State of Michigan
In the Supreme Court

The People of the State of Michigan

Plaintiff-Appellee,

v.

Cinecca Daquan Madison

Defendant-Appellant.

MSC No. 167120

COA No. 369559

Ottawa County Circuit Court
Case No. 22-45611-FC

Amicus Curiae Brief

Criminal Defense Attorneys of Michigan

In support of Cinecca Daquan Madison

Criminal Defense Attorneys of Michigan

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Statement of the Questions Presented

First Question

Should this Court overturn its decision in *People v Carpenter* because the statutory interpretation was contrary to this Court's common law and the plain language of the relevant statutes?

CDAM Answers: "Yes."

Second Question

Should this Court overturn its decision in *People v Carpenter* because it was wrongly decided and the principles of stare decisis do not favor retaining the decision?

CDAM Answers: "Yes."

Statement of Interest of *Amicus Curiae*

Founded in 1976, the Criminal Defense Attorneys of Michigan ("CDAM") represents the interests of the criminal defense bar in a wide array of matters. With the support of hundreds of members, CDAM promotes expertise in criminal and constitutional law; educates the bench, bar, and public of the need for quality and integrity in defense services; and guards against erosion of the rights and privileges guaranteed by the United States and Michigan Constitutions and laws. In furtherance of this mission, CDAM regularly appears as Amicus Curiae in important precedent setting cases. MCR 7.312(H)(2) permits CDAM to file an amicus curiae brief without motion for leave from the Michigan Supreme Court. Here the Court invited CDAM to file an amicus brief. *People v Madison*, ___ Mich ___; 12 NW3d 440 (2024).

Statement of Facts

CDAM relies on the Statements of Facts provided by Mr. Madison in his briefing in this Court.

Focus of CDAM's Brief

CDAM addresses both questions outlined in this Court's order granting oral argument on the application: "(1) whether *People v Carpenter*, 464 Mich 223, 241 (2001) was correctly decided and, if not, (2) whether *Carpenter* should nonetheless be retained under principles of stare decisis, *Coldwater v Consumers* Energy Co, 500 Mich 158, 172-174 (2017)." *People v Madison*, ___ Mich ___; 12 NW3d 440 (2024). CDAM argues *Carpenter* was wrongly decided and should not be retained under principles of stare decisis.

Introduction

At least 23 percent of people incarcerated in the Michigan Department of Corrections have been diagnosed with a serious mental illness. Milton L. Mack, Jr., *Decriminalization of Mental Illness: Fixing a Broken System*, Conference of State Court Administrators at 3.[1] It is unsurprising, then, that the circumstances of many criminal convictions illustrate the influence of profound and debilitating mental illness. Consider Mr. William Jones, who was recently convicted of first-degree murder, home invasion, and related offenses. See *People v Jones*, unpublished per curiam opinion of the Court of Appeals, issued August 1, 2024 (Docket No. 362817). During a fit of paranoia, Mr. Jones fired shots out of a friend's car, fearing others were following him. He eventually jumped from the car, fled into an unfamiliar home, and begged the family inside to call 911 for his protection. When officers arrived, Mr. Jones was holding the father hostage. Convinced the officers were only impersonating real officers, Mr. Jones fired multiple shots through the wall, took off his clothes, and jumped through the window. One of Mr. Jones's shots struck and killed the father.

Mr. Cinecca Madison's pending trial provides another troubling example of mental illness in the commission of offenses. Application at 7-8. The alleged incident occurred on the same day his mental health provider cancelled his evaluation for schizophrenia medication. Just before the shooting, Mr. Madison told his provider about his experience with what can only be described as mental torture: the television was whispering evil things to him, the air occasionally looked like scurrying mice, sometimes a teddy bear would shoot him an evil stare.

Because Mr. Jones and Mr. Madison do not meet the strict definition of legal insanity, they fall into a large group of individuals who are prohibited from telling their jury about how their undeniable sickness contributed to their offense. This has been the grim reality for the last

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[1] This report is available online at https://cosca.ncsc.org/__data/assets/pdf_file/0018/23643/2016-2017-decriminalization-of-mental-illness-fixing-a-broken-system.pdf.

24 years, since *People v Carpenter*, 464 Mich 223 (2001). In *Carpenter*, this Court held that a person is statutorily barred from introducing evidence of diminished capacity short of legal insanity as a defense against criminal charges. 464 Mich at 241. *Carpenter* abruptly introduced an "all or nothing" regime: an accused person is either legally insane or not. *Id*. at 237.

Carpenter is wrong. Wrong as a matter of statutory interpretation. Wrong as a matter of the legislative framework. Wrong as a matter of science. Because stare decisis does not favor retaining the decision, this Court should overturn *Carpenter* and allow juries to hear the truth.

Arguments

I. *Carpenter* violates fundamental rules of statutory interpretation.

When interpreting Michigan's insanity defense statute, MCL 768.21a, the *Carpenter* Court violated the most fundamental rules of statutory interpretation. *Carpenter* was thus wrongly decided.

A. *Carpenter* cannot be squared with the plain text of the insanity statute.

A bedrock principle of statutory interpretation is that "the starting point for [] analysis is the statutory text." *Desert Palace, Inc. v Costa*, 539 US 90, 98 (2003); see also *In re MCI Telecommunications Complaint*, 460 Mich 396, 411 (1999); *People v Wood*, 506 Mich 114, 122 (2020). And when, as here, the statute is unambiguous, "judicial construction is neither required nor permissible." *MCI Telecommunications Complaint*, 460 Mich at 411. To distort the plain language of the statute is to "engag[e] in a form of judicial usurpation," violating the canon that "lawmaking power is reposed in the people as reflected in the work of the Legislature." *Robinson v City of Detroit*, 462 Mich 439, 467 (2000). The *Carpenter* majority usurped the Legislature's power; rather than compound this error, this Court should correct the flawed prior analysis. *Id.* at 460.

Consider the relevant language of MCL 768.21a, the insanity defense statute at issue in *Carpenter*:

> 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 . . . or as a result of having an intellectual disability . . . 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.

On its face, the statute answers one question: When can mental illness or having an intellectual disability constitute a defense of legal insanity? The answer: When, as a result of mental illness or having an intellectual disability, "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." MCL 768.21a. But what if, for example, as a result of mental illness, a person is unable to feel remorse? No—MCL 768.21a instructs mental illness or intellectual disability "does not *otherwise* constitute a defense of legal insanity." *Id.* (emphasis added).

The legal insanity statute does not mention, much less prohibit, a diminished capacity defense—that "because of mental disease or defect a defendant cannot form the specific state of mind required as an essential element of a crime." *Carpenter*, 464 Mich at 232 (quotation marks omitted). Put another way, the *legal insanity* statute does not provide what "constitutes a defense" of *diminished capacity*. MCL 768.21a. The defense of diminished capacity is clearly not the "defense of legal insanity." As MCL 768.21a provides, the "defense of legal insanity" is an "affirmative defense." An affirmative defense "admits the doing of the act charged, but seeks to justify, excuse, or mitigate it." *People v Lemons*, 454 Mich 234, 246 n 15 (1997) (quotation marks omitted). Unlike a diminished capacity defense, an affirmative defense "does not negate selected elements or facts of the crime." *Id.*

Despite the statute's silence on diminished capacity, the *Carpenter* Court concluded that, when enacting MCL 768.21a, the Legislature intended 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." 464 Mich at 236. This interpretation is belied by the plain and unambiguous statutory text, which is not concerned with "reduc[ing] criminal responsibility by negating specific intent." *Id.* Rather, the statute could not be any clearer that its concern is solely with the "defense of legal insanity." MCL

768.21a(1). The *Carpenter* Court's extratextual interpretation dramatically and impermissibly expanded the scope of the statute.

By insisting the statute affects *all* defenses involving mental illness, the *Carpenter* Court ignored the last three words of MCL 768.21a(1), rewriting it to read: "Mental illness or having an intellectual disability does not otherwise constitute a defense ~~of legal insanity~~." See Vars, *When God Spikes Your Drink: Guilty Without Mens Rea*, 4 Cal L Rev Circuit 209, 211 (2013). Assuming these last three words are superfluous is a patent "violation of this Court's principles of statutory interpretation." *People v Gloster*, 499 Mich 199, 207 & n 20 (2016). "Courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146 (2002); *Corley v United States*, 556 US 303, 314 (2009) (discussing "one of the most basic interpretive canons, that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant" (quotation marks omitted)). Although it may be permissible to treat words as "surplusage" when they are "inadvertently inserted or [] repugnant to the rest of the statute," *Chickasaw Nation v United States*, 534 US 84, 94 (2001) (citing K. Llewellyn, The Common Law Tradition 525 (1960)), that is not the case here, where the words "of legal insanity" mirror the very *core* of the statute (i.e., the affirmative defense of legal insanity).

If the Legislature wanted to prohibit all evidence of mental illness that does not meet the criteria for legal insanity, it could have written MCL 768.21a to say exactly that. Indeed, on numerous occasions, our Legislature has drafted criminal statutes in this manner, expressly forbidding the use of certain evidence in any defense against a charge. Consider, for example, the statute regarding voluntary intoxication, MCL 768.37(1). There, the Legislature wrote: "it is not a defense to any crime that the defendant . . . voluntarily consumed" alcohol or a controlled substance. MCL 768.37(1). Similarly, the statute criminalizing prostitution notes "[i]t is not a defense . . . that any part of that violation was committed outside this state." MCL 750.460. When

charged with receiving or concealing stolen property, "[i]t is not a defense . . . that the property was not stolen . . . if the property was explicitly represented to the accused person as being stolen." MCL 750.535(12). Undoubtably, then, the Legislature could have explicitly stated, for example: "it is not a defense to any crime that, at the time of the offense, the defendant acted with diminished mental capacity and was thus unable to form the specific state of mind required as an essential element of a crime."[2] But the Legislature did not.

Had the Legislature intended to "alter" the availability of a defense as "fundamental" as diminished capacity, "we would expect the text . . . to say so." *Puerto Rico v Franklin California Tax-free Tr*, 579 US 115, 127 (2016). This is especially true given that, at the time the Legislature enacted MCL 768.21a, diminished capacity was a widely recognized theory of defense in Michigan courts. See *People v Lynch*, 47 Mich App 8, 20-22 (1973); *People v Fields*, 64 Mich App 166, 173 (1975).[3] Yet *Carpenter* suggests the Legislature implicitly and silently effected a sea change. That was wrong—the Legislature "'does not, one might say, hide elephants in mouseholes.'" *Franklin California Tax-free Tr*, 579 US at 127 (quoting *Whitman v Am Trucking Associations*, 531 US 457, 468 (2001)); see also *People v Arnold*, 502 Mich 438, 480 n 18 (2018).

The text of MCL 768.21a is unambiguous, and it is explicitly limited to the affirmative defense of insanity. That settles the interpretive question, and "judicial construction is neither required nor permissible." *MCI Telecommunications Complaint*, 460 Mich at 411.

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[2] And, of course, the Legislature could have also written the last sentence of MCL 768.21a(1) to read "Mental illness or having an intellectual disability does not otherwise constitute a defense."

[3] See also, *infra* at n 13, for citations to other jurisdictions that similarly had the diminished capacity defense available at the time of this Court's decision in *Carpenter*.

B. The Legislature did not eliminate the diminished capacity defense by enacting a so-called "comprehensive statutory framework."

Worse than simply failing to *start* with the text of the insanity statute, the *Carpenter* majority *never* engaged in any meaningful textual analysis.[4] Rather, the Court speculated about the Legislature's "policy choice" and "signified [] intent." *Carpenter*, 464 Mich at 237, 241. And this Court's speculation was guided not by the plain text of MCL 768.21a but instead by a so-called "comprehensive statutory framework." *Id.* at 237.[5] Even if the text of the insanity statute was ambiguous enough to warrant investigation into the Legislature's intent (a claim not made by the *Carpenter* Court), this Court cannot conclude the statutory framework reveals "the Legislature has created an all or nothing insanity defense." *Id.*

On this issue, the gravamen of the *Carpenter* Court's explanation rests on the guilty-but-mentally-ill (GBMI) statute, MCL 768.36. The GBMI statute permits a trial court to find that an individual is "guilty

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[4] The prosecution commits the same error. In its recitation of several rules of statutory construction, the prosecution acknowledges the "intent of the Legislature is expressed in the statute's plain language." Prosecution Supplemental Brief at 8. Curiously, though, the prosecution begins its analysis with the "context of related statutes," noting "the interplay between the several statutes through which the Legislature addressed the treatment of mentally ill or intellectually disabled defendants." Prosecution Supplemental Brief at 8. And at no point does the prosecution analyze the plain text of the statute. The most the prosecution does is assert without citation that "[c]learly, the *Carpenter* Court was aware of th[e] verbiage in MCL 768.21a." *Id.* at 23.

[5] The *Carpenter* analysis also rested on other extratextual observations such as: "both diminished capacity and insanity involve a moral choice by the community to withhold a finding of responsibility and its consequence of punishment" from the accused. *Carpenter*, 464 Mich at 239 (quotation marks omitted).

beyond a reasonable doubt of an offense" and that "he or she was mentally ill at the time of the commission of that offense" but not legally insane. MCL 768.36(1). If an individual is found guilty but mentally ill, the trial court "shall impose any sentence which could be imposed pursuant to law upon a defendant who is convicted of the same offense." MCL 768.36(3).

The *Carpenter* Court reasoned the diminished capacity defense was eliminated because, in enacting the GBMI statute, "the Legislature has already contemplated and addressed situations involving persons who are mentally ill or [have an intellectual disability] yet not legally insane." *Carpenter*, 464 Mich at 237. That is not so. Not all "situations involving [legally sane] persons who are mentally ill or have an intellectual disability" must result in a finding of guilty but mentally ill. In some cases, they will. In other cases, the trier of fact could conclude that the individual, even though legally sane, had a "mental abnormality to negate the specific intent" element of the crime. *Id.* at 232. Thus, the jury will not return a verdict of guilty but mentally ill but instead convict on "a lower grade of the offense not requiring that particular mental element." *Id.* (quotation marks omitted).[6] There is no evidence that the Legislature "contemplated and addressed" and *prohibited* this latter case. See *id.* at 237.

The *Carpenter* Court's rationale also illustrates the dangers of skipping the "first step" of statutory interpretation: its reading of the GBMI statute contradicts "the language of the statute itself." *MCI Telecommunications Complaint*, 460 Mich at 411. The Legislature did not draft the GBMI statute to target all "situations involving" legally sane but mentally ill persons. See *Carpenter*, 464 Mich at 237. Rather, the first few words of the statute provide that it applies when a

[6] In *People v Tyson*, Justice Cavanagh used the example of a jury who concludes that "because of the defendant's mental illness (diminished capacity), the prosecution did not 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." 511 Mich 1080, 1089 (2023) (CAVANAGH, J., dissenting).

"defendant asserts a defense of insanity." MCL 768.36(1). Of course, an individual raising diminished capacity does not necessarily assert an additional, affirmative defense of insanity (and vice versa).

Furthermore, the *Carpenter* Court pointed to the GBMI statute's punishment provision (MCL 768.36(3)), to conclude "the Legislature has demonstrated its policy choice that evidence of mental incapacity short of insanity cannot be used to avoid or reduce criminal responsibility by negating specific intent." *Carpenter*, 464 Mich at 237. MCL 768.36(3) does not support this logical leap. The statute instructs courts to sentence an individual found guilty but mentally ill "in the same manner as any other defendant committing the same offense." *Id*. (citing MCL 768.36(3)). But it does not broadly mandate "criminal responsibility" (i.e. punishment) for all legally sane individuals who produce evidence of mental incapacity. Even if that were a permissible interpretation, evidence of diminished capacity simply negates specific intent—it does not necessarily negate all criminal liability and punishment.[7]

The Legislative history of the GBMI statute also contradicts the *Carpenter* Court's reading—a point made in Justice Cavanagh's dissent in *People v Tyson*, 511 Mich 1080 (2023). There, Justice Cavanagh explained the Legislature enacted the GBMI statute to address "concerns that 'the release of persons acquitted of crimes due to insanity create[d] a potential threat to the public safety.' " *Tyson*, 511 Mich at 1088 (quoting House Legislative Analysis, HB 4363 (March 20, 1975)). The statute was a direct response to *People v McQuillan*, a 1974 case in which this Court held that a person acquitted by reason of insanity could be released to the public if a sanity hearing did not find the person was presently insane. 392 Mich 511, 538-547 (1974); see also *Tyson*, 511 Mich at 1087-1089 (CAVANAGH, J., dissenting); Judith A Northrup,

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[7] See, e.g., 2 Lafave, Substantive Criminal Law (3d ed), § 9.2(a) (explaining that a diminished capacity defense is distinct from an insanity defense, because "an appropriate showing of partial responsibility will result in a finding of not guilty of the offense charged, although the circumstances will usually be such that conviction of some *lesser offense* is still possible").

Guilty but Mentally Ill: Broadening the Scope of Criminal Responsibility, 44 Ohio St L J 797, 809 (1983) (noting the "GBMI provisions were the direct outgrowth of the intense public reaction" to the release of "sixty-four inmates" after *McQuillan*). Thus, "the ability to present diminished-capacity evidence does not undermine the stated goal of the GBMI verdict." *Tyson*, 511 Mich at 1088. And, again, raising a successful diminished capacity defense often does not result in "the release of persons acquitted of crimes due to insanity." House Legislative Analysis, HB 4363 (March 20, 1975).

C. The Legislature has not assented to *Carpenter* by silence.

At several points in the prosecution's briefing, it implies or explicitly states "the Legislature has not seen fit to alter the Court's application of the statutory scheme." See Prosecution Supplemental Brief at vi, 11, 13, 24. In other words, the prosecution suggests "the Legislature has acquiesced to the interpretations of the statutes offered by this Court" in *Carpenter*. *People v Gardner*, 482 Mich 41, 58 (2008).

This Court has long "observe[d] that legislative acquiescence is an exceedingly poor indicator of legislative intent." *Donajkowski v Alpena Power Co*, 460 Mich 243, 258 (1999); see also *Gardner*, 482 Mich at 58. There could be "myriad reasons explaining the Legislature's failure to correct an erroneous judicial decision." *Donajkowski*, 460 Mich at 259 (quotation marks omitted). One such reason may be the "[b]elief that the matter should be left to be handled by the normal processes of judicial development of decisional law, including the overruling of outstanding decisions to the extent that the sound growth of the law requires." *Id*. Assuming Legislative acquiescence sends the dangerous message that if the Legislature "delay[s] long enough to correct [the Court's] errors those errors thus become both respectable and immutably frozen." *Robinson*, 462 Mich at 465 n 25. The "larger and more dismal corollary," then is that "if enough people persist long enough in ignoring an injustice it thereby becomes just." *Id*. Far safer is the assumption that the Legislature's "silence is just that—silence." *Alaska Airlines, Inc v Brock*, 480 US 678, 686 (1987).

* * *

MCL 768.36(1) is unambiguous. The statute sets forth requirements for when mental illness or having an intellectual disability can constitute a defense of legal insanity, and it neither mentions nor prohibits a diminished capacity defense. The *Carpenter* Court erred when it ignored the statutory text and (incorrectly) speculated about the Legislature's intent.

II. *Carpenter* should not be retained under stare decisis.

Carpenter was wrongly decided. See Part I *supra*. This Court's stare decisis analysis should start there. See *Robinson v City of Detroit*, 462 Mich 439, 464-466) (2000) ("The first question, of course, should be whether the earlier decision was wrongly decided.").

This Court also considers three factors in determining whether it should overturn an earlier decision. As outlined in Mr. Madison's Supplemental Brief, those factors are: (1) whether the decision defies practical workability; (2) whether reliance interests would work an undue hardship if the decision were overruled; and (3) whether changes in law or facts no longer justify the decision. *Coldwater v Consumers Energy Co*, 500 Mich 158, 173-174 (2017). Each of these factors weighs in favor of abandoning this Court's decision in *Carpenter* despite stare decisis.

A. The rule under *Carpenter* has notable workability problems.

Under *Coldwater*, this Court first considers whether the rule from *Carpenter* is practically workable. *Coldwater*, 500 Mich at 173-174. "[A] rule of decision defies practical workability if it has proved difficult to apply or implement." *In re Ferranti*, 504 Mich 1, 26 (2019). "Workability" also "involves the reception of the decision by courts and parties." *Ottgen v Katranji*, 511 Mich 223, 240 (2023). Relevant considerations include "whether the decision [has] been met with criticism," and "whether its application [has] been contested or difficult." *Id*. In the context of statutory interpretation, a decision may be unworkable if "a reader of

the underlying statute would be unable to rely on its plain meaning in light of the decision's departure from that meaning." *Id.*

This Court's decision in *Carpenter*, which ended the use of the diminished capacity defense previously recognized in Michigan, is not workable. Following *Carpenter*, courts categorically exclude evidence of a person's mental illness if it does not reach the level of legal insanity.[8] A blanket prohibition might seem easy for courts to administer, "but precluding such important evidence in the interest of convenience is a poor reason to retain such an obvious misconstruction of the statute." *Tyson*, 511 Mich at 1089 (CAVANAGH, J., dissenting) ("The 'practical workability' factor is neutral at best."). More importantly, a "practical workability" problem does not mean "a court of law cannot render some decision—no opinion of this Court is 'unworkable' in that sense." *Paige v City of Sterling Heights*, 476 Mich 495, 511 (2006).

The intense criticism with which *Carpenter* has been met evinces the decision's workability problem. *Ottgen*, 511 Mich at 240. *Carpenter*, which was not joined by the full court, 464 Mich at 241 (CAVANAGH and KELLY, JJ., dissenting), has been questioned by several members of this Court and litigants alike. See *Robinson*, 462 Mich at 466 (describing the

[8] The burden on people trying to establish legal insanity is also quite high, and it does not comport with today's scientific understanding of what it truly means to be competent and to understand the consequences of your own actions. See, e.g., Robert Schehr & Chelsea French, *Mental Competency Law and Plea Bargaining: A Neurophenomenological Critique*, 79 Albany L Rev 1091, 1104 (2016).

"practical workability" of a prior decision as "suspect" where "the Court of Appeals has repeatedly questioned [it]").[9, 10]

That the *Carpenter* rule's "application [has] been contested" also undermines any argument that the rule is workable. Consider, for example, *People v Yost*, in which the Court of Appeals held the trial court abused its discretion by excluding evidence of Ms. Yost's limited intellectual capabilities to contextualize her statements and behavior. 278 Mich App 341, 353-358 (2008). The court acknowledged *Carpenter*, but observed *Carpenter* "does not mean that a defendant who is legally sane can never present evidence that he or she is afflicted with a mental disorder or otherwise has limited mental capabilities." *Id.* at 355. *Yost* illustrates the ongoing difficulty courts and parties often have in determining when evidence of mental illness can be presented or if, as this Court wrote unequivocally in *Carpenter*, "evidence of mental incapacity short of insanity cannot be used to avoid or reduce criminal responsibility by negating specific intent," 464 Mich at 237.[11] See, e.g.,

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[9] See, e.g., *People v Sudz*, 513 Mich 891 (2023) (WELCH, J., dissenting); *People v Bloye*, unpublished per curiam opinion of the Court of Appeals, issued December 9, 2004 (Docket No. 249624) (rejecting a claim of diminished capacity due to *Carpenter*); *People v Lancaster*, unpublished per curiam opinion of the Court of Appeals, issued December 21, 2006 (Docket No. 263483) (same); *People v Cresap*, unpublished per curiam opinion of the Court of Appeals, issued March 20, 2003 (Docket No. 231406) (same).

[10] A basic search in Westlaw for cases mentioning "*People v Carpenter*" and "diminished capacity" following this Court's decision in *Carpenter* results in 88 published and unpublished cases from this Court and the Court of Appeals, illustrating the number of challenges on appeal litigants have made to *Carpenter*. What these results do not account for are challenges made solely in the trial court, or challenges made on appeal by leave where the application was denied.

[11] In *Yost*, the prosecution "consistently asserted that this excluded evidence is diminished capacity evidence, however, and contend[ed] that

People v Uncapher, unpublished per curiam opinion of the Court of Appeals, issued April 13, 2004 (Docket No. 246222), p 2 (finding "*Carpenter* precludes admission" of evidence of mental deficiencies to show an individual's inability to "for[m] a mental element of the crime"); *People v Tait*, unpublished per curiam opinion of the Court of Appeals, issued May 16, 2017 (Docket No. 332252). But see, e.g., *People v Ricketts*, unpublished per curiam opinion of the Court of Appeals, issued August 17, 2023 (Docket No. 361139), p 6 (permitting introduction of evidence of Mr. Ricketts' intellectual disability to "provide context to the jury regarding defendant's statements to various individuals throughout the case"). Thus, the *Carpenter* rule, while appearing straightforward, is difficult to administer. See *Ottgen* 511 Mich at 243 (finding workability issues where "rule articulated by [prior case] might be straightforward . . [but the] application and effects of the rule in related areas have been anything but clear").

On several occasions this Court has noted that a decision may be unworkable if "a reader of the underlying statute would be unable to rely on its plain meaning in light of the decision's departure from that meaning." *Ottgen*, 511 Mich at 240; see also *Paige*, 476 Mich at 510-511. That is the precise issue here: a reader of MCL 768.21a would not be able to rely on its plain meaning because *Carpenter* departs from the meaning. *Carpenter* made Michigan's insanity statute "confusing and less decipherable to the ordinary citizen." *Paige*, 476 Mich at 510. "Such a regime is unworkable in a rational polity." *Id.* at 510.

The *Carpenter* rule also creates the potential for confusing results, as in Mr. Madison's case. Specifically, *Carpenter*'s ruling prevents Mr. Madison, and others who experience mental health crises less than legal insanity at the time of their offense, from showing jurors why they may have acted in what they perceived as self-defense. See Madison Application for Leave to Appeal at 16-17. A jury is therefore prohibited

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allowing such evidence would essentially create a 'non-intent exception' to the prohibition on diminished capacity evidence set forth in *Carpenter*." *People v Yost*, 483 Mich 856, 861 (2009) (CORRIGAN, J., dissenting).

from considering whether a mentally ill person's perception of events justified their actions as self-defense. *Id.* This result is counterintuitive, even if not specifically centered within the confines of the diminished capacity defense.

The *Carpenter* rule is, therefore, unworkable under the *Ottgen* standards.

B. There are no reliance interests in the *Carpenter* ruling. Overturning the case would merely require adjustments that our courts and many other state courts have made before.

The second factor under *Coldwater* weighs in favor of overruling *Carpenter* because the decision has not 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. It is important to remember that the diminished capacity defense *was* previously available in Michigan following the Court of Appeals' decision in *People v Lynch*, 47 Mich App 8, 19 (1973); see also *People v Fields*, 64 Mich App 166 (1975) (applying the rule from *Lynch* to address a jury instruction issue). For over 25 years—longer than the *Carpenter* rule has been around—people in Michigan were able to present a full picture to juries: how their mental illnesses played a role in their offenses.

As this Court has explained, "reliance is *only* present where the prior decision has caused a large number of persons to attempt to conform their conduct to a certain norm." *Paige*, 476 Mich at 511 (emphasis added). For instance, "where an entire class of individuals or businesses purchase insurance and another entire class does not in reliance on a decision by this Court, this may be viewed as the sort of reliance that could cause 'practical real-world dislocations.'" *Id.* at 511-512. *Carpenter* had no such effect.[12]

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[12] The prosecution's supplement brief does not allege any reliance interest but instead argues overruling *Carpenter* will require "great

It can hardly be said that people accused of crimes, prosecutors, or judges have heavily relied on the *Carpenter* ruling in their day-to-day operations. If anything, the rule has hindered the legal process for mentally ill people accused of crimes by creating a disconnect between the high standard required to establish legal insanity or incompetency and the reality of so many people involved in our criminal legal system. Overturning the decision would remedy this issue, and it would not cause undue hardship.

Since *Carpenter*, this rule has not been expanded to prohibit the admissibility of mental illness evidence beyond its use in the diminished capacity defense. People convicted of crimes are still allowed to use evidence of mental illness as mitigating circumstances to ask a judge for a lower sentence, and mental illness evidence is still admissible in the context of legal insanity defenses, claims about a person's lack of competency, or guilty but mentally ill verdicts. Thus, because *Carpenter* has remained confined to the diminished-capacity context, this Court need not worry about reliance interests beyond that realm.

Jurors are routinely tasked with evaluating the effect of mental illness on the outcome of the case. See, e.g., *Yost*, 278 Mich App at 357-358 (jurors could consider evidence of Ms. Yost's intellectual disability to determine whether her "statements and actions were truly indicative of a guilty conscience"). Most notably, jurors weigh mental health evidence when considering whether a person was "legally insane" at the time of their offense. See MCL 768.21a; M Crim JI 7.11; M Crim JI 7.12. A decision from this Court overturning *Carpenter* would not result in "real-world dislocations," but rather mere "adjustments." *Coldwater*, 500 Mich at 173.

The fact that many other states and jurisdictions allow evidence of mental illness to negate the requisite specific intent—some even allow

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adjustment" among the courts. Prosecution Supplemental Brief at 22. The stare decisis analysis, however, is not concerned with "readjustments, but practical real-world dislocations." *Coldwater*, 500 Mich at 173.

it to negate *any* culpable state of mind—further proves this change would not disrupt the operation of Michigan courts.[13] This Court should not retain its decision in *Carpenter* for the possibility that any reliance interests would be disrupted.

C. Changes in law and circumstance require this Court to address its erroneous decision in *Carpenter*.

There have been no changes in law or facts that weigh against overruling *Carpenter*.[14] Rather, this factor counsels in favor of overturning *Carpenter* because the decision reflects an outdated view of mental illness and its role in the criminal legal system. See *Tyson*, 511 Mich at 1090, (CAVANAGH, J., dissenting). The *Carpenter* Court suggested that people are either legally insane—an already high bar—or legally sane, with no "gradations of culpability." *Id.*, citing Carpenter, 464 Mich at 236-237. But this does not track with modern understanding of mental illness and culpability. *Id.*

Not long after this Court's decision in *Carpenter*, our state courts implemented a pilot program for implementing mental health court programs. Michigan Courts, *About Mental Health Courts*.[15] These courts

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[13] See, e.g., *Saranchak v Beard*, 616 F3d 292 (CA3 2010); Alaska Stat Ann § 12.47.020; *Commonwealth v Tharp*, 627 Pa 673 (2014); *Caruthers v Wexler-Horn*, 592 SW3d 328 (Mo 2019); *State v McKinley*, 234 W Va 143 (2014); *United States v Gonyea*, 140 F3d 649 (CA6 1998); *United States v Fazzini*, 871 F2d 635 (CA7 1989); *United States v Twine*, 853 F2d 676 (1988). See also 22 ALR 1228 (1968) (collecting cases).

[14] It would also be appropriate for this Court to conclude that it "need not consider whether changes in the law and facts no longer justify [*Carpenter*] because [*Carpenter*] itself was never justified as it was a change in the law that this Court had the power, but not the authority, to make." *Paige*, 476 Mich at 513.

[15] More information on Michigan's Mental Health Courts is available at www.courts.michigan.gov/administration/court-programs/problem-solving-courts/about-mental-health-courts/.

were developed "in response to the overrepresentation of people with mental illnesses in the criminal justice system" and function to "divert[] select defendants with mental illness into judicially supervised, community-based treatment." *Id.* Since their conception in 2009, our state has further expanded the mental health courts program to include at least 39 courts across the state. *Id.*; see also Michigan Courts, *Mental Health Courts: Current Number of Mental Health Courts in Michigan*;[16] MCL 600.1091(1). Michigan has been a national leader in recognizing and addressing how mental illness interacts with the criminal legal system.[17]

Furthermore, this Court and the Court of Appeals have issued opinions that illustrate our changing understanding of brain science, mental illness, and culpability. In *People v Parks*, this Court accepted the widely studied and scientifically supported view that people ages 18 and under do not have the same level of maturity and, therefore, culpability as people committing offenses after their brains are fully developed. 510 Mich 225 (2022) ("[T]he same features that characterize the late-adolescent brain also diminish the culpability of these youthful offenders, rendering them less culpable than older adults.").[18] Similarly, in *People v Bennett*, 335 Mich App 409, 435-436 (2021) (GLEICHER, J., concurring), Judge Gleicher identified that mental illness is a "fact that mitigates an offender's culpability for committing a crime." See also

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[16] *Id.*

[17] Recent research out of Michigan State University further identifies the importance of addressing mental illness through *all* stages of the criminal legal process. See also Jennifer E. Johnson, et al., *Recommended Mental Health Practices for Individuals Interacting with U.S. Police, Court, Jail, Probation, and Parole Systems*, 75(3) Psychiatric Services 246-257 (2024).

[18] This Court is currently considering whether the same can be said for 19- and 20-year-olds. See *People v Czarnecki*, 513 Mich 1146 (2024) and *People v Taylor*, 12 NW3d 444 (2024) (ordering oral argument on the applications).

People v Hurless, unpublished per curiam opinion of the Court of Appeals, issued September 19, 2024 (Docket No. 366066) (N.P. HOOD, J., dissenting), p 4 (reasoning the *Beck* prohibition against considering acquitted conduct in sentencing a person should similarly apply to acquittals of not guilty by reason of insanity because the culpability of a person with mental illness is different); *People v Gooldy*, unpublished per curiam opinion of the Court of Appeals, issued August 15, 2024 (Docket No. 361190), p 9 n12 (recognizing substance use disorder is "unquestionably a mental illness that would mitigate an offender's culpability").

In sum, Michigan has been a leader in recognizing the effect of mental illness on those impacted by our criminal legal system. As required by our Constitution, this Court has followed the science and has interpreted the law consistent with growing bodies of research that support treating people with mental illness different than those without mental illness. The third prong of *Coldwater* is heavily in favor of overturning *Carpenter*—changes in facts, law, and our understanding of mental illness all require a decision in favor of Mr. Madison.

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This Court should not rely on the principles of stare decisis to reject Mr. Madison's claims. For the reasons described in this brief as well as Mr. Madison's Application for Leave to Appeal and Supplemental Brief, amicus urges this Court to abandon its erroneous decision in *Carpenter*.

Conclusion and Relief Requested

For the reasons stated above, **CDAM** respectfully requests that this Honorable Court reverse and remand for a new trial for Mr. Madison.

Respectfully submitted,

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