appeals in *People v Yost*, 278 Mich App 341; 749 NW2d 753 (2008). This Court should not upset the rational, coherent, and workable statutory scheme that exists under current law.

Accordingly, for the reasons discussed *infra*, the People of the State of Michigan respectfully request this Honorable Court deny leave to appeal.

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Statement of Questions Presented

Question I

Was *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001) correctly decided by this Court?

Plaintiff-Appellee's Answer: Yes.

Defendant-Appellant's Answer: No.

Question II

If *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001) was not correctly decided by this Court, should it nonetheless be retained under the principle of *stare decisis*?

Plaintiff-Appellee's Answer: Yes.

Defendant-Appellant's Answer: No.

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Statement of Facts

A. *Introduction*

On June 1, 2022 at approximately 10:20 pm, Antory "Tory" Burrell was shot from behind by Defendant four (4) times while riding a bicycle and listening to music. He was pronounced dead at the scene. The second victim, Demontae "Montae" Knight was also shot from behind by Defendant five (5) times while riding a bicycle with Tory and listening to music. Montae was able to crawl to a tree where he pretended that he was dead. Montae suffered serious injury requiring extensive surgery, but he survived. He thought he heard eight or nine gunshots. [PE 10-20-2022 at 26-28, 32-33].

Tory had a gun tucked in his waistband, as he typically did, but he never pulled it out that day. [PE 10-20-2022 at 18, 24, 30, 44]. Anticipated trial testimony will support that although the police found a gun on Tory as he was deceased laying in the middle of the road still tangled in the bicycle he was riding, it was found held securely within the waistband of his pants and underwear.

After the initial shooting, Montae saw Defendant walk up to Tory lying motionless in the road and shoot him again. [PE 10-20-2022 at 28-29]. Defendant rushed away from the scene. [PE 10-20-2022 at 30].

Defendant and both victims knew each other and didn't have any "bad blood", but they were not close. [PE 10-20-2022 at 14-15, 38]. Anticipated trial testimony is that Defendant told police he was not in any argument with either victim and in fact was comfortable with them to the point of joining them for a walk that evening and following them around for approximately one to one and half (1 to 1 ½) hours.

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Defendant even waited outside Montae's house for approximately five (5) minutes while Montae and Tory went inside as they were not comfortable letting Defendant inside the home. [PE 10-20-2022 at 19-20]. There will be no evidence presented that Tory used or even displayed a gun to anyone at any time that evening. Even Defendant told the police he never saw any gun and he was never threatened by either victim.

Prior to the initial shooting, Defendant asked Montae if he had a gun on him and Montae told Defendant he did not. [PE 10-20-2022 at 17]. There is no evidence Montae ever possessed a weapon of any kind that evening.

Anticipated trial testimony is 1) at no time during his police interviews did Defendant admit to possessing a weapon much less firing and shooting the weapon; and 2) the gun Defendant used that night was owned by his mother and Defendant returned it to their home where she kept it.

It is not disputed that Defendant participated in a jail phone call with a female and told her that he saw [Tory] "clutching" it [the gun] in a threatening manner and that he heard [Montae] say "get em". [Def MSC App for Lve at 10]. And "from the onset of this case, the defense has argued that Defendant's account of the circumstances forcing him to defend himself are true, *or true to him.* (emphasis added). [Def MSC App at 17].

Defendant is afflicted with mental illness. He has not filed a notice of insanity defense. This is likely because Defendant has been forensically evaluated by a psychologist at the Forensic Center (Dr. Michele Hill) and by a psychologist of Defendant's choosing (Dr. Jeffrey Kieliszewski) and both have concluded that Defendant was not legally insane at the time he committed the crimes and was criminally responsible for his actions. (See Def. Exh 4, Dr.

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Michele Hill's Report (12-29-2022) and addendum (03-23-2023) as well as Def. Exh 5, Dr. Jeffery T. Kieliszewski's Report (10-06-2023).

Defendant was also evaluated by another psychologist of Defendant's choosing (Dr. Michael Wolff). (See Def. Exh. 6, Dr. Wolff's Report (03-02-2024) and his addendum (05-16-2024). The first report addresses Defendant's intellectual disabilities. The purpose of the addendum was to address defense counsel's request for Dr. Wolff's opinion on human behavior in the context of 1) making a false statement to law enforcement and 2) perceptions of danger.

Defendant's intended defense, based on his motions and briefings, appears to be that because of his mental illness he lacked the requisite *mens rea* to be convicted of open murder and assault with intent to commit murder. In other words, his intent to commit the crimes was diminished due to his mental illness *(i.e. "diminished capacity")* —a defense not recognized in Michigan pursuant to *People v Carpenter*, thus his appeal to this Court where he is relying heavily on both the concurring and dissenting opinion in *People v Tyson*, 511 Mich 1080; 992 NW2d 293 (2023). Alternatively, he argues that he acted in self-defense. There is no evidence of self-defense beyond the jail call between Defendant and the female, which is inadmissible hearsay unless Defendant testifies. MRE 801.

Significantly, *even considering Defendant's mental illness*, it did not justify his actions in murdering the victim, or assaulting with intent to murder the other victim. The evaluations prepared by all three (3) of the psychologists did not indicate that Defendant has a diminished capacity that would prevent him from acting with specific intent. For example, even if Defendant knew that the murder victim typically carried a handgun, and even if Defendant believed he heard the victims whispering to each other saying "get em"—neither of these beliefs diminished his ability to act intentionally (i.e. shoot them) and certainly would not support a self-

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defense claim (i.e. he would have had a duty to retreat, was illegally possessing a handgun *and* he shot both the victims from behind).

B. *Reports of Defendant's mental illness—not legally insane,* [previously discussed in Plaintiff-Appellee's Brief in Opposition to Defendant-Appellant's Application for Leave to Appeal and are not repeated in this Supplemental Briefing].

1. Dr. Michele Hill (12-29-2022) report
2. Dr. Michele Hill (03-23-2023) addendum
3. Dr. Jeffrey T. Kieliszewski (10-06-2023) report

C. *Reports of Defendant's mental illness,* discussed [previously discussed in Plaintiff-Appellee's Brief in Opposition to Defendant-Appellant's Application for Leave to Appeal and are not repeated in this Supplemental Briefing].

1. Dr. Michael Wolff (03-02-2024) report
2. Dr. Michael Wolff (05-16-2024) addendum

D. *Defendant's Charges and Appeal*

On June 3, 2022, Defendant was charged with Count 1: Homicide—Open Murder of Antory Burrell (statutory short form) pursuant to MCL 750.316; Count 2: Assault with Intent to Murder Demontae Knight pursuant to MCL 750.83; and Counts 3 and 4, Felony Firearm pursuant to MCL 750.227b.

On January 10, 2024, the Trial Court denied Defendant's motion to present evidence of his mental illness stating:

> "Defendant apparently wishes to assert that he lacked the *mens rea* required to convict him of first-degree murder due to his mental illness. By extension, he also wishes to assert that the mental illness provoked him to act as required to convict him of the lesser-included

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> offense of manslaughter, and negating the malice requirement for a murder conviction … Because defendant does not meet the definition of legal insanity, he is prohibited from presenting evidence of his mental illness to negate the specific intent elements of the charged crimes or reduce his criminal responsibility… Defendant's request to admit evidence of diminished capacity and mental disturbance is denied." (See Def Exh. 1 Trial Court Order).

On May 10, 2024, the Court of Appeals denied Defendant's interlocutory appeal on these issues for failure to persuade the Court of the need for immediate appellate review. (See Def. Exh. 2, Court of Appeals order, 05-10-2024). Defendant filed an interlocutory appeal with this Court and on July 5, 2024 and this Court directed Plaintiff-Appellee to answer Defendant's Application for Leave to Appeal the May 10, 2024 order of the Court of Appeals. In his Application, Defendant-Appellant argued (1) that the Court of Appeals erred in denying immediate appellate review; (2) that *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001) was wrongly decided; and (3) that Defendant-Appellant should be permitted to present evidence of diminished capacity to the jury with related jury instructions on *mens rea*, and "perception" regarding self-defense. These arguments were fully addressed in Plaintiff-Appellee's Brief in Opposition to Defendant-Appellant's Application for Leave to Appeal.

Having received Plaintiff-Appellee's answer, on October 30, 2024 this Honorable Court granted Defendant-Appellant's motion to stay the trial court proceedings, directed oral argument on Defendant-Appellant's Application and directed the Parties to file supplemental briefs.

Plaintiff-Appellee now addresses the particular issues raised by the Court in its October 30, 2024 order. Supplemental briefing was directed regarding two (2) questions:

1. Was *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001) correctly decided by this Court?

2. If *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001) was not correctly decided by this Court, should it nonetheless be retained under the principle of *stare decisis*?

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ARGUMENT I

People v Carpenter, 464 Mich 223; 627 NW2d 276 (2001) was correctly decided by this Court.

Discussion:

Defendant has raised the issue of statutory interpretation of the insanity defense statute. MCL 768.20a. His argument that *Carpenter* was not correctly decided relies primarily on the dissenting opinion in *People v Tyson*, 511 Mich 1080; 992 NW2d 293 (2023).

In 2001, the *Carpenter* Court interpreted the insanity defense statute by analyzing it along with other related statutes and previous caselaw. The interpretation and application of a statute presents a question of law that is reviewed de novo. *People v Zajaczkowski*, 493 Mich 6, 12; 825 NW2d 554 (2012).

"The cardinal rule of statutory construction is to discern and give effect to the intent of the Legislature." *People v Dowdy*, 489 Mich 373, 379; 802 NW2d 239 (2011) (citation omitted); *People v Bylsma*, 493 Mich 17, 26; 825 NW2d 543 (2012). The intent of the Legislature is expressed in the statute's plain language. *People v Cole*, 491 Mich 325, 330; 817 NW2d 497 (2012).

"The Legislature is presumed to act with knowledge of appellate court statutory interpretations, and silence by the Legislature for many years following judicial construction of a statute suggests consent to that construction." *People v Higuera*, 244 Mich App 429, 436; 625 NW2d 444 (2001) (citations omitted). When the construction of two statutes or provisions lends themselves to a construction that avoids conflict, that interpretation of the provisions is controlling. *People v Ellis*, 224 Mich App 752, 756; 569 NW2d 917 (1997). Statutes that relate to the same matter are considered to be in *pari materia*. *People v Perryman*, 432 Mich 235, 240; 439 NW2d 243 (1989). "Statutes that address the same subject or share a common purpose are *in*

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pari materia and must be read together as a whole." *People v Harper*, 479 Mich 599, 621; 739 NW2d 523 (2007) (emphasis in original). The general rule of in *pari materia* requires courts to examine the context of related statutes. *Id.*

Consistent with this general rule, the *Carpenter* Court considered the interplay between the several statutes through which the Legislature addressed the treatment of mentally ill or intellectually disabled defendants, including consideration of when their mental illness or intellectual disability would provide a defense or excuse for their criminal conduct.

This Court directed the Parties to answer whether *Carpenter* was correctly decided. Yes, *Carpenter* was correctly decided as its interpretation of the insanity statute was rational, coherent and correct.

The diminished-capacity defense was first recognized by the Michigan Court of Appeals in *People v Lynch*, 47 Mich App 8, 208 NW2d 656 (1973); see *Carpenter*, 464 Mich at 233. At the time, the Michigan test for legal insanity asked "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?" *People v Martin*, 386 Mich 407, 418; 192 NW2d 215 (1971); see *Carpenter*, 464 at 234 n 7. Based on this expression of the common law, the Court of Appeals rejected the view "that mental capacity is an all or nothing matter that only insanity … negates criminal intent." *Lynch*, 47 Mich App at 20, and held that a defendant may present relevant psychiatric "testimony bearing on intent," which is "sometimes called proof of diminished or partial responsibility." *Id* at 20-21.

Two years later, in 1975, the Legislature codified the insanity defense through enactment of 1975 PA 179 and 180; see MCL 330.1400a (defining "mental illness"); MCL 330.1100b (defining "intellectual disability"); MCL 768.20a (procedural requirements for defendant to

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pursue insanity defense); MCL 768.21a (legal insanity defined); and MCL 768.36 (creating verdict of "guilty but mentally ill" and resulting treatment). These statutory enactments amended the insanity defense by defining mental illness; expressing the manner and procedure in which mental illness or intellectual disability can excuse a defendant from criminal liability; and how the law treats a defendant whose insanity defense is rejected and defendant is found guilty, but is also found to suffer from a mental illness or intellectual disability. As explained by Chief Justice Taylor in *People v Shahideh*, 482 Mich 1156, 1163-1164; 758 NW2d 536 (2008) (Taylor, CJ, concurring), the legislative action was meant to clarify the manner in which a defendant's mental deficiencies or capacity might present a defense for their criminal acts.

As Chief Justice Taylor explained:

> In response to the public outcry and perceived problems with the insanity defense, the Legislature enacted sweeping revisions to the Mental Health Code and the Code of Criminal Procedure. 1975 PA 179, 180. In particular, the Legislature:
>
> (1) adopted a statutory definition of insanity based on § 4.01 of the Model Penal Code,
>
> (2) created the guilty but mentally ill verdict,
>
> (3) required the guilty but mentally ill verdict to be an option every time the insanity defense was raised,
>
> (4) enacted a statute preventing an individual from claiming insanity because he or she was under the influence of voluntarily consumed alcohol or drugs at the time of the alleged offense, MCL 768.21a,
>
> (5) enacted a statute requiring that the jury be instructed regarding the law before trial starts whenever an insanity defense is presented, MCL 768.29a(1), and
>
> (6) required that a defendant who wishes to pursue an insanity defense serve written notice on the court and the prosecutor not less than 30 days before trial and submit to a court-ordered examination, relating to the claim of insanity, by personnel for the Center for Forensic Psychiatry or other qualified personnel. MCL 768.20a.
>
> Given the vastness of these legislative substantive and procedural changes, one can see why *People v Carpenter,* 464 Mich 223, 237; 627 NW2d 276 (2001), concluded

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> that the Legislature had established a "comprehensive statutory framework" that determines "when mental incapacity can serve as a basis for relieving one from criminal responsibility." *[Shahideh*, 482 Mich at 1161–1163 (Taylor, CJ, concurring) (footnotes omitted).]

The insanity defense is codified under MCL 768.21a, which provides, in relevant part:

> 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 …MCL 330.1400, or as a result of having an intellectual disability as defined in … 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.
>
> 2) ***
>
> 3) The defendant has the burden of proving the defense of insanity by a preponderance of the evidence.

"Mental illness" is defined in the Mental Health Code, MCL 330.1400(g), as "a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life." See *People v Mette*, 243 Mich App 318, 325; 621 NW2d 713 (2000).

"Intellectual disability" is defined to mean "a condition manifesting before the age of 18 years that is characterized by significantly subaverage intellectual functioning and related limitations in 2 or more adaptive skills …" MCL 330.1100b.

At the same time the Legislature codified the insanity defense, it created a manner for treating one who suffers from a mental illness but who is not legally insane at the time they commit a crime for which they are found guilty.

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Pursuant to MCL 768.36:

1) If the defendant asserts a defense of insanity in compliance with section 20a, the defendant may be found "guilty but mentally ill" if, after trial, the trier of fact finds all of the following beyond a reasonable doubt:

   a) That the defendant is guilty of an offense.

   b) That the defendant was mentally ill at the time of the commission of that offense.

   c) That the defendant was not legally insane at the time of the commission of that offense.

The *Carpenter* Court recognized "a wide divergence of views among states concerning the admissibility of evidence of mental illness short of insanity." *Carpenter* at 236, citing 1 Robinson, Criminal Law Defenses, § 64(a), p 272-279.

As was true when the Court decided *Carpenter* in 2001, the Michigan Legislature has never recognized diminished capacity as a defense to any crime. In the 1975 amendments, the Legislature codified the insanity defense, modeling MCL 768.21a(1) after section 4.01(1) of the ALI's Model Penal Code. *People v Jackson*, 245 Mich App 17, 19; 627 NW2d 11 (2001).

As noted by the Court of Appeals in *Jackson*:

MPC § 4.01(1) reads:

> A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease ... he lacks substantial capacity either to appreciate the ... wrongfulness of his conduct or to conform his conduct to the requirements of the law.

Michigan first adopted a statutory test of insanity modeled on the MPC test in 1975. 1975 PA 180. That test reads as follows:

> A person is legally insane if, as a result of mental illness ... that person lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law. [*Jackson*, 245 Mich App at 19 n 1.]

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Even before 1975, the very next section of the Model Penal Code, 4.02(1), set forth a model for the diminished capacity defense. See *People v Lynch*, 47 Mich App 8, 21 n 12; 208 NW2d 656 (1973). In *Lynch*, 47 Mich App at 21 n 12, when recognizing the diminished capacity defense for the first time, the Court of Appeals noted that the ALI, Model Penal Code, § 4.02(1) provided:

> '(I) Evidence that the defendant suffered from a mental disease or defect shall be admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense.'

Yet, as noted by the United States Supreme Court in *Metrish v Lancaster*, the Michigan Legislature has never adopted nor enacted the Model Penal Code embodiment of the diminished capacity defense. *Metrish v Lancaster*, 569 US 351, 366; 133 S Ct 1781; 185 L Ed 2d 988 (2013), citing ALI, Model Penal Code §4.02(1) pp 216-217 (1985). Thus, while the Legislature chose to enact comprehensive legislation related to crimes committed by mentally ill defendants by establishing legal insanity as a statutory defense (MCL 768.21a) using MPC § 4.01(1) as its model, they did not go the step further to adopt and enact § 4.02(1) involving the defense of diminished capacity.

Following the 1975 statutory enactments, in *People v Mangiapane*, 85 Mich App 379, 395; 271 NW2d 240 (1978), the Court of Appeals held that the diminished capacity defense came "within the codified definition of legal insanity." As such, a defendant asserting diminished capacity would have to establish that their mental illness or intellectual disability prevented them from possessing 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." MCL 768.21a(1). The Court of Appeals provided that a defendant

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could pursue a diminished capacity defense ---alleging their mental illness prevented them from forming specific intent –as long as they comply with the requirements of the statute. *Mangiapane*, 85 Mich App at 395. Presumably, this would include providing notice, submitting to a psychological examination, the jury being instructed as to legal insanity, and the availability of verdicts including guilty but mentally ill, and not guilty by reason of insanity. See *id*, citing MCL 768.20a, MCL 768.21a, and MCL 768.36.

In 1994, the Legislature amended the statutory scheme to clarify that the defendant carries the burden of proof to establish legal insanity by a preponderance of the evidence. 1994 PA 56; MCL 768.21a(3). The Legislature again did not mention, much less enact, a diminished capacity affirmative defense. Nevertheless, because diminished capacity was understood by the Court of Appeals to fall under the statutory scheme, the court held that the defendant had the burden of proof to establish the defense in compliance with the statute, MCL 768.21a(3); *People v Mette*, 243 Mich App 318, 324-325, 330; 621 NW2d 713 (2000); see *Carpenter*, 464 Mich at 235.

It is in this setting that the defendant in *Carpenter* argued on appeal that MCL 768.21a(3) (which required him to establish his legal insanity by a preponderance of the evidence), was unconstitutional as it relieved the prosecution of its burden to prove the *mens rea* element of the offense beyond a reasonable doubt. In analyzing the interplay between the statutes and the asserted affirmative defense of diminished capacity, the Court necessarily had to interpret the statutory scheme and to determine and effectuate the intent of the Legislature.

The *Carpenter* Court noted that following *Mangiapane*, the Court of Appeals continued to address diminished capacity as a form of the statutory insanity defense. *Id* at 235. Therefore, in *Carpenter*, the Court of Appeals had held that when the defendant sought to present a

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diminished capacity defense, he bore the burden of establishing the defense by a preponderance of the evidence under MCL 768.21a(3). The defendant in *Carpenter* challenged that burden on appeal, "arguing that nothing in the language of § 21a suggests a legislative intent to place on defendants the burden of proving diminished capacity." 464 Mich at 235.

In examination of the relevant statutes, the Court in *Carpenter* held that the comprehensive legislative framework had "conclusively determined when mental incapacity can serve as a basis for relieving one from criminal responsibility," creating an all-or-nothing insanity defense. *Id* at 236, 237. Thus, defendants could not invoke the diminished-capacity defense, as that defense was not encompassed within the "comprehensive statutory scheme. *Id* at 236. The Court noted that the statutory scheme further encompassed the consequences to a person who is mentally ill, or with an intellectual disability, yet not legally insane. With creation of the guilty but mentally ill verdict, MCL 768.36, such a person "may be found 'guilty but mentally ill,'" but the legislature had foreclosed the use of "evidence of mental incapacity short of insanity . . . to avoid or reduce criminal responsibility by negating specific intent." *Carpenter*, 464 Mich at 237.

Paraphrasing, Defendant here argues that the insanity statute does not apply to his case (which involves mental illness and/or intellectual disability). To support his argument, he states a) that the opening sentence of MCL 768.21a says what the affirmative defense does apply to: only defendants who are presenting the affirmative defense *of legal insanity* (not all defenses---such as his defense of diminished capacity) and b) that the closing sentence ends with the words ("… of *legal insanity*.") which is a reiteration of the opening sentence which only applies to defendants who are presenting the affirmative defense *of legal insanity*. Because of this, he argues that the Legislature did not intend to funnel *all* mental illness through the insanity statute

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(i.e. his mental illness and/or intellectual disability) because if they intended to, they would not have written the statute as they did. As such, he should be able to present evidence to negate the *mens rea* element of the offense. Clearly, the *Carpenter* Court was aware of this verbiage, took it into account and still concluded the insanity statute was intended to be a comprehensive scheme in which Defendant must comply regardless of Defendant's argument here. Notably, Defendant followed the process outlined in the insanity statute, and, after being evaluated by three (3) separate experts, he was determined by all three (3) of them not to be legally insane. If this Court were to agree with Defendant that the insanity statute does not apply to him (i.e. overrule *Carpenter*), it would effectively allow Defendant to present his mental illness/intellectual disability without any of the procedural requirements (i.e. notice to the prosecution), among many others. The circumvention of the insanity statute under Defendant's analysis is not logically what the Legislature intended and was so concluded by the *Carpenter* Court.

Defendant further argues that *Carpenter* should be overturned because he is also asserting a self-defense claim. As such, he not only should be able to put before the jury information about his mental illness and/or intellectual disability to negate the *mens rea* of the principle offense(s) but also because whether the use of force is reasonable in a claim of self-defense "depends on what an ordinarily prudent and intelligent person would do on the basis of ***perceptions*** of the actor." *People v Orlewicz*, 293 Mich App 96, 102; 809 NW2d 194 (2011). "At a minimum, Defendant wants to be able to present his history, and psychological and cognitive circumstances to the jury as they relate to his perception and the formation of his belief that he was in danger warranting self-defense. And, that the jury receive an instruction on perception, that includes the ***subjective*** perception of the Defendant based upon his psychological

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circumstances, when considering the standard for self-defense." [Def App for Lve at 17]. [emphasis added]. His pursuit of this argument is obvious.

> Regarding Self-Defense,
>
> As a general rule, the killing of another person in self-defense by one who is free from fault is justifiable homicide if, under all the circumstances, he honestly and reasonably believes that he is in imminent danger of death or great bodily harm and that it is necessary for him to exercise deadly force. The necessity element of self-defense normally requires that the actor try to avoid the use of deadly force if he can safely and reasonably do so, for example by applying nondeadly force or by utilizing an obvious and safe avenue of retreat. *People v Bailey, Jr.*, 485 Mich 1083; 777 NW2d 424 (2010) citing *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002).
>
> In addition to these general concepts, the Supreme Court emphasized in *Riddle* that "a person is *never* required to retreat from a sudden, fierce, and violent attack; nor is he required to retreat from an attacker who he reasonably believes is about to use a deadly weapon." *Id.* (emphasis in original). "[A]s long as he honestly and reasonably believes that it is necessary to exercise deadly force in self-defense, the actor's failure to retreat is never a consideration," and "he may stand his ground and meet force with force." *Id. See also* M Crim JI 7.15 (Use of deadly force in Self-defense).

The standard requires an <u>*objectively*</u> honest and reasonable belief that it is necessary to exercise deadly force.

> "Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt." *People v Elkhoia*, 251 Mich App 417, 443; 651 NW2d 408 (2002). *See also* M Crim JI 7.20 (Burden of Proof-Self Defense).

The murder Victim was shot in front and in back. The other Victim was shot in front and in back. The three (3) experts who evaluated Defendant found him to be legally sane. Defendant self-reported to one (1) of the experts of a scenario where Defendant "perceived" he was acting in self-defense. The existence of Defendant's ***perceptions*** of what he believed was true at the time he murdered one Victim and injured the other Victim, is entirely subjective and is not the standard. Overturning *Carpenter* and allowing Defendant to present this information to

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the jury (which is clearly outside the bounds of the insanity statute) would not only change the standard but would also leave the prosecution with no way to meet its burden of proving Defendant was *not* acting in self-defense. Proving subjective intent is much like trying to "prove a negative"—impossible. And, what Defendant describes here is an insanity defense.

As noted by the Supreme Court in *Metrish v Lancaster*, 568 US 351, 366, 368; 133 S Ct 1781; 185 L Ed 988 (2013), this [*Carpenter* Court analysis] was not an unreasonable statutory interpretation. Although the Court was addressing only whether *Carpenter's* rejection of the diminished capacity defense could be constitutionally applied retroactively to a defendant whose crime was committed prior to that pronouncement, the Supreme Court nevertheless commented more than once that the statutory interpretation was "reasonable." See *Metrish*, 586 US at 366, 368.

To the extent that the *Carpenter* Court interpreted the Legislature's codification of the insanity defense to apply to all defenses based upon mental illness or intellectual disability, the Court correctly held that the statutory scheme precluded a defendant from asserting a diminished capacity defense *outside the bounds of MCL 768.21a*. The argument that a defendant lacked the mental capacity to form specific intent due to mental illness or intellectual disability is really another way of asserting that the defendant lacked the ability to appreciate the wrongfulness of his actions or conform his conduct to the requirements of the law. Legal insanity.

By enacting a comprehensive treatment of mental illness, including notice, evaluation, and post-trial treatment, *Carpenter's* holding that the Legislature intended to establish an all-or-nothing insanity defense is logical and coherent.

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It is the job of the Court to apply the law (i.e. statutes) as written when its meaning is clear. If a statute is unclear, the Court can interpret the statute as the Court understands the intended meaning of the statute to be and then apply it to the case at hand.

Here, the *Carpenter* Court, determined that the comprehensive scheme established by the Legislature in the 1975 legal insanity statute was intended to be the sole means by which a defendant could assert an insanity defense (which includes a "diminished capacity" defense). And, perhaps a Court in 2025 may not agree with the 2001 *Carpenter* Court. However, a difference of opinion between the two (2) Courts does not mean that the *Carpenter* Court got it wrong. All it means it that the two (2) Courts disagree on how the statute should be interpreted. The *Carpenter* Court appropriately did its job of analyzing the insanity statute, other related statutes and the caselaw and determined the insanity statute was the *sole* means by which a defendant could assert an insanity defense. The judicial branch operates under the principle of *stare decisis*, discussed *infra*, and to overrule *Carpenter* would require this Court to find that *Carpenter's* holding was wrong. Which it was not. This Court should not disturb this reasonable interpretation of legislative intent, even if the present Court would have decided the matter differently.

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ARGUMENT II

If *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001) was not correctly decided by this Court, it should nonetheless be retained under the principle of *stare decisis*.

Discussion:

Defendant argues that *Carpenter* was not correctly decided and should be overruled *irrespective* of stare decisis. The People respectfully disagree.

The statutory interpretation and holding from *Carpenter* should be retained under the principle of *stare decisis* even if this Court determines that the *Carpenter* Court got it wrong.

"That a case was wrongly decided, by itself, does not necessarily mean that overruling it is appropriate." *Coldwater v Consumers Energy Co.*, 500 Mich 158, 172; 895 NW2d 154 (2017), citing *Robinson v Detroit*, 462 Mich 439, 465; 613 NW2d 307 (2000). "Indeed, under the doctrine of *stare decisis*, principles of law deliberately examined and decided by a court of competent jurisdiction should not be lightly departed." *Id* at 172 (cleaned up). "'However, *stare decisis* is not to be applied mechanically to forever prevent the Court from overruling earlier erroneous decisions determining the meaning of statutes.'" *Id* at 173, quoting *Robinson*, 462 Mich at 463. The Court noted in *Robinson* that "the Court is not constrained to follow precedent when governing decisions are unworkable or badly reasoned." 462 Mich at 464. The People would emphasize, however, that where a governing decision is not unworkable or badly reasoned, the preferred course is to follow the application of *stare decisis*. See *Id* at 463, citing *Hohn v United States*, 524 US 236, 251; 118 S Ct 1969; 141 L Ed 2d 242 (1998) (*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."); *Smith v Allwright*, 321 US 649, 655; 64 S Ct 757; 88 L Ed 987 (1944).

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In *Robinson*, the Court suggested four factors that should be considered when determining whether to overturn a previous decision involving statutory interpretation: (1) whether the prior decision was wrongly decided; (2) whether the decision defies practical workability; (3) whether reliance interests would work an undue hardship should the decision be overruled; and (4) whether changes in the law or facts no longer justify the decision. *Robinson*, 462 Mich at 464; see *Coldwater*, 500 Mich at 173.

FACTOR 1: *Carpenter* was **not wrongly decided**.

The crux of Defendant's argument is that insanity statute does not apply to his case (which involves mental illness and/or intellectual disability) and that the *Carpenter* Court got it wrong when it concluded that "diminished capacity" cases are governed by the statutory framework of the insanity statute. Defendant has failed to establish that *Carpenter's* statutory interpretation was wrong. He simply points to the dissent in *Tyson* and agrees with it.

Shortly after the Court of Appeals had recognized a diminished capacity affirmative defense, the Legislature enacted the statutory insanity defense, modeling MCL 768.21a(1) after section 4.01(1) of the Model Penal Code and not including the very next section encompassing diminished capacity, discussed *supra*.

The statutory scheme created the verdict of guilty but mentally ill and provided for treatment of those suffering from mental illness whether they are convicted as guilty but mentally ill or acquitted through application of the insanity defense as not guilty by reason of insanity. At no time has the Legislature indicated an intension to allow mental illness short of insanity to act as a defense to crime. And the holding in *Carpenter*, 464 Mich at 226, that, "by enacting a comprehensive statutory scheme setting forth the requirements for and the effects of

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asserting a defense based on either mental illness or [intellectual disability], the Legislature has signified it intent not to allow a defendant to introduce evidence of mental abnormalities short of legal insanity to avoid or reduce criminal responsibility by negating specific intent" is a coherent interpretation of the intended effect of the various statutes enacted through 1975 PA 179 and 180.

Defendant has failed to establish that this interpretation is incorrect. Aside from Defendant's arguments discussed *supra*, to the extent that Defendant's arguments involve an assertion that disallowing him to present the information about his mental illness/intellectual disability would be a due process violation of his right to present a complete defense, this Constitutional argument has been rejected by the Supreme Court in *Fisher v United States*, 328 US 463; 66 S Ct 1318; 90 L Ed 2d 1382 (1946) and *Clark v Arizona*, 548 US 735; 126 S Ct 2709; 165 L Ed 2d 842 (2006). Defendant's argument that disallowing a diminished capacity defense violates his due process right to present a complete defense, fails to acknowledge that a defendant who is unable to appreciate the wrongfulness of their own actions or conform to the requirements of the law, should they prove such to the finder of fact, will be acquitted. *Carpenter* does not preclude a defendant from introducing psychiatric evidence or expert testimony to assist the fact finder in understanding other evidence offered [with limitations]. See *People v Yost*, 278 Mich App 341, 355-358; 749 NW2d 753 (2008) (evidence of defendant's limited mental capacity offered to make fact of consequence to determination of guilt more or less probable, without being offered to directly negate specific intent element, is admissible and not barred by *Carpenter* even though touching on defendant's limited mental capacity).

Defendant has failed to establish that *Carpenter's* statutory construction is wrong. Absent establishing the first factor, the remaining three (3) factors have no application. See

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Robinson, 462 Mich at 465-466 (where prior case was wrongly decided, Court must proceed to the remaining factors). The Court should, therefore, not overrule *Carpenter*. However, the People will address the remaining factors.

FACTOR 2: The holding in *Carpenter* (that neither the Supreme Court nor the Legislature have recognized the diminished capacity defense) **is practical and workable**.

Carpenter does not defy practical workability. *Carpenter* has limited the admission of psychiatric evidence of a defendant's diminished capacity for over twenty-four (24) years. It is a practical and workable construction. While there is no defense based on diminished capacity in Michigan --- aside from a lack of capacity established through the insanity defense --- evidence of a defendant's limited mental capacity is still admissible in certain instances where relevant other than to negate specific intent. *Yost*, 278 Mich App at 355-356. Defendant disagrees with the policy of the statutory scheme creating an all-or-nothing defense based on mental illness or intellectual disability; but the *Carpenter* holding is not unworkable.

FACTOR 3: Overruling *Carpenter* **would create unnecessary hardship**.

In the event that this Court were to overrule *Carpenter*, there would be a great adjustment and new issues that would arise requiring resolution by the appellate courts. This Court certainly could resurrect the diminished capacity defense, but this would also recreate issues that preceded *Carpente*r. Which party would carry the burden of proof? And by what standard? Would a defendant be required to follow the notice and evaluation requirements of MCL 768.20a? Jury instructions would need to be resurrected or possibly updated. Can Defendant present to the jury evidence of his ***subjective perception*** when he asserts a self-defense claim? If so, does that mean

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that in addition to changing the standard from objective to subjective, the burden on the prosecution is also changed? Other issues unforeseen. It would commence a long period of adjustment to the change in the law. Is all this workable? Maybe. But it would cause a hardship to some extent. On balance, however, where the original decision is not an unreasonable interpretation, this factor would create problems *for the sake of re-interpreting the statutory scheme, not to correct an error but to impose a different but no more valid interpretation.* Thus, while probably not working an insurmountable hardship, it would be one that is undue.

FACTOR 4: **Changes in the facts and law** since the Court decided *Carpenter* do not merit a change based on factors better left for the Legislature to consider as a matter of public policy.

Changes in the facts and the law do not merit overruling *Carpenter*. Defendant makes passing reference to an argument that *Carpenter* essentially reflects an outdated understanding of what we now know about brain science. Considerations in the nature of scientific, medical, neurological, and psychological understandings are not the issue before the Court. The issue is the intent of the Legislature in enacting the comprehensive statutory scheme addressing Defendants who suffer from mental illness or intellectual disability. If changes in the understanding of mental illness or intellectual disability warrant a change in that statutory scheme, these matters should be addressed by the Legislature. The creation of mental health courts where prosecutors might offer non-violent, mentally ill defendants a diversion from the mainstream criminal justice system is one way mental illness is being addressed. The law and science both are ever-changing, but such changes do not invalidate the statutory construction made in *Carpenter*.

Carpenter was not wrongly decided. Even in this Court would have come to a different conclusion regarding the legislative intent embodied in 1975 PA 179 and 180, that does not

invalidate *Carpenter's* logical and coherent construction of the statutory scheme. On balance, even if this Court believes *Carpenter* was not correctly decided, the People urge this Court not to overrule the decision, as the factors expressed in *Robinson* and *Coldwater* do not merit it. The points Defendant raises would be better addressed to the Legislature to allow the opportunity to evaluate, debate, and enact legislation based on the "moral choice [of] the community." *Carpenter*, 464 Mich at 239.

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Conclusion

In 1975, the Legislature enacted a comprehensive statutory scheme for criminal defenses based on mental illness and intellectual disability, including required notice, evaluation, and post-trial treatment. *Carpenter's* holding that the Legislature intended to establish an all-or-nothing insanity defense is logical and coherent. The *Carpenter* Court was correct in its interpretation of the intent and effect of the statutory scheme.

Should this Court believe that *Carpenter* was wrongly decided, the decision should still not be overruled. *Carpenter's* statutory interpretation has not defied practical workability over the past twenty-four (24) years, and the Legislature has not seen fit to alter the Court's application of the statutory scheme. While undue hardship resulting from a change of course would not be insurmountable, there is no reason to supplant *Carpenter* with a new interpretation. Where the statutory scheme does not violate Constitutional rights, the Court should leave it to the Legislature to enact or alter laws based on considerations of public policy.

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Relief Requested

Wherefore, Sarah F. Matwiejczyk, Prosecuting Attorney in and for the County of Ottawa, by JoEllen Haas, Senior Assistant Prosecuting Attorney, respectfully requests that this Honorable Court DENY Defendant-Appellant's Application for Leave to Appeal the May 10, 2024 order of the Court of Appeals and REMAND this matter for Trial.

Respectfully submitted,

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Dated: February 26, 2025

Statement of Word Count

Pursuant to MCR 7.212(B)(3), the counter-statement of facts, argument, conclusion and relief section of this brief are comprised of approximately 7102 total countable words set in Times New Roman, and the text is 12-point type.