

STATE OF MICHIGAN  
IN THE SUPREME COURT

**The People of the State of Michigan**

Plaintiff-Appellee,

MSC No. 167120

v.

COA No. 369559

**Cinecca Daquan Madison**

Ottawa County Circuit Court

Defendant-Appellant.

Case No. 22-45611-FC

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**Appendix to Amicus Curiae Brief**  
**Criminal Defense Attorneys of Michigan**

*In support of Cinecca Daquan Madison*

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**Criminal Defense Attorneys of Michigan**

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Date: March 31, 2025

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**Appendix A**  
**House Legislative Analysis, HB 4363**  
**(1975)**

MEMORANDUM

STATE OF MICHIGAN

DEPARTMENT OF MANAGEMENT AND BUDGET

OFFICE OF CRIMINAL JUSTICE PROGRAMS

LANSING

Date: July 1, 1975

RECEIVED by MSC 3/31/2025 10:27:14 AM

To: Honorable William G. Milliken  
From: Noel Bufe, Administrator  
Subject: Bill Analysis - HB 4363

1. What is the purpose of the bill?

The purpose of the bill is to set guidelines in the criminal code for dealing with persons who plead guilty to crimes for reasons of insanity.

2. (a) Was the bill introduced at the agency's request, and (b) does it have the agency's support?

(a) No

(b) Yes, although there are arguments against the bill's constitutionality, this matter should be decided in the courts. The arguments for the bill are more persuasive in trying to meet the ever growing need to protect society from persons who might be harmful to themselves or others.

3. Are there revenue or budgetary implications in the bill -- (a) to the department and (b) to the state?

(a) No

(b) Yes

4. Is there any local government implication in the bill?

Yes, for the county prosecuting attorneys as the bill implicates them in the review process before a patient is discharged.

5. What other principal departments might the bill affect?

Departments of Mental Health (Forensic Center) and Corrections.

6. What are the arguments for and against the bill?

FOR: A defendant found "guilty but mentally ill" would be committed because of conviction and not because of insanity. Defendants sentenced under a "guilty but mentally ill" verdict could not then petition for release on the grounds that they are not legally insane.

7. Does the department suggest amendments? If so, what and why?

No.

Honorable William G. Milliken

Page 2

July 1, 1975

8. Any other background information?

The bill is in direct response to the Michigan Supreme Court's decision in the McQuillan case, i.e. a person who is deemed sane at a later date after having pled "not guilty by reason of insanity" at a criminal trial, must be discharged from a mental institution.

See attached memorandum.

jv

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**HOUSE BILL 4363 (with proposed House  
committee amendments)**  
**Sponsor: Rep. Paul Rosenbaum**

**Analysis Section  
House of Representatives  
Committee: Judiciary**

**FIRST ANALYSIS  
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OFFICIAL COLLECTION  
MICHIGAN DOCUMENTS**

**Material in this analysis complete to 3-20-75.  
Additional information may follow.**

***The Apparent Problem to Which the Bill  
Addresses Itself:***

Under a 1967 law, persons tried on felony charges who were found not guilty by reason of insanity, were automatically turned over to the Department of Mental Health for indefinite custody. In September 1974, the Michigan Supreme Court, in a 4-3 decision, ruled that defendants acquitted of crimes due to insanity must be released from custody unless a jury, after a court hearing, determines that they are mentally ill according to the new Mental Health Code, without regard to the criminal act that led to custody. Some persons contend that the release of persons acquitted by reason of insanity creates a potential threat to the public safety. They cite cases in which a person found not guilty by reason of insanity was released after a court hearing failed to show that he was both mentally ill and dangerous by reason of his mental illness, and after his release, the person committed a violent crime.

***The Manner in Which the Bill Addresses Itself to  
the Problem:***

The bill would establish new procedures for felony cases in which a defense of insanity is presented. It would also establish a new verdict of "guilty but mentally ill" as an alternative finding to the present "guilty", "not guilty", and "not guilty by reason of insanity".

**Procedures in an Insanity Defense**

Under present law, the provisions of a defense based upon an alibi and a defense based upon the defendant's alleged insanity are substantially the same. The defendant is required to file written notice of the intended defense and witnesses to be called within 15 days after the arraignment, and at least 10 days before trial. The prosecution must respond within 10 days and at least 5 days before trial with a notice containing the names of witnesses to be called in rebuttal.

The bill would retain the current provisions for an alibi defense, but would establish new procedures for an insanity defense. Under the bill, a defendant would be required to file a written notice of intent to assert the defense of insanity at least 30 days before the date set for trial. The court would then order the defendant to undergo an examination by personnel of the Center for Forensic Psychiatry, for up to 30 days. If the defendant were to be held in jail pending trial, the Center could decide to perform the examination in the jail, or could notify the sheriff to transport the defendant to the Center for the examination. The defendant would then be returned to the jail by the sheriff after the examination. If at liberty pending trial, the defendant would be required to appear for the examination at a time and place set up by the Center. If the defendant failed to appear, the court could order commitment to the Center. A hearing on the commitment would not be necessary.

Only those statements made during an examination which related to the question of the defendant's insanity or mental illness would be admissible at the trial. (The bill specifically provides, however, that a prescribed report by the Center for Forensic Psychiatry or an independent examiner could be admissible if the prosecution and defense so stipulated.) If the defendant failed to cooperate fully in the required examination, and that failure were established to the court's satisfaction before trial, or if the defense failed to file all notices required in an insanity defense, testimony related to the defendant's insanity would be barred at the trial.

Under the bill, defendants could secure independent evaluations by physicians or psychiatrists of their choice at their own expense, or if indigent, at the expense of the court. (An examiner secured by an indigent defendant would receive a reasonable fee approved by the court.) A defendant would be required to notify the county prosecutor of an impending independent examination at least 5 days before its scheduled time.

After the examination, the Center for Forensic Psychiatry, and any independent examiners, would be required to prepare a written report and submit it to the court, prosecuting attorney, and defense counsel. The report would contain: a) the clinical findings; b) the facts upon which the findings were based; and c) the opinion of the examiner on the issue of the defendant's insanity or mental illness (as defined by Section 4001 of House Bill 4362) at the time of the alleged offense. Within 10 days after receiving the report (or reports), but no less than 5 days before trial, the prosecuting attorney would be required to file a notice of rebuttal of the defense of insanity, containing the names of witnesses to be called. If the prosecuting attorney failed to file the notice, the prosecution would be barred from offering evidence in rebuttal to the defendant's insanity defense.

**The Definition of Insanity**

Under the bill, a person would be legally insane if, as a result of mental illness or retardation, the person either failed to know that what he/she was doing was wrong, or lacked the willpower to resist committing the act. "Mental illness" would refer to the definition in House Bill 4362 (with proposed amendments): "a substantial disorder of thought or mood which significantly impairs judgement, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life." (The bill could not take effect unless House Bill 4362 were passed.) A person who was voluntarily under the influence of alcohol or controlled substances at the time of an alleged offense could not, for that reason alone, be found legally insane.

If a defendant presented an insanity defense in a criminal action tried before a jury, the judge would be required to instruct the jury, before testimony was presented concerning the question of the defendant's insanity, on the definitions of mental illness and mental retardation in the Michigan Mental Health Code. After testimony, the jury would be charged to consider separately the issue of the defendant's mental illness and the issue of the defendant's legal insanity. In addition, the charge to the jury would contain instructions on the verdicts of "not guilty", "not guilty by reason of insanity", "guilty", and "guilty but mentally ill".

**"Guilty but Mentally Ill"**

The bill would introduce a fourth possible verdict in criminal cases involving an insanity defense. Under the bill, a defendant who had asserted a defense of insanity could be found "guilty but mentally ill" if, after trial, the judge in a court trial, or the jury in a jury trial, found that the defendant was guilty of an offense, and was mentally ill, but not legally insane, at the time of the offense.

If a defendant who asserted a defense of insanity waived the right to trial by jury or judge, the trial judge with the approval of the prosecuting attorney could, if satisfied that the defendant was mentally ill, accept a plea of "guilty but mentally ill" instead of "guilty" or "not guilty by reason of insanity". Before accepting a "guilty but mentally ill" plea, however, the judge would be required to examine all reports from the pre-trial psychiatric evaluations, and to hold a hearing on the issue of the defendant's mental illness, at which both the prosecution and defense could present evidence. The reports would become part of the record of the case.

**Disposition of a Defendant Found "Guilty but Mentally Ill"**

If a defendant pleaded or was found "guilty but mentally ill", the court could impose any sentence which could be imposed by law upon a defendant who is convicted of the same offense. If committed to the custody of the Department of Corrections, the defendant would undergo further evaluation and receive appropriate psychiatric treatment from the Department of Corrections or the Department of Mental Health. Provisions in the Michigan Mental Health Code for the transfer of prisoners would apply to the defendant's transfer to and discharge from the treating facility of the Department of Mental Health, as well as to the defendant's return to the Department of Corrections for the balance of the sentence.

OVER

ANALYSIS - H.B. 4363 (3-20-75)\*

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If a treating facility designated by either the Department of Corrections or the Department of Mental Health discharged a defendant for return to the Department of Corrections for the balance of the sentence, the treating facility would submit a report to the parole board on the condition of the defendant, which contained: the clinical facts, diagnosis, and course of treatment, as well as the prognosis for improvement, chances for a relapse, the defendant's potential danger to himself or the public, and recommendations for future treatment. In the event that the parole board were to consider parole, it would be required to consult with the defendant's treating facility and obtain the specified report on the condition of the defendant. If the board granted parole, it would be required to make treatment a condition of parole, of the treating facility so recommended. In the case of a defendant found guilty but mentally ill who is placed on probation under the jurisdiction of the sentencing court, the trial judge would be required to make treatment a condition of probation, if the Center for Forensic Psychiatry so recommended. Failure to continue treatment, except by agreement with the treating facility and the parole board, would be a basis for parole violation hearings.

The period of probation could not be less than 5 years and could not be shortened unless the sentencing court received and considered a forensic psychiatric report. Treatment would be provided by an agency of the Department of Mental Health or at the defendant's expense and, with the approval of the sentencing court, by private agencies, private physicians, or other mental health personnel. The bill would require that a psychiatric report be filed with the probation officer and the sentencing court every 3 months during probation. If the defendant made a motion to discontinue probation, the probation officer would be required to obtain the specified report on the defendant's condition from the Center for Forensic Psychiatry, or any other facility certified by the Department of Mental Health for the performance of forensic psychiatric evaluation.

### *Fiscal Implications:*

Fiscal implications to the State of Michigan are not available at this time.

### *Background Information:*

The bill does not change the disposition of persons found "not guilty by reason of insanity". Under the September 1974, Michigan Supreme Court decision, *People v. McQuillan*, such a person may be detained for examination and observation no longer than 60 days before a sanity hearing must be held. If the hearing fails to establish legal insanity, the person must be released.

### *Argument For:*

A defendant found "guilty but mentally ill" would be committed because of conviction and not because of insanity. Defendants sentenced under a "guilty but mentally ill" verdict, therefore, could not petition for release on the grounds that they were not legally insane, but would serve definite sentences (with parole possibilities as indicated) in either mental health or correction facilities.

### *Argument For:*

The new verdict will help a jury. Perhaps because there seems to be a tendency for people to assume that someone who commits a particularly offensive crime "must be insane", juries frequently find defendants in such cases "not guilty by reason of insanity". Sometimes, however, the defendants are not legally insane, and although it may well have been the intent of the jury that such defendants be committed for a long period, they must be automatically released under a Michigan Supreme Court ruling of September, 1974. The new verdict gives jurors an alternative that would ensure the defendant would not be released before a minimum term had been served, and psychiatric treatment had proved effective.

### *Argument Against:*

The new verdict will confuse a jury. The issue of insanity and a person's legal responsibility for committing a crime is already a difficult one. The possibility of a "guilty but mentally ill" verdict will make it more difficult still.

### *Argument Against:*

The new verdict is not necessary. A defendant who is legally insane should be acquitted, because such a defendant did not know that an offense was wrong, or could not resist the impulse to commit the offense. Defendants who did know that an offense was wrong, and could have resisted the impulse to commit the offense, should be found guilty. If such defendants are also mentally ill, psychiatric treatment is already required by law.

### *Argument Against:*

Because a defendant found "guilty but mentally ill" would not have an indeterminate sentence, but would be required to serve at least a minimum sentence, the defendant would have no incentive to cooperate in his/her psychiatric treatment, and a high incidence of recidivism would result.

### *Argument For:*

"Guilty but mentally ill" is a modified guilty verdict. Unless it carries a mandatory minimum sentence, defendants would abuse the verdict because it would offer the best possibility for early release.

### *Argument Against:*

The bill provides that defendants who intend to assert an insanity defense must make themselves available for an examination at the Center for Forensic Psychiatry. If they fail to do so, the court could, without a hearing, order commitment to the Center. The constitutionality of commitment without a hearing is questionable.

### *Positions:*

The Department of Corrections supports the bill with the proposed amendments. (3-19-75)

The Michigan Sheriffs' Association supports the bill with the proposed amendments. (3-19-75)

The Center for Forensic Psychiatry basically has unqualified support for the bill with the proposed amendments. (3-19-75)

The Department of Mental Health, while continuing its analysis of the most recent amendments, supports the bill's intent. (3-19-75)

The Michigan Society for Mental Health, Inc. supports the bill because it more clearly defines the responsibility of the mental health institutions and the courts in dealing with the forensic patient. (3-19-75)

The Prosecuting Attorneys' Association feels that House Bill 4362 should be passed before this bill is considered. (3-19-75)

The American Civil Liberties Union opposes any involuntary commitment, and therefore opposes the bill. (3-19-75)

*HOUSE BILL 4363 (as passed by the House)*

*Sponsor: Rep. Paul Rosenbaum*

*Analysis Section  
House of Representatives  
Committee: Judiciary*

*Material in this analysis complete to 6-11-75.  
Additional information may follow.*

*The Apparent Problem to Which the Bill Addresses Itself:*

Under a 1967 law, persons tried on felony charges who were found not guilty by reason of insanity, were automatically turned over to the Department of Mental Health for indefinite custody. In September 1974, the Michigan Supreme Court, in a 4-3 decision, ruled that defendants acquitted of crimes due to insanity must be released from custody unless a jury, after a court hearing, determines that they are mentally ill according to the new Mental Health Code, without regard to the criminal act that led to custody. Some persons contend that the release of persons acquitted by reason of insanity creates a potential threat to the public safety. They cite cases in which a person found not guilty by reason of insanity was released after a court hearing failed to show that he was both mentally ill and dangerous by reason of his mental illness, and after his release, the person committed a violent crime.

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ANALYSIS - H.B. 4363 (6-1-75)\*

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#### *Fiscal Implications:*

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ANALYSIS - H.B. 4363 (6-11-75) \* PAGE 3

### THIRD ANALYSIS

*HOUSE BILL 4363 (as enrolled)*

*Sponsor: Rep. Paul Rosenbaum*

*Analysis Section  
House of Representatives  
Committee: Judiciary*

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MICHIGAN DOCUMENTS

*Material in this analysis complete to 7-15-75.  
Additional information may follow.*

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After the examination, the Center for Forensic Psychiatry, and any independent examiners, would be required to prepare a written report and submit it to the court, prosecuting attorney, and defense counsel. The report would contain: a) the clinical findings; b) the facts upon which the findings were based; and c) the opinion of the examiner on the issue of the defendant's insanity, mental illness (as defined by Section 4001 of House Bill 4362), or mental retardation at the time of the alleged offense. Within 10 days after receiving the report (or reports), but no less than 5 days before trial, the prosecuting attorney would be required to file a notice of rebuttal of the defense of insanity, containing the names of witnesses to be called. If the prosecuting attorney failed to file the notice, the prosecution would be barred from offering evidence in rebuttal to the defendant's insanity defense.

#### *The Definition of Insanity*

Under the bill, a person would be legally insane if, as a result of mental illness or retardation, the person lacked the capacity either to appreciate the wrongfulness of his/her conduct or to conform such conduct to the requirements of laws. "Mental illness" would refer to the definition in House Bill 4362 (with

proposed amendments): "a substantial disorder of thought or mood which significantly impairs judgement, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life." (The bill could not take effect unless House Bill 4362 were passed.) A person who was voluntarily under the influence of alcohol or controlled substances at the time of an alleged offense could not, for that reason alone, be found legally insane.

If a defendant presented an insanity defense in a criminal action tried before a jury, the judge would be required to instruct the jury on the definitions of mental illness and mental retardation in the Michigan Mental Health Code before testimony was presented concerning the question of the defendant's insanity. After testimony, if the evidence is warranted, the jury would be charged to consider separately the issue of the defendant's mental illness and the issue of the defendant's legal insanity. In addition, the charge to the jury would contain instructions on the verdicts of "not guilty", "not guilty by reason of insanity", "guilty", and "guilty but mentally ill".

#### "Guilty but Mentally Ill"

The bill would introduce a fourth possible verdict in criminal cases involving an insanity defense. Under the bill, a defendant who had asserted a defense of insanity could be found "guilty but mentally ill" if, after trial, the judge in a court trial, or the jury in a jury trial, found that the defendant was guilty of an offense, and was mentally ill, but not legally insane, at the time of the offense.

If a defendant who asserted a defense of insanity waived the right to trial by jury or judge, the trial judge with the approval of the prosecuting attorney could, if satisfied that the defendant was mentally ill, accept a plea of "guilty but mentally ill" instead of "guilty" nolo contendere, or "not guilty by reason of insanity". Before accepting a "guilty but mentally ill" plea, however, the judge would be required to examine all reports from the pre-trial psychiatric evaluations, and to hold a hearing on the issue of the defendant's mental illness, at which both the prosecution and defense could present evidence. The reports would become part of the record of the case.

#### Disposition of a Defendant Found "Guilty but Mentally Ill"

If a defendant pleaded or was found "guilty but mentally ill", the court could impose any sentence which could be imposed by law upon a defendant who is convicted of the same offense. If committed to the custody of the Department of Corrections, the defendant would undergo further evaluation and receive appropriate psychiatric treatment from the Department of Corrections or the Department of Mental Health. Provisions in the Michigan Mental Health Code for the transfer of prisoners would apply to the defendant's transfer to and discharge from the treating facility of the Department of Mental Health, as well as to the defendant's return to the Department of Corrections for the balance of the sentence.

If a treating facility designated by either the Department of Corrections or the Department of Mental Health discharged a defendant for return to the Department of Corrections for the balance of the sentence, the treating facility would submit a report to the parole board on the condition of the defendant, which contained: the clinical facts, diagnosis, and course of treatment, as well as the prognosis for improvement, chances for a relapse, the defendant's potential danger to himself or the public, and recommendations for future treatment. In the event that the parole board were to consider parole, it would be required to consult with the defendant's treating facility and obtain the specified report on the condition of the defendant. If the board granted parole, it would be required to make treatment a condition of parole, of the treating facility so recommended. In the case of a defendant found guilty but mentally ill who is placed on probation under the jurisdiction of the sentencing court, the trial judge would be required to make treatment a condition of probation, if the Center for Forensic Psychiatry so recommended. Failure to continue treatment, except by agreement with the treating facility and the parole board, would be a basis for parole violation hearings.

The period of probation could not be less than 5 years and could not be shortened unless the sentencing court received and considered a forensic psychiatric report. Treatment would be provided by an agency of the Department of Mental Health or at the defendant's expense and, with the approval of the sentencing court, by private agencies, private physicians, or other mental health personnel. The bill would require that a psychiatric report be filed with the probation officer and the sentencing court every 3 months during probation. If the defendant made a motion to discontinue probation, the probation officer would be required to obtain the specified report on the defendant's condition from the Center for Forensic Psychiatry, or any other facility certified by the Department of Mental Health for the performance of forensic psychiatric evaluation.

The bill would take effect August 6, 1975, and would apply only to offenses committed on or after that date.

#### *Fiscal Implications:*

Fiscal implications to the State of Michigan are not available at this time.

#### *Background Information:*

The bill does not change the disposition of persons found "not guilty by reason of insanity". Under the September 1974, Michigan Supreme Court decision, *People v. McQuillan*, such a person may be detained for examination and observation no longer than 60 days before a sanity hearing must be held. If the hearing fails to establish legal insanity, the person must be released.

#### *Argument For:*

A defendant found "guilty but mentally ill" would be committed because of conviction and not because of insanity. Defendants sentenced under a "guilty but

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mentally ill" verdict, therefore, could not petition for release on the grounds that they were not legally insane, but would serve definite sentences (with parole possibilities as indicated) in either mental health or correction facilities.

for an examination at the Center for Forensic Psychiatry. If they fail to do so, the court could, without a hearing, order commitment to the Center. The constitutionality of commitment without a hearing is questionable.

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*Argument For:*

The new verdict will help a jury. Perhaps because there seems to be a tendency for people to assume that someone who commits a particularly offensive crime "must be insane", juries frequently find defendants in such cases "not guilty by reason of insanity". Sometimes, however, the defendants are not legally insane, and although it may well have been the intent of the jury that such defendants be committed for a long period, they must be automatically released under a Michigan Supreme Court ruling of September, 1974. The new verdict gives jurors an alternative that would ensure the defendant would not be released before a minimum term had been served, and psychiatric treatment had proved effective.

*Argument Against:*

The new verdict will confuse a jury. The issue of insanity and a person's legal responsibility for committing a crime is already a difficult one. The possibility of a "guilty but mentally ill" verdict will make it more difficult still.

*Argument Against:*

The new verdict is not necessary. A defendant who is legally insane should be acquitted, because such a defendant did not know that an offense was wrong, or could not resist the impulse to commit the offense. Defendants who did know that an offense was wrong, and could have resisted the impulse to commit the offense, should be found guilty. If such defendants are also mentally ill, psychiatric treatment is already required by law.

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*Argument Against:*

Because a defendant found "guilty but mentally ill" would not have an indeterminate sentence, but would be required to serve at least a minimum sentence, the defendant would have no incentive to cooperate in his/her psychiatric treatment, and a high incidence of recidivism would result.

*Argument For:*

"Guilty but mentally ill" is a modified guilty verdict. Unless it carries a mandatory minimum sentence, defendants would abuse the verdict because it would offer the best possibility for early release.

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*Argument Against:*

The bill provides that defendants who intend to assert an insanity defense must make themselves available

**Appendix B**  
***People v Bloye (COA 2004)***

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWN ROBERT BLOYE,

Defendant-Appellant.

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UNPUBLISHED  
December 9, 2004

No. 249624  
Marquette Circuit Court  
LC No. 02-039831-FH

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of possession of a weapon by a prison inmate, MCL 800.283(4), entered after a jury trial. He was sentenced as a fourth habitual offender to four to fifteen years in prison, to be served consecutively to the sentence he was serving when the offense was committed. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with possession of a weapon by a prison inmate after a corrections officer found a spear-like weapon in his cell. A forensic examiner evaluated defendant, and found him competent to stand trial and criminally responsible. Subsequently, the trial court allowed counsel to withdraw from the case, but ordered counsel to remain available to assist defendant if he so requested.

Defendant filed a motion seeking to be allowed to present the defense that, by virtue of diminished capacity that did not rise to the level of legal insanity, he was unable to form the intent necessary to have committed the charged offense.<sup>1</sup> The trial court denied the motion, opining that diminished capacity was not a viable defense, and noting that defendant had not adhered to the procedural requirements for asserting the insanity defense.

At trial, defendant acknowledged that he kept a weapon in his cell, but maintained that prison employees were poisoning him, and asserted that he insisted on a trial in order to publicize the situation at the prison. The warden's administrative assistant testified that

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<sup>1</sup> Possession of a weapon by a prison inmate is a specific intent crime. CJI2d 3.9.

defendant had filed numerous grievances regarding the alleged actions of the prison employees, and that the grievances had been investigated and proven to be unsubstantiated.

Defendant argues that he was deprived of the due process by: (1) the trial court's erroneous pre-trial ruling precluding him from presenting the defense of insanity; (2) the prosecutor's improper argument that the issue of mental illness or insanity was not before the jury; and (3) the trial court's erroneous instruction that neither insanity nor mental illness had been raised as a defense. Furthermore, defendant argues that trial counsel rendered ineffective assistance by failing to investigate and present the defense of legal insanity.

Legal insanity is a defense to a charged crime. A person is legally insane if, as a result of mental illness, he lacked the substantial capacity to appreciate the nature and quality or the wrongfulness of his conduct, or to conform his conduct to the requirements of the law. Mental illness, in and of itself, does not constitute the defense of legal insanity. A defendant has the burden of proving the defense of insanity by a preponderance of the evidence. MCL 768.21a; *People v Stephan*, 241 Mich App 482, 489; 616 NW2d 188 (2000). A defendant who seeks to assert the defense of insanity must serve written notice on the court and the prosecutor not less than thirty days before trial, and submit to an examination by personnel at a center for forensic psychiatry or other qualified personnel. MCL 768.20a(1)-(3).

The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). We review a claim of prosecutorial misconduct de novo. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001).

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. Counsel must have made errors so serious that he was not performing as the "counsel" guaranteed by the federal and state constitutions. US Const, Am VI; Const 1963, art 1, § 20; *People v Carbin*, 463 Mich 590, 599; 623 NW2d 884 (2001). Counsel's deficient performance must have resulted in prejudice. To demonstrate the existence of prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *Id.* at 600.

We affirm. Defendant, acting *in propria persona*, filed a motion seeking to be allowed to present the defense of diminished capacity to negate specific intent. In the motion, defendant indicated that the defense of diminished capacity did not rise to the level of legal insanity. Evidence of mental incapacity less than insanity cannot avoid or reduce criminal responsibility by negating specific intent. Only mental illness constituting insanity can negate intent. The defense of diminished capacity is not available. *People v Carpenter*, 464 Mich 223, 237; 627 NW2d 276 (2001). The trial court correctly held that the defense of diminished capacity was not viable. Moreover, the trial court correctly held that defendant's failure to properly present an insanity defense, i.e., to file a notice of intent to present such a defense, precluded him from raising the defense at trial. MCL 768.20a(1). The procedural limitations placed on the ability to raise an insanity defense do not unconstitutionally infringe on a defendant's due process right to present a defense. *People v Toma*, 462 Mich 281, 294; 613 NW2d 694 (2000).

Defendant's assertion that he was denied due process by the prosecutor's argument and the trial court's instruction to the jury that the issue of mental illness or insanity was not before it is without merit. The defense of diminished capacity was not available, *Carpenter, supra*, and defendant failed to file a notice of intent to assert an insanity defense, as required by MCL 768.20a(1). The statements made by the prosecutor and the trial court were correct. Moreover, by stating that he had no objection to the instructions as read by the trial court, defendant waived any claim of error on appeal. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

Counsel did not render ineffective assistance by failing to investigate and properly raise and present the defense of insanity. Prior to conducting a preliminary examination, the district court ordered that defendant be evaluated for competency and criminal responsibility. The examiner opined that defendant was competent to stand trial and criminally responsible, and that his mental status did not meet the requirements for legal insanity. In reaching his conclusion the examiner not only spoke with defendant, but also reviewed records of prior forensic evaluations, none of which found that defendant was legally insane. It is likely that counsel's decision to refrain from filing a notice of intent to present an insanity defense was a matter of trial strategy. We do not substitute our judgment for that of trial counsel on matters of trial strategy. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). Furthermore, after defendant assumed primary responsibility for his own defense, he did not request that counsel assist him in filing a notice of intent to assert an insanity defense. Defendant has not established prejudice in that he has not shown that but for an error by counsel, it is reasonably probable that the result of the proceedings would have been different. *Carbin, supra*.

Affirmed.

/s/ Jane E. Markey  
/s/ E. Thomas Fitzgerald  
/s/ Donald S. Owens

**Appendix C**  
***People v Cresap (COA 2003)***

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID T. CRESAP,

Defendant-Appellant.

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UNPUBLISHED

March 20, 2003

No. 231406

Oakland Circuit Court

LC No. 99-168453-FC

Before: Markey, P.J., and White and Zahra, JJ.

PER CURIAM.

Following a bench trial, defendant was found guilty but mentally ill of two counts of first-degree premeditated murder, MCL 750.316, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life imprisonment without parole for each of the murder convictions to be served consecutively to concurrent two-year terms for the felony firearm convictions. He appeals by right. We affirm.

Defendant raises several challenges to the trial court's findings of fact. A trial court's findings of fact in a bench trial are reviewed for clear error. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002); MCR 2.613(C). A finding is clearly erroneous where, after reviewing the entire record, this Court is "left with a definite and firm conviction that a mistake has been made." *People v Parker*, 230 Mich App 337, 339; 584 NW2d 336 (1998).

We reject defendant's argument that the court's findings are deficient because the court's opinion does not set forth "subsidiary facts." Defendant cites *People v Jackson*, 63 Mich App 249, 253; 234 NW2d 471 (1975), in support of his claim that the court's findings were deficient. However, in *People v Vaughn*, 186 Mich App 376, 384; 465 NW2d 365 (1990), this Court resolved a conflict concerning the requisite degree of specificity for a court's findings at a bench trial. This Court determined that MCR 2.517 is satisfied where it appears from the court's findings that the court was aware of the factual issues and correctly applied the law. *Id.*; *People v Wardlaw*, 190 Mich App 318, 320-321; 475 NW2d 387 (1991). This standard does not require that a court state subsidiary facts or reasons for its conclusions, as defendant argued. Therefore, the court's failure to include "subsidiary facts" was not error.

Defendant argues that the court's opinion fails to indicate that it was his burden to prove insanity by a preponderance of the evidence. In its opinion, the court stated, "The Court finds beyond a reasonable doubt that the Defendant was not legally insane at the time of the

commission of the offense.” Given that the court was convinced beyond a reasonable doubt that defendant was not insane, the court necessarily was not persuaded that a preponderance of the evidence showed that defendant was insane. In light of this finding, any misunderstanding on the court’s part inured to defendant’s benefit and, therefore, does not warrant appellate relief.

Contrary to defendant’s contention, the court did not clearly err in finding that Dr. Abramsky conceded that his opinion would be different had he known that defendant admitted to others that he was lying to the police on September 25, 1995. The finding is supported by Dr. Abramsky’s affirmative answer to the prosecution’s question, “If the Defendant did know that it was a false statement when he told the police someone else shot his parents, would that possibly change your opinion?” The court did not state that Dr. Abramsky conceded that defendant admitted lying to the police, only that if Dr. Abramsky knew that information, his opinion would have changed. The hypothetical question appears to have been based on Dr. Clark’s testimony that defendant admitted to him that when he told the police and others that someone else had killed his parents, he did not believe that was what happened, but said so to avoid incriminating himself. Hence, the trial court’s finding is not clearly erroneous.

Defendant also argues that the trial court misstated Dr. Balay’s testimony when stating, “Dr. Balay opines that Defendant was not insane because his appreciation of wrongfulness after the event.”

Defendant is correct that Dr. Balay did not opine that defendant was not insane. In her testimony and report, Dr. Balay consistently maintained her opinion that defendant was insane, i.e., not criminally responsible. The court’s opinion appears to be internally inconsistent with regard to Dr. Balay’s opinion on this subject. Initially, the court correctly recognized that “Dr. Balay said he was not criminally responsible.” Later, however, the court stated, “Dr. Balay opines that Defendant was not insane because his appreciation of wrongfulness after the event.” The two statements appear to be inconsistent because, as Dr. Balay explained, she used the term “not criminally responsible” to mean that the legal definition of insanity was met. Ordinarily, where a trial court’s findings are inconsistent or ambiguous, remand for clarification is appropriate. In this case, however, we are not convinced that remand for further explanation is necessary to facilitate appellate review. *People v Shields*, 200 Mich App 554, 559; 504 NW2d 711 (1993). When the contested finding is read in context, the court’s intended meaning is apparent. The statement addresses the portion of Dr. Balay’s testimony on cross-examination in which she was asked to specify weaknesses in her conclusion that defendant was insane. In light of the court’s recognition at the outset that Dr. Balay opined that defendant was insane, we are not persuaded that the challenged finding, although poorly drafted, requires a remand for further explanation.

Defendant’s next issue is a challenge to the sufficiency of the evidence of premeditation and deliberation. However, defendant’s argument focuses on the corpus delicti rule, which he claims was violated because his statements to the doctors were admitted without the prosecution first proving premeditation and deliberation by other evidence. Defendant did not preserve this issue by moving to suppress his statements on this basis at trial. *People v Beard*, 171 Mich App 538, 548; 431 NW2d 232 (1988); *People v Harris*, 113 Mich App 333, 335-336; 317 NW2d 615 (1982). Moreover, the argument is without merit because the corpus delicti of first-degree murder requires only proof of “a death and some criminal agency that caused the death.” *People v McMahan*, 451 Mich 543, 549; 548 NW2d 199 (1996); see, also, *People v Williams*, 422 Mich

381, 388; 373 NW2d 567 (1985). Defendant does not argue that those elements were not established.

To the extent that defendant is challenging the sufficiency of the evidence of premeditation and deliberation apart from the corpus delicti rule, we are not persuaded that the evidence was insufficient. The evidence indicated that defendant purchased a gun four days before the killings, that he decided to kill his parents, obtained the gun, entered his parents' bedroom, and began shooting. Additionally, while they were still alive, he left the room to get an axe that was kept in the basement. He returned to the bedroom and inflicted several axe blows to the victims, who attempted to defend themselves. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find premeditation and deliberation beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Defendant also argues that the trial court's finding of premeditation and deliberation was against the great weight of the evidence. Although defendant did not raise this issue in a motion for a new trial in the trial court, consistent with MCR 7.211(C)(1)(c), we will treat the issue as preserved. A new trial based upon the great weight of the evidence should be granted only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998).

Specifically, defendant argues that his mental illness made him incapable of premeditating and deliberating the killings. Defendant essentially asserts that he had a "diminished capacity" that precluded him from forming the requisite intent.<sup>1</sup>

In *People v Carpenter*, 464 Mich 223, 237; 627 NW2d 276 (2001), our Supreme Court held that "diminished capacity" is not a viable defense in Michigan. The Court noted that it had never specifically authorized the use of the defense, which had been introduced to Michigan and developed by this Court. *Id.* at 233-235. The Court determined that the Legislature, by enacting the statutory framework for the insanity defense, "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." *Id.* at 237.

Defendant's argument that the court's finding of premeditation and deliberation is against the great weight of the evidence because his mental illness made him incapable of premeditating and deliberating is incompatible with *Carpenter's* holding that diminished capacity is not a viable defense in Michigan. Pursuant to *Carpenter*, evidence of defendant's mental illness, which the court found did not meet the threshold for insanity, could not be "used to avoid or reduce criminal responsibility by negating specific intent." *Id.* at 237. Although defendant asserts that *Carpenter* cannot be applied retroactively, he does not further discuss or attempt to explain his position regarding this issue. Accordingly, we deem that point abandoned as being inadequately briefed. "A party may not merely state a position and then leave it to this Court to

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<sup>1</sup> The case cited by defendant, *People v Lynch*, 47 Mich App 8; 208 NW2d 656 (1973), is cited by the Supreme Court in *People v Carpenter*, 464 Mich 223, 233; 627 NW2d 276 (2001), as the case that introduced the diminished capacity defense to Michigan.

discover and rationalize the basis for the claim.” *People v Griffin*, 235 Mich App 27, 45; 597 NW2d 176 (1999).

Defendant also claims that consideration of the factors set forth in *People v Conklin*, 118 Mich App 90; 324 NW2d 537 (1982), do not support a finding of premeditation and deliberation. We disagree. The circumstances of the killing support the trial court’s finding of a premeditated and deliberate murder. The facts and circumstances reveal that defendant had numerous opportunities to reflect on his actions before he killed the victims. The evidence indicated that defendant fired a rifle repeatedly and that each shot required him to manually eject the spent cartridge. See *People v Strunk*, 184 Mich App 310, 325-326; 457 NW2d 149 (1990) (discussing the use of a pump-action shotgun in the context of a defendant’s challenge to the sufficiency of the evidence of premeditation and deliberation.) Furthermore, when the shooting did not kill the victims, defendant retrieved an axe and chopped at them. Patently, defendant had the opportunity to reflect on his actions. *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). The forensic evidence, including the presence of victim’s defensive wounds, proved that the victims were alive when defendant began attacking them with the axe. Defensive wounds may be evidence of premeditation. *People v Johnson*, 460 Mich 720, 733; 597 NW2d 73 (1999). Because the evidence does not preponderate heavily against the verdict, defendant is not entitled to relief on this basis.

Defendant next argues that the trial court’s determination that he was criminally responsible is against the great weight of the evidence. We disagree.

Insanity is an affirmative defense requiring proof that as a result of mental illness or mental retardation, the defendant lacked substantial capacity either to appreciate the nature and quality or the wrongfulness of his conduct or to conform his conduct to the requirements of the law. MCL 768.21a(1); see, also, *Carpenter, supra* at 230-231. The defendant bears the burden of proving the defense of insanity by a preponderance of the evidence. MCL 768.21a(3); *Carpenter, supra* at 231.

Two of the three psychiatric experts, Drs. Balay and Abramsky, believed that defendant was insane. The other, Dr. Clark, believed that defendant was mentally ill but not insane at the time of the offenses. Both Dr. Balay and Dr. Abramsky expressed some uncertainty about their conclusions.

Dr. Abramsky recognized that the case was in “a gray area” because of defendant’s illness. Dr. Abramsky believed that although defendant could not articulate it, he might have operated under a delusion. Dr. Abramsky concluded that when defendant was interviewed by the police, he did not know whether or not he had committed the crime. As previously mentioned, Dr. Abramsky conceded that his opinion might change if there were evidence that defendant knew he was lying when he talked to the police. Dr. Clark’s testimony later provided that evidence.

Dr. Balay indicated that the assessment of defendant’s ability to appreciate the wrongfulness of his conduct was “very tricky” because his behavior afterward demonstrated that he knew he had done something wrong. She inferred that at the time of the crime, he did not know that what he was doing was wrong, but she recognized that this was a “questionable position.” She inferred that at that time of the killings, defendant was in a state of rage, but

recognized that the inference was not “clear cut.” She found no evidence that he was able to conform his conduct and “limited evidence” that he was unable to conform his conduct to the requirements of the law.

In contrast with Dr. Balay and Dr. Abramsky, Dr. Clark opined that the case was not that close, but was “rather more clear.” He found inadequate evidence of a link between defendant’s mental illness and the killings. He believed that defendant’s explanation that he used the axe to put his parents out of their suffering showed that he was capable of appreciating wrongfulness during the killings. Unlike the other experts, Dr. Clark believed that defendant was in full control and engaged in conscious and goal-directed behavior as he shot at his parents, retrieved a second weapon, and then attempted to conceal his actions.

The trial court found Dr. Clark’s report thorough and convincing. Having reviewed the evidence, we do not believe that it heavily preponderates against the court’s determination that defendant was criminally responsible.

Defendant next asserts that the absence of the court’s own analysis for reaching its verdict “leads to the inference this may have been a compromised [sic] verdict.” Defendant does not explain the factual or legal basis for this claim. His cursory argument merely repeats the assertion that the court’s findings inadequately explain the reasons for the verdict. Because defendant does not explain the basis of this claim, we deem it abandoned. *Griffin, supra* at 45.

Defendant next argues that his answers to background questions posed by the police before he was given *Miranda*<sup>2</sup> warnings on September 25, 1995, were inadmissible. In addition, defendant claims that all of his answers on September 26, 1995, were inadmissible because the *Miranda* warnings were not repeated. Defendant argues that his answers during these interviews were used against him in a “forensic context.” Because defendant did not raise these specific challenges to the admissibility of the statements below, we review this unpreserved issue for plain error in accordance with *People v Carines*, 460 Mich 750, 764-767; 597 NW2d 130 (1999).

Defendant has not established plain error with respect to the background questions. Routine booking questions are not “interrogation.” See *People v Anderson*, 209 Mich App 527, 532-533; 531 NW2d 780 (1995).

Although defendant claims that fresh warnings were required when his interview resumed on September 26, 1999, the cases he cites in support of that position are readily distinguishable from the case at bar. *People v Catey*, 135 Mich App 714; 356 NW2d 241 (1984), and *Michigan v Mosley*, 423 US 96; 96 S Ct 321; 46 L Ed 2d 313 (1975), address the circumstances in which questioning may be resumed after a suspect invokes the right to remain silent. Defendant does not assert that he invoked that right in this case.

To the extent that defendant is arguing that the warnings became stale with the passage of time, we note that “[t]he police are not required to read *Miranda* rights every time a defendant is questioned.” *People v Littlejohn*, 197 Mich App 220, 223; 495 NW2d 171 (1992). This Court

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<sup>2</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

has stated that “the failure to reread a defendant’s *Miranda* rights prior to each interrogation does not render his subsequent statements inadmissible as evidence against him. Rather, a factual question is raised as to whether the statements were voluntary.” *People v Godboldo*, 158 Mich App 603, 607; 405 NW2d 114 (1986). Here, however, defendant does not argue on appeal that the statements were involuntary. Accordingly, defendant has not established plain error.

We affirm.

/s/ Jane E. Markey  
/s/ Helene N. White  
/s/ Brian K. Zahra

**Appendix D**  
***People v Gooldy (COA 2024)***

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**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES GERALD GOOLDY,

Defendant-Appellant.

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UNPUBLISHED

August 15, 2024

No. 361190

Jackson Circuit Court

LC No. 17-005716-FH

Before: GADOLA, C.J., and PATEL and YOUNG, JJ.

PER CURIAM.

James Gerald Gooldy appeals by leave granted<sup>1</sup> his sentence after pleading guilty to manufacture and/or delivery of controlled substances, second offense, MCL 333.7401(2)(b)(i), Jackson Circuit Court Judge Thomas D. Wilson presiding.<sup>2</sup> After Gooldy’s guilty plea, the trial court sentenced him to 8 to 20 years in prison. On appeal, Gooldy argues that (1) the trial court reversibly erred when he was sentenced by a different judge who did not preside over his earlier plea proceedings, and (2) his sentence was disproportionate. We affirm. Regarding the first issue, the trial court did not abuse its discretion by denying Gooldy’s request to adjourn sentencing or his alternate request to withdraw his plea, which were both premised on the plea-taking judge’s absence at sentencing. Further, the trial court’s sentence was not an abuse of discretion.

I. BACKGROUND

In December 2017, Gooldy was bound over for trial as a third-offense habitual offender, MCL 769.11, on one count of manufacture and/or delivery of ecstasy or MDMA, second offense, MCL 333.7401(2)(b)(i). Thus, Gooldy was charged for an enhanced second drug offense, and as

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<sup>1</sup> On January 12, 2024, the Michigan Supreme Court remanded this case to this Court for consideration as on leave granted. See *People v Gooldy*, \_\_\_ Mich \_\_\_; 999 NW2d 41 (2024).

<sup>2</sup> As discussed herein, the sentencing judge was different from the judge who presided over Gooldy’s plea proceedings.

a third-offense habitual offender. The instant case was initially presided over in the circuit court by Judge Thomas D. Wilson. Gooldy was released on bond in May 2019.

The trial court held a plea hearing before Judge Wilson on April 20, 2021, at which Gooldy admitted that he “delivered the controlled substance of ecstasy or MDMA to a third party” on or about December 8, 2017.<sup>3</sup> Gooldy said he was willing to plead guilty *only if* sentenced to probation, and the court responded, “Well all I can tell you is if I’m not going to put you on probation[,] I’ll let you withdraw your plea.” Gooldy then pleaded guilty to delivery/manufacture of ecstasy, second offense, with the prosecution dismissing the third-offense habitual-offender notice, and the trial court accepted his plea. In taking this plea, the trial court reiterated that “if I’m going to give you [Gooldy] anything other than probation at [sentencing] after [you already served] 33 months in jail, if I find that I’ve got to give you something more than that then I’ll give you the opportunity to withdraw your plea.”

The same day it accepted Gooldy’s plea, the trial court amended the conditions of its pretrial release order, which as relevant here required that Gooldy personally appear at sentencing, not commit any further crimes, and refrain from using illegal narcotics. Gooldy was scheduled for sentencing on August 5, 2021, but he failed to appear after also missing his presentence interview. The trial court issued a bench warrant for Gooldy’s arrest that same day. This would be Judge Wilson’s final action on Gooldy’s case. On August 6, 2021, the State Court Administrative Office authorized the assignment of Judge Edward J. Grant to the Jackson County circuit court to temporarily replace Judge Wilson. The assignment was limited from August 15, 2021, to December 31, 2021, and stated, “Reason for Assignment: MEDICAL LEAVE.”

In September 2021, Gooldy was arrested for possession of drug paraphernalia and on outstanding warrants in this case. Gooldy’s sentencing commenced on October 28, 2021, with Judge Grant presiding. Defense counsel at the outset requested an adjournment of sentencing—or, alternatively, an opportunity for Gooldy to withdraw his plea—because of Judge Wilson’s absence. The court declined to do so:

[*Defense Counsel*]: This is a case that Judge Wilson has been very involved with in discussions about resolving this case. Judge Wilson does not do *Cobbs*<sup>[4]</sup> agreements. So I’m not suggesting that we have a *Cobbs* agreement with Judge Wilson.

*The Court*: All right. Which would have to be on the record.

[*Defense Counsel*]: Absolutely. But we had discussions with Judge Wilson on the record and those discussions were integral to the plea agreement that my

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<sup>3</sup> This proceeding also involved Gooldy’s guilty plea in case number 19-001671-FH, which is not at issue on appeal. In that case, Gooldy pleaded guilty to prisoner possessing contraband, specifically the possession of fentanyl, an offense that occurred while he was jailed in July 2017 for a prior offense.

<sup>4</sup> See *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

client entered into. . . . And we are asking this court to adjourn this matter so that we can be sentenced in front of Judge Wilson who is much more familiar with the case . . . [and] all the discussions that we've had.

I understand that it is not a *Cobbs* agreement so it is not an official agreement. But the statements made and discussions that we've had with Judge Wilson over the period of several years regarding this case were an, were an important part of the plea from [Gooldy]'s perspective. . . .

\* \* \*

*The Court:* All right. Well there's a reason why we have the court rules and there's a reason why we have a thing called a *Cobbs* agreement, because it has to be placed on the record.

...

\* \* \*

[*Defense Counsel*]: And just so we're clear. These were discussions held on the record.

*The Court:* But no promises are made.

[*Defense Counsel*]: Judge Wilson does not make promises.

*The Court:* All right. All right. Your motion is denied. We're going to proceed.

The court ultimately sentenced Gooldy, within the 6-to-10-year minimum guidelines range, to 8 to 20 years' imprisonment, with credit for 997 days served. After discussing Gooldy's education level, his family situation, his failure to appear at the initial sentencing, his multiple failures to previously follow through with drug treatment, the circumstances of this offense and Gooldy's narcotics possession in jail, and other information from his PSIR, the court determined that Gooldy was "not probation material." Specifically highlighting that Gooldy absconded from probation after leaving supervised drug treatment in 2017, the court said, "You don't comply with what you're supposed to do. . . . We're just spinning our wheels. If there's going to be any change[,] you've got to make the change. We can't make the change for you." Gooldy now appeals.

## II. STANDARDS OF REVIEW

"A trial court's ruling on a motion to adjourn is reviewed for an abuse of discretion." *Pugno v Blue Harvest Farms LLC*, 326 Mich App 1, 27; 930 NW2d 393 (2018). This Court also reviews for an abuse of discretion a trial court's decision on a motion to withdraw a plea. *People v Martinez*, 307 Mich App 641, 646; 861 NW2d 905 (2014). "An abuse of discretion occurs when the trial court's decision is outside the range of principled outcomes. Underlying questions of law

are reviewed de novo, while a trial court’s factual findings are reviewed for clear error.” *Id.* at 646-647.

Gooldy’s sentence is reviewed for reasonableness consistent with the Supreme Court’s opinion in *People v Steanhouse*, 500 Mich 453; 902 NW2d 327 (2017). *People v Posey*, 512 Mich 317, 349-352, 357, 359-360; \_\_\_ NW2d \_\_\_ (2023). Per *Steanhouse*, “the proper inquiry when reviewing a sentence for reasonableness is whether the trial court abused its discretion by violating the ‘principle of proportionality’ set forth in *People v Milbourn*,<sup>5</sup> 435 Mich 630, 636; 461 NW2d 1 (1990), ‘which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.’ ” *Steanhouse*, 500 Mich at 459-460; see also *id.* at 475 (reasonableness review tests “whether the sentence is proportionate to the seriousness of the matter, not whether it departs from or adheres to the guidelines’ recommended range.”). Gooldy bears the burden of overcoming a presumption of proportionality when appealing a within-guidelines sentence, and must demonstrate that such a sentence “is unreasonable or disproportionate.” *Posey*, 512 Mich at 357-359.

### III. ANALYSIS

Gooldy argues that (1) the trial court reversibly erred when he was sentenced by a different judge who did not preside over his earlier plea proceedings, and (2) his sentence was disproportionate. Regarding the first issue, the trial court did not abuse its discretion by denying Gooldy’s request to adjourn sentencing or his alternate request to withdraw his plea, which were both premised on Judge Wilson’s absence at sentencing. Specifically, because Judge Wilson was not reasonably available at the time of sentencing, his absence does not entitle Gooldy to resentencing. Further, even if a valid *Cobbs* agreement existed for a lesser sentence, Gooldy was not entitled to withdraw his plea because he committed misconduct after its acceptance and before sentencing. We also conclude that the trial court’s sentence was not an abuse of discretion.

#### A. JUDGE WILSON’S ABSENCE AT SENTENCING

Gooldy first contends that the trial court reversibly erred when he was sentenced by a different judge who did not preside over his earlier plea proceedings. As an initial matter, we disagree with Gooldy’s argument that the trial court erred because he was sentenced by Judge Grant instead of Judge Wilson. “A defendant is entitled to be sentenced before the judge who accepts the plea, *provided that judge is reasonably available.*” *People v Bennett*, 344 Mich App 12, 19; 999 NW2d 827 (2022) (cleaned up; emphasis added). It appears to be undisputed that Judge Wilson was on medical leave and thus *not* available when Judge Grant sentenced Gooldy in October 2021.

Gooldy asserts that resentencing before Judge Wilson is warranted because Judge Wilson was only temporarily unavailable. Indeed, according to the assignment form, Judge Grant was to replace Judge Wilson for a period of only four months. But here, Gooldy’s sentencing was only scheduled to a time during Judge Wilson’s leave of absence because of malfeasance by Gooldy.

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<sup>5</sup> *Milbourn* was overruled in part on other grounds by *Steanhouse*.

And while logically it makes some sense to consider the length of an absence when determining whether a judge is truly “unavailable,” Gooldy fails to provide substantive analysis about the same or an explanation of how, if at all, these considerations are affected by the aforementioned malfeasance. See *Bronson Methodist Hosp v Mich Assigned Claims Facility*, 298 Mich App 192, 199; 826 NW2d 197 (2012) (“An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give [an issue] only cursory treatment with little or no citation of supporting authority.”) (quotation marks and citation omitted).

Furthermore, the limited discussion of this question in caselaw indicates that this Court need only consider whether the plea-taking judge was reasonably available *on the sentencing date*. See *People v Humble*, 146 Mich App 198, 200; 39 NW2d 422 (1985)<sup>6</sup> (“The record before us is silent on the question of whether Judge Burrows, a visiting probate judge, was reasonably available *on April 16* to sentence defendant.”) (emphasis added).<sup>7</sup> Here, Judge Wilson was not reasonably available at the time of sentencing, and his absence does not entitle Gooldy to resentencing. Accordingly, the trial court did not abuse its discretion by denying Gooldy’s request to adjourn sentencing.

#### B. JUDGE WILSON’S ASSURANCES AT PLEA-TAKING

This case is complicated by Gooldy’s alternate request to withdraw his guilty plea and apparent reliance when pleading guilty on Judge Wilson’s comments regarding probation. Specifically, while defense counsel acknowledged repeatedly below that Judge Wilson “does not do *Cobbs* agreements” and that no such agreement existed, at least formally, the circumstances of Gooldy’s plea align squarely with the concept articulated in *Cobbs* and its progeny.

We acknowledge that Gooldy does not rely on *Cobbs* on appeal.<sup>8</sup> And defense counsel arguably waived any *Cobbs* issue by disavowing in the trial court the existence of any *Cobbs*

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<sup>6</sup> Although this Court is not required to follow cases decided before November 1, 1990, see MCR 7.215(J)(1), a published case decided by this Court “has precedential effect under the rule of stare decisis,” MCR 7.215(C)(2). See also *Woodring v Phoenix Ins Co*, 325 Mich App 108, 114-115; 923 NW2d 607 (2018) (stating that although this Court is not “strictly required to follow uncontradicted opinions from this Court decided before November 1, 1990,” those opinions are nonetheless “considered to be precedent and entitled to significantly greater deference than are unpublished cases.”).

<sup>7</sup> We reiterate this Court’s concerns from *Bennett* that the rule concerning a judge’s unavailability at sentencing “remains ill-defined.” *Bennett*, 344 Mich App at 23 n 7. “Consequently, we strongly encourage the adoption of a court rule to precisely define the contours of the rule.” *Id.*

<sup>8</sup> See *Bronson Methodist Hosp*, 298 Mich App at 199 (“An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give [an issue] only cursory treatment with little or no citation of supporting authority.”) (quotation marks and citation omitted); *Mich Ed Ass’n v Secretary of State*, 280 Mich App 477,

agreement with Judge Wilson. See *People v Davis*, 509 Mich 52, 64; 983 NW2d 325 (2022) (“Waiver is the intentional relinquishment or abandonment of a known right, and one who waives an issue cannot later seek appellate review of that issue.”) (quotation marks and citation omitted). However, we provide the following discussion to give guidance to the bench and bar concerning *Cobbs* agreements. And for the reasons provided, Gooldy was not entitled to plea withdrawal under *Cobbs*.

“A *Cobbs* agreement is an agreement in which a defendant agrees to plead guilty in reliance on the trial court’s preliminary evaluation of the sentence to be imposed.” *People v Brinkey*, 327 Mich App 94, 99; 932 NW2d 232 (2019); see also *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993) (“a judge may state *on the record* the length of sentence that, on the basis of the information then available to the judge, appears to be appropriate for the charged offense”).

“Under a *Cobbs* agreement a defendant is permitted to withdraw his or her guilty plea in the event that the trial court determines that it must exceed the preliminary evaluation.” *Brinkey*, 327 Mich App at 99 (quotation marks and citation omitted). *Cobbs* states:

The judge’s preliminary evaluation of the case does not bind the judge’s sentencing discretion, since additional facts may emerge during later proceedings, in the presentence report, through the allocution afforded to the prosecutor and the victim, or from other sources. However, a defendant who pleads guilty or nolo contendere in reliance upon a judge’s preliminary evaluation with regard to an appropriate sentence has an absolute right to withdraw the plea if the judge later determines that the sentence must exceed the preliminary evaluation. [*Cobbs*, 443 Mich at 283.]

Relatedly, MCR 6.310(B)(2)(b) allows defendants to withdraw a plea “after acceptance but before sentence” if “the plea involves a statement by the court that it will sentence to a specified term or within a specified range, and the court states that it is unable to sentence as stated[.]”

Here, despite Judge Grant’s observation at sentencing that “no promises were made” and defense counsel’s response that “Judge Wilson does not make promises,” that is exactly what appears to have happened at Gooldy’s plea proceedings. When Judge Wilson asked Gooldy if he wanted to plead guilty—notably after the judge said he would “probably” sentence Gooldy to probation—Gooldy responded, “I’ll, if, *as long as* it’s to prob[ation], [if you] release me to probation I’ll plead guilty.” (Emphasis added.) Judge Wilson when taking the plea stated numerous times and in no uncertain terms that he would permit Gooldy to withdraw the same if the judge ultimately deviated from a sentence of probation, which Judge Wilson indicated might occur if some new and “stark” facts were revealed before sentencing. Thus, Judge Wilson provided a preliminary evaluation of the sentence to be imposed by stating on the record, on the basis of the information then available, that probation appeared to be appropriate. See *Cobbs*, 443 Mich at 283; *Brinkey*, 327 Mich App at 99. Further, consistent with the concept of a *Cobbs* agreement, Judge Wilson allowed that Gooldy could withdraw his plea if the ultimate sentence

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488; 761 NW2d 234 (2008), *aff’d* 489 Mich 194 (2011) (“[W]e generally do not consider any issues not set forth in the statement of questions presented.”).

deviated from the judge's preliminary evaluation that probation was appropriate. Therefore, Gooldy was arguably entitled to withdraw his plea under *Cobbs* and MCR 6.310(B)(2)(b) when Judge Grant was unwilling to follow Judge Wilson's preliminary evaluation.

But defense counsel did not make this argument, and even if counsel had, the trial court did not abuse its discretion by denying Gooldy's request to withdraw his plea. Specifically, Gooldy waived his right to plea withdrawal because he committed misconduct after Judge Wilson accepted his plea.

Except as allowed by the trial court for good cause, a defendant is not entitled to withdraw a plea under subsection (2)(a) or (2)(b)<sup>[9]</sup> if the defendant commits misconduct after the plea is accepted but before sentencing. For purposes of this rule, misconduct is defined to include, but is not limited to: absconding or failing to appear for sentencing, violating terms of conditions on bond or the terms of any sentencing or plea agreement, or otherwise failing to comply with an order of the court pending sentencing. [MCR 6.310(B)(3).]

Gooldy indisputably failed to appear for his initial sentencing. This alone is clearly misconduct as contemplated under MCR 6.310(B)(3), and therefore nullified any entitlement Gooldy may have had to plea withdrawal.<sup>10</sup> Further, Gooldy was charged with possession of drug paraphernalia in September 2021 when arrested for his outstanding warrants, in violation of the trial court's amended release conditions entered when he pleaded guilty. To the extent the trial court erred by denying Gooldy's requested relief because there were "no promises" and no *Cobbs* agreement when our review of the record, as discussed, shows otherwise, the court still reached the correct result given Gooldy's misconduct. See *People v Goold*, 241 Mich App 333, 342 n 3; 615 NW2d 794 (2000) ("Ordinarily, when a lower court reaches the right result, even for the wrong reason, this Court will affirm."). For the forgoing reasons, the trial court did not abuse its discretion by denying Gooldy's request to adjourn sentencing, nor by denying Gooldy's alternate request to withdraw his plea.

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<sup>9</sup> As indicated above, MCR 6.310(B)(2)(b) allows for plea withdrawal related to a *Cobbs* agreement, specifically when "the plea involves a statement by the court that it will sentence to a specified term or within a specified range, and the court states that it is unable to sentence as stated[.]" MCR 6.310(B)(2)(a) applies when "the plea involves an agreement for a sentence for a specified term or within a specified range, and the court states that it is unable to follow the agreement[.]"

<sup>10</sup> See also *People v Gooldy*, 513 Mich 974, 976; 999 NW2d 41 (2024) (VIVIANO, J., *concurring*) (opining that "even if there had been a *Cobbs* agreement, defendant would no longer have been entitled to withdraw his plea because of his subsequent misconduct."); *id.* ("I am aware of no caselaw suggesting that a defendant who fails to appear for sentencing has a constitutional or other right, once he is later apprehended, to delay his sentencing until his preferred judge returns from a medical leave or to withdraw his plea.").

### C. PROPORTIONALITY OF SENTENCE

Gooldy also contends that his sentence was disproportionate. As discussed, a sentencing court must “take into account the nature of the offense and the background of the offender” to ensure “that the sentence[] imposed . . . [is] proportionate to the seriousness of the matter[.]” *Milbourn*, 435 Mich at 651. “An appropriate sentence should give consideration to the reformation of the offender, the protection of society, the discipline of the offender, and the deterrence of others from committing the same offense.” *People v Boykin*, 510 Mich 171, 183; 987 NW2d 58 (2022); see also *People v Babcock*, 469 Mich 247, 263; 666 NW2d 231 (2003) (“the more egregious the offense, and the more recidivist the criminal, the greater the punishment”). A sentencing court should consider information in a defendant’s PSIR, see *People v Lampe*, 327 Mich App 104, 120; 933 NW2d 314 (2019) (A PSIR is “intended to insure that the punishment is tailored not only to the offense, but also to the offender.”), and may consider uncharged offenses, *People v Beck*, 504 Mich 605, 626; 939 NW2d 213 (2019).

As the trial court observed, Gooldy had a considerable criminal history with two prior felonies and five misdemeanors. While Gooldy successfully completed one previous probation term, he since absconded from or otherwise violated probation three separate times, most recently just before the instant offense in 2017. Gooldy repeatedly struggled with substance-abuse components of his probation. In 2017, Gooldy possessed fentanyl while in jail, for which he pleaded guilty alongside the instant offense. The sentencing court also specifically referenced Gooldy’s connection to the overdose death of Kimberly Schilling and her unborn child, which led to the investigation of Gooldy and the offense at issue.<sup>11</sup> And during this case, as already covered, Gooldy missed his initial sentencing date and was arrested possessing drug paraphernalia just a month before he was ultimately sentenced.

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<sup>11</sup> Gooldy’s presentence investigation report (PSIR) provides the following background concerning this issue:

On November 8, 2017, Anthony Schilling called 911 after finding his wife Kimberly Schilling unresponsive in the bathroom with a syringe near her. . . . On November 16, 2017, Kimberly Schilling, having been placed on life support, lost her battle and died, losing her unborn baby in the process.

Anthony Schilling agreed to help officers in their investigation into this matter. He showed officers Facebook messages where his wife had been communicating with a subject named James Gooldy, the defendant in this matter. . . . Search warrants were obtained for the Facebook account of the defendant, and it was clear that he was selling drugs, along with William Blair.

Anthony Schilling agreed to help police set up a drug transaction with Gooldy, which led to the instant offense.

We acknowledge Gooldy’s incredibly debilitating and destructive relationship with drugs, and his acceptance of at least some responsibility for his conduct. Indeed, we have no reason to doubt the validity of Gooldy’s cited studies concerning the long-term effects of serious drug use on the brain and users’ potential for subsequent recovery. Nonetheless, these studies were never presented to or even referenced in the trial court, and attempts to enlarge the record on appeal are generally prohibited. See *Mich AFSCME Council 25 v Woodhaven-Brownstown Sch Dist*, 293 Mich App 143, 146; 809 NW2d 444 (2011) (declining to consider evidence not before the trial court when it decided the motion at issue). Further, Gooldy merely cites studies concerning addiction and recidivism generally, with no connection to his own circumstances apart from saying that one study “explained” his “relapse”—notably without any support from an expert to reach that conclusion.<sup>12</sup> Therefore, even considering these studies, Gooldy has not met his burden to demonstrate that his within-guidelines sentence was disproportionate to *his* particular circumstances, nor to those of the offense at issue. See *Posey*, 512 Mich at 357-359; *Steanhouse*, 500 Mich at 459-460.

The record reflects that the sentencing court was readily aware of Gooldy’s history of addiction, which was documented in Gooldy’s PSIR and discussed at sentencing, and considered this in conjunction with the other pertinent circumstances. And Gooldy does not argue that the trial court lacked or misconstrued any information concerning his drug use, that it improperly failed to consider his addiction as mitigating, or that his trial counsel was ineffective for failing to present any pertinent information—or for any other deficiency—regarding this matter. The trial court also held valid concerns about Gooldy’s rehabilitation potential given his prior failures in this regard.

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<sup>12</sup> Notably, our Court recognized in *People v Bennett*, 335 Mich App 409, 429; 966 NW2d 768 (2021), that “[o]ur justice system generally regards an offender who commits a crime while suffering from undiagnosed or untreated mental illness as less deserving of the harshest punishments.” Substance use disorder is unquestionably a mental illness that would mitigate an offender’s culpability. But there is no argument presented that Gooldy had or has that diagnosis. In any event, *Bennett* was specifically related to evaluating mental illness in the context of other factors relevant to *juvenile* sentencing, and undisturbed authority from this Court alternatively provides that trial courts need not consider a defendant’s mental health or substance abuse history when imposing a sentence, see *People v Johnson*, 309 Mich App 22, 34; 866 NW2d 883 (2015), vacated in part on other grounds 497 Mich 1042 (2015) (“[The d]efendant next argues that the trial court failed to consider various mitigating factors, such as his mental health and substance abuse histories . . . . However, . . . the trial court was not required to consider such mitigating factors when it sentenced him.”). And “trial courts are not required to expressly or explicitly consider mitigating factors at sentencing.” *People v Bailey*, 330 Mich App 41, 63; 944 NW2d 370 (2019). Gooldy raises no issue with this binding authority, and this Court is bound to follow its own published decisions. MCR 7.215(C)(2) and (J)(1).

Given the totality of the record, Gooldy's sentence was proportionate to the offense and offender, not an abuse of discretion, and Gooldy has not met his burden to show otherwise.

Affirmed.

/s/ Michael F. Gadola  
/s/ Sima G. Patel  
/s/ Adrienne N. Young

**Appendix E**  
***People v Hurless (COA 2024)***

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**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER SCOTT HURLESS,

Defendant-Appellant.

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UNPUBLISHED

September 19, 2024

No. 366066

Barry Circuit Court

LC No. 2022-000635-FH

Before: FEENEY, P.J., and RICK and N. P. HOOD, JJ.

PER CURIAM.

Defendant appeals by leave granted<sup>1</sup> his sentences following guilty pleas to possession of methamphetamine, MCL 333.7403(2)(b)(i); stalking, MCL 750.411h; and trespass to land, MCL 750.552. The trial court sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to concurrent terms of 10 to 20 years’ imprisonment for possession of methamphetamine, 87 days’ imprisonment for stalking, and 87 days’ imprisonment for trespass to land. This case asks us to decide whether the prohibitions against a sentencing court relying on acquitted conduct as an aggravating factor, as outlined in *People v Beck*, 504 Mich 605, 625-630; 939 NW2d 213 (2019), extend to the conduct underlying the dismissal of charges based on the defense of not guilty by reason of insanity (NGRI). We conclude that they do not, and therefore affirm.

**I. FACTUAL BACKGROUND**

This action originates from defendant’s arrest after a three-year pattern of stalking the victim.<sup>2</sup> Defendant previously had a relationship with the victim’s sister and was the biological

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<sup>1</sup> *People v Hurless*, unpublished order of the Court of Appeals, entered June 21, 2023 (Docket No. 366066).

<sup>2</sup> The background facts presented here are from the presentence investigation report. Courts may rely on information in a PSIR, “which is presumed to be accurate unless the defendant effectively

father of the victim's nephew, but the victim herself had no other immediate connection to him. In addition to harassing the victim, defendant engaged in similar behavior toward the victim's sister for 12 years. Despite the years-long pattern of conduct, defendant was not convicted of stalking the victim prior to this case. Defendant's conduct toward the victim, however, formed the basis for a 2019 home-invasion charge. Defendant raised an NGRI defense to that charge, which the court accepted as valid. The charge was thereafter dismissed.

In mid-September 2022, the victim's home security system captured defendant walking through her backyard. The police were dispatched to the victim's home in the early evening. When they arrived, the victim informed the police that in the past, defendant had broken into her home, left objects on the front porch, including dog feces, cookies, coffee, and hot chocolate, and shown up to her house unexpectedly. She showed them photos "taken that morning" depicting defendant on her property. The victim also showed the officers defendant's YouTube channel. There, he had videos in which he directly addressed the victim, including one in which he used expletives and said he would "beat [her] face in[to] the floor" and called her a "whore." The victim told the police that law enforcement had recently warned defendant to stay away from her property. The victim indicated that she felt threatened by defendant's behavior.

The police contacted defendant about his presence on the victim's property. He admitted being on the victim's property, but, according to the presentence investigation report (PSIR), stated that he was "only passing by." Defendant indicated that he did not know he was intimidating or making the victim uncomfortable.<sup>3</sup> The police arrested defendant for trespassing and stalking based on his repeated unwelcome contact and the history between the parties. After they made the arrest, the police searched defendant and discovered a glass pipe and a small plastic bag containing crystals and powder on his person. The substance in the bag was later tested and determined to be approximately 0.1 grams of methamphetamine. According to the PSIR, defendant acknowledged having used methamphetamine on the day of his arrest.

The prosecution charged defendant with one count of possession of methamphetamine, MCL 333.7403(2)(b)(i), with a fourth-offense habitual offender enhancement, MCL 769.12; one count of stalking, MCL 750.411h; and one count of trespass to land, MCL 750.552. The possession charge is a felony, ordinarily punishable by up to 10 years in prison, but the fourth-offense habitual offender notice increased the statutory maximum punishment to life imprisonment. The stalking and trespass charges are both misdemeanors, with respective statutory maximum punishments of one year in jail and 90 days in jail. The habitual offender notice had no impact on their penalties. At a mid-October 2022 plea hearing, defendant pleaded guilty to each count.

In early December 2022, the Michigan Department of Corrections (MDOC) prepared a PSIR for defendant. In the PSIR, MDOC calculated a minimum sentencing guideline range of 10

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challenges the accuracy of the factual information." *People v Grant*, 455 Mich 221, 233-234; 565 NW2d 389 (1997).

<sup>3</sup> It is unclear from the PSIR whether defendant made this statement to the officer who prepared the PSIR or to the police when they questioned him.

to 46 months' imprisonment for his conviction of possession of methamphetamine, based on a total prior record variable (PRV) score of 100 points, placing him at PRV level F, and a total offense variable (OV) score of zero, placing him at OV level I. The PSIR documented defendant's criminal history, which included 12 adult convictions of varying severity between 1999 and the 2022 sentencing. Notably, it also included two cases from June 2019 that resulted in NGRI dismissals: one involving assaulting, resisting, or obstructing a police officer, and one involving second-degree home invasion. At least one of these NGRI dismissals (the home invasion) related to conduct toward the victim. MDOC recommended a sentence of 2 to 10 years (a within-guidelines sentence) for the drug possession and sentences of 87 days for both misdemeanors.

Defendant was sentenced in December 2022. During the hearing, the victim read her victim-impact statement, describing the "constant state of fear," "anxiety," and "helplessness" she felt as a result of defendant's conduct. The victim impact statement referenced defendant's prior acquittals by reason of insanity. In imposing its sentence, the trial court stated its belief that defendant was dangerous. The trial court also considered defendant's lengthy criminal record and history of recidivism. Referencing defendant's crimes "go[ing] back to 2000," the trial court noted several that were "dismissed because of his mental health." Regarding the two acquittals by reason of insanity, the trial court stated:

Resisting, obstructing a police officer, not guilty by insanity. Still committed the crime. 2019, again, another home invasion, not guilty by reason of insanity.

Another crime that to me, mental health issues aren't more valuable than my safety. I don't think we get people to run around the streets, I'm mentally ill so I get to rape you. I'm mentally ill so I get [to] steal your car. I—I think that's crazy. I think—I think it's wrong. And now we get just a few years later this charge. He's very dangerous. He's very, very dangerous in my eyes.

The trial court indicated that it would depart from the guidelines, relying on the seriousness of defendant's convictions, the need to protect society, and the failure of previous rehabilitative efforts to justify the departure. The trial court sentenced defendant to 120 to 240 months' (or 10 to 20 years') imprisonment for the possession of methamphetamine conviction, a minimum sentence that was 74 months above the recommended minimum range of 10 to 46 months. Despite its stated concerns regarding the conduct underpinning the stalking and trespassing convictions, the trial court sentenced defendant to 87 days' credit for time served for both convictions. This was nine months below the statutory maximum for the stalking conviction and three days below the statutory maximum for trespass. After imposing the sentence, the trial court stated:

You have no right—no right to break into people's homes. You have no right to peek into people's windows. You have no right [to] invade people's privacy and make them feel uncomfortable, unsafe. No right whatsoever. None. When and if you get out of prison, if you come back to Barry County, you're going to get the same thing, only more.

This appeal followed.

## II. ANALYSIS

### A. BECK'S APPLICATION TO NGRI DISMISSALS

Defendant first argues that trial court's consideration of acquitted conduct when sentencing him violated his due-process rights. We disagree.

We generally review "constitutional claims under a de novo standard." *People v Brown*, 339 Mich App 411, 419; 984 NW2d 486 (2021). Defendant failed to raise his argument regarding the trial court's consideration of acquitted conduct during sentencing, and it is therefore unpreserved. See *People v Anderson*, 322 Mich App 622, 634; 912 NW2d 607 (2018) ("To preserve a sentencing issue for appeal, a defendant must raise the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals."). See also *People v Brown*, 326 Mich App 185, 191-192; 926 NW2d 879 (2018) (noting that to preserve a constitutional claim a defendant must "raise an objection on the ground" also raised on appeal); MCL 769.34(10); MCR 6.429(C).

We review unpreserved issues "for plain error affecting a defendant's substantial rights." *People v Heft*, 299 Mich App 69, 78; 829 NW2d 266 (2012). See also *People v Stokes*, 333 Mich App 304, 307; 963 NW2d 643 (2020) (applying plain-error analysis to an unpreserved issue involving consideration of acquitted conduct at sentencing). To obtain relief under the plain-error rule, a defendant must prove that (1) an error occurred, (2) the error was plain, and (3) that the plain error affected their substantial rights—in other words, the error affected the outcome of the proceedings. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Even if a defendant satisfies these three requirements, reversal is only warranted if the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings independent of the defendant's innocence. *Id.* at 763-764. Sometimes identified as a fourth prong of plain-error analysis, this last step conceptually overlaps with the third prong. *People v Davis*, 509 Mich 52, 75-76; 983 NW2d 325 (2022).

In *Beck*, 504 Mich at 629, our Supreme Court held that sentencing courts cannot consider conduct for which a defendant has been acquitted. The rationale behind this decision is that an acquittal signifies a jury's determination that the prosecution failed to prove the defendant's guilt beyond a reasonable doubt. *Id.* at 626. The NGRI statute, MCL 768.21a(1), specifies that an NGRI verdict means that the defendant committed the act but was legally insane at the time of the offense. The statute states, 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 . . . 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. [Emphasis added.]

The facts of *Beck* concerned conduct for which the defendant was acquitted outright, signifying a lack of proof beyond a reasonable doubt that the defendant committed the charged crimes. See *Beck*, 504 Mich at 626-627. The *Beck* Court specifically stated that its holding regarding acquitted conduct applies when a factfinder—in the *Beck* context, a jury—“has specifically determined that the prosecution has not proven beyond a reasonable doubt that a defendant engaged in certain conduct[.]” *Id.* at 626. This is distinct from circumstances where a defendant raises an affirmative NGRI defense. In order to raise an NGRI defense, the defendant must *admit* that they committed the crime, but could not appreciate that their conduct was criminal in nature. See *People v Mette*, 243 Mich App 318, 328-329; 621 NW2d 713 (2000) (noting that the defense of insanity is an affirmative defense that “*does not negate selected elements or facts of the crime.*” (quotation marks and citations omitted; emphasis added)). This does not disprove that the conduct occurred, but rather acknowledges the defendant’s mental incapacity to be held criminally responsible.

We conclude that successfully proving an NGRI defense is not the same as earning an acquittal based on the prosecutor’s failure to prove that a crime was committed beyond a reasonable doubt. This is so because successfully raising an NGRI defense does not result in an acquittal in the traditional sense of the word, or at the very least not the type of acquittal contemplated by the *Beck* Court. Consequently, defendant has not met his burden under the plain-error standard. *Carines*, 460 Mich at 763-764.

## B. PROPORTIONALITY

Defendant additionally argues that he is entitled to resentencing because his sentences were unreasonable and disproportionate. We disagree.

A trial court’s upward departure from a defendant’s calculated guidelines range is reviewed for reasonableness. *People v Lockridge*, 498 Mich 358, 392; 870 NW2d 502 (2015). We review “the reasonableness of a sentence for an abuse of the trial court’s discretion.” *People v Walden*, 319 Mich App 344, 351; 901 NW2d 142 (2017). Generally, “[a] trial court abuses its discretion if the minimum sentence imposed falls outside the range of principled outcomes.” *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008). A defendant’s sentence may also be an abuse of discretion if it “violates the principle of proportionality, which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.” *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

The minimum sentencing guidelines are only advisory; however, those guidelines “remain a highly relevant consideration in a trial court’s exercise of sentencing discretion.” *Lockridge*, 498 Mich at 391. To determine if an upward departure is more proportionate than a sentence within the guidelines range, a trial court may consider factors including, but not limited to:

- (1) the seriousness of the offense;
- (2) factors that were inadequately considered by the guidelines; and
- (3) factors not considered by the guidelines, such as the relationship between the victim and the aggressor, the defendant’s misconduct while in custody, the defendant’s expressions of remorse, and the defendant’s potential for rehabilitation. [*Walden*, 319 Mich App at 352-353 (citation omitted).]

A trial court may also consider a defendant's "extensive criminal history and tendency to reoffend" in determining whether an upward departure is proper. *People v Odom*, 327 Mich App 297, 318; 933 NW2d 719 (2019). In making a proportionality determination, a trial court must "justify the sentence imposed in order to facilitate appellate review." *Lockridge*, 498 Mich at 392. "This includes an explanation of why the sentence imposed is more proportionate to the offense and the offender than a different sentence would have been." *Smith*, 482 Mich at 311.

Defendant largely argues that his sentence was disproportionate because the trial court considered his criminal record in sentencing him, including the 2019 charges that were dismissed based on his NGRI defense. In *People v McIntire*, 461 Mich 147, 155-156; 599 NW2d 102 (1999), our Supreme Court emphasized the importance of judicial discretion in sentencing, allowing judges to consider a wide range of factors to determine the most appropriate punishment. The trial court's discretion in considering a defendant's past conduct, including conduct for which the defendant raised an NGRI defense, is consistent with the broader principles of individualized sentencing and the need to protect public safety. Moreover, the consideration of such conduct does not equate to punishing the defendant for those past acts. Rather, it informs the court's understanding of the defendant's character and his potential risk to society. This distinction is crucial in maintaining the balance between fair sentencing and public protection. Here, by considering the totality of defendant's criminal record, including those crimes for which he successfully raised an NGRI defense, the trial court adequately fulfilled the goal of tailoring the offense to the offender.

Additionally, it bears repeating that one of the charges for which defendant raised an NGRI defense involved the same victim at issue in the instant matter. Michigan's sentencing guidelines, as outlined in MCL 769.34(3), allow courts to consider various factors, including the defendant's criminal history and behavior, to ensure sentences are appropriate to the individual and the offense. The trial court, by considering defendant's prior conduct with this specific victim, aimed to craft a sentence that not only addressed the punishment for his current offenses but also considered his potential for committing future offenses. Given defendant's pattern of behavior, including repeated harassment of the same victim, it was within the trial court's discretion to consider his past conduct. In doing so, the court crafted a sentence that adequately considered defendant's overall risk to society and need for rehabilitation. See *People v Sabin (On Second Remand)*, 242 Mich App 656, 661; 620 NW2d 19 (2000) ("[A] trial court has been given broad discretion, within limits fixed by law, to tailor a sentence to the circumstances of each case and each offender in an effort to balance society's need for protection against its interest in rehabilitation of the offender.").

A conviction for a scant amount of methamphetamine, in and of itself, would not justify a prison sentence of 10 to 20 years, particularly with a properly scored guidelines range of 10 to 46 months. Arguably, when viewed in a vacuum, the sentence seems excessive and disproportionate. But here, defendant was convicted as a fourth-offense habitual offender under MCL 769.12. This, coupled with defendant's complete criminal history, the history between defendant and the victim, the victim's impact statement, and the rationale articulated by the sentencing court, adequately supports the lengthy sentence issued by the court. Considering these other permissible sentencing factors, we hold that defendant's sentence was reasonable and proportionate. Defendant is not entitled to relief.

Affirmed.

/s/ Kathleen A. Feeney  
/s/ Michelle M. Rick

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**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER SCOTT HURLESS,

Defendant-Appellant.

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UNPUBLISHED  
September 19, 2024

No. 366066  
Barry Circuit Court  
LC No. 2022-000635-FH

Before: FEENEY, P.J., and RICK and N. P. HOOD, JJ.

N. P. HOOD, J. (*dissenting*).

I respectfully dissent. I would conclude that the prohibitions against a sentencing court relying on acquitted conduct as an aggravating factor, as outlined in *People v Beck*, 504 Mich 605, 625-630; 939 NW2d 213 (2019), extend to the conduct underlying an acquittal by reason of insanity. Because the trial court improperly relied on defendant Christopher Scott Hurless’s prior acquittals by reason of insanity, I would vacate the sentence and remand for resentencing.

**I. BACKGROUND**

The majority accurately describes the factual background of this case. Hurless engaged in a years-long pattern of harassing and stalking the victim. Critically, that history included the conduct underlying a 2019 home invasion charge that resulted in an acquittal by reason of insanity. It also included the conduct underlying the mid-September 2022 stalking that formed the factual basis of the stalking charge in this case. As the majority observes, Hurless pleaded guilty to one count of possession of methamphetamine, MCL 333.7403(2)(b)(i), with a fourth-offense habitual offender enhancement, MCL 769.12, related to a use-amount of methamphetamine found on his person during his arrest; one count of stalking, MCL 750.411h; and one count of trespass to land, MCL 750.552. The trial court relied on the acquittal by reason of insanity when imposing Hurless’s sentence.

**II. CONSIDERATION OF ACQUITTED CONDUCT DURING SENTENCING**

Hurless first argues that the trial court’s consideration of acquitted conduct when sentencing him violated his due-process rights. Although a plea (or verdict) of not guilty by reason

of insanity is not the same sort of acquittal considered in *Beck*, I would conclude that the same principles barring a sentencing court from considering acquitted conduct apply to the conduct underlying an acquittal by reason of insanity. Cf. *Beck*, 504 Mich at 625-630. In other words, I would conclude that the trial court should not have considered the conduct underpinning Hurless's 2019 not-guilty-by-reason of insanity (NGRI) pleas.

The majority correctly observes that, because Hurless did not raise his argument regarding the trial court's consideration of acquitted conduct during sentencing, it is unpreserved and subject to plain-error analysis. See *People v Anderson*, 322 Mich App 622, 634; 912 NW2d 607 (2018) ("To preserve a sentencing issue for appeal, a defendant must raise the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals."). See also *People v Brown*, 326 Mich App 185, 191-192; 926 NW2d 879 (2019). To obtain relief under the plain-error rule, a defendant must prove that (1) an error occurred, (2) the error was plain, and (3) that the plain error affected substantial rights—in other words, the error affected the outcome of the proceedings. *People v Anderson*, 341 Mich App 272, 280; 989 NW2d 832 (2022). If a defendant satisfies these three requirements, we must determine whether the plain error warrants reversal, in other words, whether it seriously affected the fairness, integrity, or public reputation of the judicial proceedings independent of the defendant's innocence. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Sometimes identified as a fourth prong of plain-error analysis, this last step conceptually overlaps with the third prong. *People v Davis*, 509 Mich 52, 75-76; 983 NW2d 325 (2022).

Regarding the first prong of plain-error analysis, I would conclude that an error occurred. The trial court improperly considered acquitted conduct: the conduct and facts underlying an acquittal by reason of insanity. "[D]ue process bars sentencing courts from finding by a preponderance of the evidence that a defendant engaged in conduct of which he was acquitted." *Beck*, 504 Mich at 629. Generally, acquitted conduct is conduct that "has been formally charged and specifically adjudicated by a jury." *Id.* at 620. Such conduct "is protected by the presumption of innocence" and "may not be evaluated using the preponderance-of-the-evidence standard without violating due process." *Id.* at 627. "When a jury has made no findings (as with uncharged conduct, for example)," however, "no constitutional impediment prevents a sentencing court from punishing the defendant as if he engaged in that conduct using a preponderance-of-the-evidence standard." *Id.* at 626. An acquittal by reason of insanity is different from the acquittal and acquitted conduct addressed in *Beck*, but it carries similar considerations and implications for sentencing. See *id.* at 625-630.

Insanity is an affirmative defense. See MCL 768.21a; *People v Mette*, 243 Mich App 318, 328; 621 NW2d 713 (2000). "An affirmative defense admits the crime but seeks to excuse or justify its commission." *People v Dupree*, 486 Mich 693, 704 n 11; 788 NW2d 399 (2010). More specifically, the affirmative defense of insanity excuses conduct where a "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. In other words, the person is unable to understand that what they are doing is wrong, or they are unable to control themselves. See *id.* Mental illness alone is insufficient to satisfy the requirements of legal insanity. See *id.* ("Mental illness or having an intellectual disability does not otherwise constitute a defense of legal insanity.").

Legal insanity is a defense, but an acquittal by reason of insanity is a legal conclusion resulting from very specific factual findings. See MCL 768.21a. See also MCL 330.2050. Though it is an affirmative defense, a plea of not guilty by reason of insanity is still an acquittal, albeit one with different consequences than the acquittal in *Beck*. See *Black's Law Dictionary* (11th ed) (defining “acquittal” as “[t]he legal certification, usu[ally] by jury verdict, that an accused person is not guilty of the charged offense; an official statement in a court of law that a criminal defendant is not guilty”); *id.* (defining “not guilty by reason of insanity” as “[a] not-guilty verdict, based on mental illness, that usu[ally] does not release the defendant but instead results in commitment to a mental institution” and “[a] criminal defendant’s plea of not guilty that is based on the insanity defense”). See also MCL 330.2050 (containing provisions in the Mental Health Code, MCL 330.1001 *et seq.*, related to those “acquitted of a criminal charge by reason of insanity”); *Duckett v Solky*, 341 Mich App 706, 715; 991 NW2d 852 (2022) (“In Michigan, after a criminal defendant pleads not guilty by reason of insanity or is acquitted by reason of insanity, the trial court must commit the defendant to the custody of the [Center for Forensic Psychiatry] . . .”). And although a plea of not guilty by reason of insanity requires a court to find a factual basis for the plea, including a finding that the defendant committed the acts charged, see MCR 6.304(C)(1), a defendant is still adjudicated as acquitted, albeit by reason of insanity. Unlike a straight acquittal, an acquittal by reason of insanity requires immediate involuntary hospitalization. See MCL 330.2050. Our courts have consistently recognized an acquittal by reason of insanity is different from an acquittal when it comes to detention and release, see *People v Hampton*, 384 Mich 669; 187 NW2d 404 (1971) (retroactively applying the rule requiring the trial court to instruct a jury that an acquittal by reason of insanity does not equate with unconditional release), but we have also recognized that a person acquitted by reason of insanity is committed to a hospital for therapeutic purposes, instead of to a prison for punitive purposes, see *Duckett*, 341 Mich App at 715, 726-727. In its simplest terms, an acquittal by reason of insanity is a determination of culpability (or lack thereof), which places such an acquittal closer to the acquittal in *Beck* than to a guilty plea or verdict. Cf. *Beck*, 504 Mich at 625-630 (holding that due process prohibits a sentencing court from relying on conduct that might otherwise satisfy a preponderance of evidence standard “when a jury has specifically determined that the prosecution has not proven beyond a reasonable doubt that a defendant engaged in certain conduct”). It is a factual finding that a defendant has engaged in conduct, but a legal conclusion that he is not culpable for it.

The majority correctly observes that successfully proving an NGRI defense is not the same as earning an acquittal from the prosecutor’s failure to prove beyond a reasonable doubt that the defendant committed a crime. But requiring a sentencing court to ignore the conduct underpinning a NGRI plea is not too different from the mandate in *Beck*. *Beck* often forces sentencing courts to adhere to a legal fiction when imposing a sentence. For example, if a jury concludes that a defendant *probably* committed an offense, then it must acquit for lack of proof *beyond a reasonable doubt*. Under *Beck*, a sentencing judge can no longer consider a crime that the defendant probably committed, something that would be a valid sentencing consideration had the conduct not been charged at all. An acquittal by reason of insanity is conduct that we know was committed, but conduct which we also know the defendant was not responsible for. This seems to be at least as valid of a basis as a jury acquittal. The critical difference is it often does not involve a jury determination. But it does involve a determination by the Legislature that the conduct is not criminal. See MCL 768.21a. See also MCL 330.2050.

Here, Hurless was acquitted by reason of insanity on the 2019 charges. This means the conduct occurred, but he was not criminally liable for the conduct. Nonetheless, the trial court relied on that conduct to enhance Hurless's sentence. When sentencing Hurless, the trial court itemized the convictions listed in the presentence investigation report (PSIR), but it also emphasized the two 2019 charges—resisting and obstructing law enforcement and home invasion—that resulted in acquittals by reason of insanity. Referencing the 2019 charges and acquittals by reason of insanity, the trial court stated:

Resisting, obstructing a police officer, not guilty by insanity. Still committed the crime. 2019, again, another home invasion, not guilty by reason of insanity.

Another crime that to me, mental health issues aren't more valuable than my safety. I don't think we get people to run around the streets, I'm mentally ill so I get to rape you. I'm mentally ill so I get [to] steal your car. I—I think that's crazy. I think—I think it's wrong. And now we get just a few years later this charge. He's very dangerous. He's very, very dangerous in my eyes.

The trial court directly referenced conduct underpinning Hurless's acquittals by reason of insanity as an aggravating circumstance.

This was acquitted conduct, and reliance on that conduct as an aggravating circumstance that violated the principles outlined in *Beck*. See *Beck*, 504 Mich at 625-630. *Beck* prohibits trial courts from relying on acquitted conduct during sentencing. See *id.* Even prior to our Supreme Court's decision in *Beck*, we have long recognized in unpublished authorities that acquittals by reason of insanity do not count toward a defendant's criminal history. *People v Kline*, unpublished per curiam opinion of the Court of Appeals, issued August 3, 2001 (Docket No. 212106), p 7 (“[W]e agree that the trial court erred in treating defendant's previous acquittal ‘by reason of insanity’ as a prior conviction . . .”).<sup>1</sup> As stated, the conduct underlying the 2019 acquittals is not disputed—the trial court had to find a sufficient factual basis to accept a plea of not guilty by reason of insanity—but also culpability is not disputed. Hurless's acquittal by reason of insanity means he was not culpable. The trial court should not have considered it as an aggravating factor when fashioning the sentence.<sup>2</sup>

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<sup>1</sup> Though unpublished cases are nonbinding on this Court, they may be persuasive or instructive. See *People v Parkinson*, \_\_\_ Mich App \_\_\_, \_\_\_ n 3; \_\_\_ NW3d \_\_\_ (2023) (Docket No. 362683); slip op at 6 n 3.

<sup>2</sup> Though not raised as an issue on appeal, the trial court also appears to have used an undiagnosed mental health condition as an aggravating factor. We have previously cautioned against using mental health conditions as an aggravating sentencing factor. See *People v Bennett*, 335 Mich App 409, 429; 966 NW2d 768 (2021). We have also observed that individuals suffering from undiagnosed or untreated mental health conditions are usually not deserving of the harshest penalties. *Id.*

Further, I am not persuaded by the prosecution's argument that the trial court could rely on the acquittal by reason of insanity simply because it was in the PSIR. This Court has held that "a sentencing court may review a PSIR containing information on acquitted conduct . . . so long as the court does not rely on the acquitted conduct when sentencing the defendant." *People v Stokes*, 333 Mich App 304, 311; 963 NW2d 643 (2020). But see *People v Stokes*, 507 Mich 939, 939-940; 957 NW2d 824 (2021) (McCORMACK, C.J., concurring) (questioning the correctness of this Court's conclusion in *Stokes* that a PSIR containing information on acquitted conduct may be considered and noting its tension with the holding in *People v Grant*, 455 Mich 221, 233-234; 565 NW2d 389 (1997) that a PSIR is presumed accurate unless the defendant challenges the accuracy of the factual information). Here, the trial court explicitly relied on acquittals by reason of insanity as aggravating circumstances when fashioning the sentence.<sup>3</sup> The record therefore supports a finding that the trial court violated *Beck* when it relied on the information about the acquitted conduct in the PSIR. See *Stokes*, 333 Mich App at 311-312. This was an error.

Having concluded that the error occurred, I would move to the second prong of plain-error analysis and conclude that the error was plain or obvious. Though commonly referred to as "not guilty by reason of insanity," see, e.g., SCAO, *Form MC 207* "Commitment Order, Not Guilty By Reason of Insanity," the Legislature has identified such adjudication as "*acquittal* by reason of insanity." See MCL 330.2050 (emphasis added). *Beck* did not address acquittals by reason of insanity, but it held that sentencing courts cannot rely on acquitted conduct as aggravating factors. See *Beck*, 504 Mich at 625-630. See also *Kline*, unpub op at 7. It is also undisputed that a person is not criminally liable for conduct they commit while legally insane. See MCL 768.21a. Even short of legal insanity, we have held that individuals who commit crimes while suffering from undiagnosed or untreated mental illness are less deserving of the harshest punishments. See *People v Bennett*, 335 Mich App 409, 429; 966 NW2d 768 (2021). These combine to make the error plain.

Regarding the third prong of plain-error analysis, I would also conclude that this plain error affected the outcome of the sentencing. The trial court relied heavily on acquitted conduct when fashioning the sentence. Aside from violating due process as described in *Beck*, it resulted in an

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<sup>3</sup> I observe that the PSIR identified both of the 2019 convictions as "not guilty by reason of insanity" and "dismissed." The parties appear to agree that both convictions resulted in acquittals by reason of insanity, not a voluntary dismissal by the prosecution after an opinion that Hurless was insane. Had the prosecution dismissed the charges because of a viable insanity defense, as opposed to the trial court accepting a plea of not guilty by reason of insanity, the implications for sentencing might be different, and undoubtedly even more complicated. See *Beck*, 504 Mich at 626-627 (permitting consideration of uncharged conduct); *People v Johnson*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW3d \_\_\_ (2024) (Docket No. 362236); slip op at 5 (permitting consideration of conduct by a preponderance of the evidence where conduct formed the basis of charges resulting in a hung jury). See also *Bennett*, 335 Mich App at 429-431 (observing that "[o]ur justice system generally regards an offender who commits a crime while suffering from undiagnosed or untreated mental illness as *less* deserving of the harshest punishments . . ."). The question of whether the trial court could rely on charges that were voluntarily dismissed due to a viable insanity defense is not presently before us.

increased penalty. The trial court used these acquittals to assess Hurless's dangerousness and criminal history, and relied on them as a basis for imposing a significant departure from the guidelines. This necessarily affected the outcome.

Finally, this plain error warrants reversal. The sentence implicates the reputation of the court and fairness of the proceedings because it effectively enhances a punishment based on acquitted conduct, where the basis for the acquittal was a mental health condition. Hurless is entitled to resentencing without being punished for conduct that our laws have already excused. Because I would conclude that the trial court's reliance on acquitted conduct warrants vacating the judgment of sentence and remanding for resentencing, I would decline to address Hurless's supplemental argument regarding the proportionality of his sentence.

### III. CONCLUSION

For the reasons stated above, I would vacate the judgment of sentence and remand for resentencing.

/s/ Noah P. Hood

**Appendix F**  
***People v Jones (COA 2024)***

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**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM PAUL JONES,

Defendant-Appellant.

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UNPUBLISHED

August 1, 2024

No. 362817

Kalamazoo Circuit Court

LC No. 2019-002123-FC

Before: CAMERON, P.J., and M. J. KELLY and YATES, JJ.

PER CURIAM.

Defendant, William Jones, appeals by right his jury convictions of first-degree murder, MCL 750.316(a); murder during the commission of a felony (felony murder), MCL 750.316(b); first-degree home invasion, MCL 750.110a(2); three counts of assault with the intent to murder (AWIM), MCL 750.83; unlawful imprisonment, MCL 750.349b; carrying or possessing a firearm while ineligible to do so (felon-in-possession of firearm), MCL 750.224f(1); carrying or possessing ammunition while ineligible to do so (felon-in-possession of ammo), MCL 750.224f(3); and nine counts of carrying or possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b.<sup>1</sup> For the reasons stated herein, we affirm.

I. BASIC FACTS

During the night of December 1, 2019, Jones was acutely intoxicated on methamphetamine and suffering from paranoia. Jones was riding as a passenger in a vehicle operated by a friend when he fired several shots from a handgun through the vehicle's windshield at passing cars. He told an officer that he fired because he thought the cars were following him. Jones eventually jumped from the vehicle and ran through a wooded area to a home occupied by Christopher Neal, Haley Coe, and their minor daughter.

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<sup>1</sup> The jury found Jones not guilty of one count of resisting or obstructing a police officer, MCL 750.81d.

Jones entered the home without permission and terrorized Neal, Coe, and their daughter by pointing and waving two handguns at them. Jones felt that his life was in danger and asked Neal to call 911. Jones and Coe also called 911. Coe eventually went upstairs with her daughter, but Jones took Neal hostage and forced him into a bedroom on the ground floor. Throughout the incident, Jones was acting strangely.

Police officers responded, but Jones did not believe that they were officers. After hearing a gunshot emanating from the downstairs bedroom where Jones was holding Neal hostage, the officers forced entry into the home. Once inside, the officers tried to deescalate the situation by speaking with Jones through the door to the bedroom. They were able to confirm that Neal was still alive at that time. Jones continued to believe that the officers were not police officers, and he threatened to kill Neal if they entered the bedroom. After speaking with the officers for several minutes, Jones began firing at the officers through the walls and door. Jones's shots struck three officers. Jones apparently took off his jacket, shoes, and shirt, and then jumped through a glass window in an effort to escape. Officers arrested Jones outside the window.

Inside the bedroom the officers discovered that Neal had died of a single gunshot wound to the back of his head. Evidence established that Jones fired 23 shots that night and that the officers did not fire any shots.

## II. DIMINISHED-CAPACITY DEFENSE

On appeal, Jones makes two related arguments. He argues that, although it was determined that he was not legally insane during the events at issue, he had mental-health issues arising from his long-term use of methamphetamine that negated his ability to form the specific intent to commit the crimes. In his view, he should have been able to present a diminished-capacity defense premised on his long-term use of methamphetamine notwithstanding our Supreme Court's decision in *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001), which he argues was wrongly decided. Citing *People v Tyson*, 511 Mich 1080; 992 NW2d 293 (2023), Jones maintains that at least three justices from our Supreme Court have similarly concluded that *Carpenter* was wrongly decided. He urges this Court to do the same. He further maintains that his lawyer provided ineffective assistance by failing to hire and call an expert who could have testified about his diminished capacity.

### A. PRESERVATION

Jones did not ask for permission to assert a diminished-capacity defense in the trial court, but he did argue to the jury that he lacked the requisite intent under the totality of the circumstances. Jones first asserted that he had a right to present a diminished-capacity defense in his motion for a new trial. To the extent that Jones argues on appeal that the trial court abused its discretion when it denied his motion for a new trial premised on his right to present a diminished-capacity defense, he preserved that claim of error by moving for a new trial in the trial court and asserting that ground for relief. See *People v Clark*, 330 Mich App 392, 414; 948 NW2d 604 (2019). To the extent that Jones claims that the trial court erred when it did not allow him to present a diminished-capacity defense, he did not preserve that claim of error by raising it before or during trial. See *People v Abraham*, 256 Mich App 265, 274; 662 NW2d 836 (2003). Finally, Jones did not have to take any special steps to preserve a claim of ineffective assistance which is

premised on errors that are apparent on the record alone. See *People v Sabin (On Second Remand)*, 242 Mich App 656, 658; 620 NW2d 19 (2000).

## B. STANDARDS OF REVIEW

This Court reviews a trial court's decision on a motion for a new trial for an abuse of discretion. *Abraham*, 256 Mich App at 269. A trial court abuses its discretion when it selects an outcome that falls outside the range of reasonable and principled outcomes. *Clark*, 330 Mich App at 415. This Court reviews de novo the proper application of the law and constitutional standards. *Id.* To obtain relief for an unpreserved claim of error, Jones must demonstrate that the trial court plainly erred and that the error affected his substantial rights. See *id.* at 414.

To establish his claim of ineffective assistance, Jones must show that his lawyer's decision to forgo a diminished-capacity defense fell below an objective standard of reasonableness under prevailing professional norms and that there is a reasonable probability that, but for the unprofessional conduct, the result of the lower court proceeding would have been different. See *People v Vaughn*, 491 Mich 642, 669; 821 NW2d 288 (2012). In evaluating whether a lawyer's performance fell within the range of competent representation, this Court presumes that the lawyer rendered effective assistance, and this Court must affirmatively entertain the range of possible reasons that counsel may have had for proceeding as he or she did. *Vaughn*, 491 Mich at 670.

## C. ANALYSIS

In *Carpenter*, 464 Mich at 230-241, our Supreme Court examined the statutory scheme governing a defendant's right to assert an insanity defense. The Court related that the Legislature placed the burden of proving the defense on the defendant and required the defendant to meet certain procedural requirements before he or she could present the defense. *Id.* at 231. Our Supreme Court concluded that the Legislature's decision to enact a comprehensive statutory scheme governing the defense of insanity amounted to a conclusive determination as to when "mental incapacity can serve as a basis for relieving one from criminal responsibility." *Id.* at 237. The Court noted in particular that the Legislature had already addressed what should happen when a person was mentally ill during the commission of a crime, but not legally insane; such persons, the Court explained, could be found guilty but mentally ill and sentenced in the same manner as any other defendant. *Id.* The Court concluded that that provision "demonstrated [the Legislature's] policy choice that evidence of mental capacity short of insanity cannot be used to avoid or reduce criminal responsibility by negating specific intent." *Id.* The Court, therefore, rejected the continued viability of the diminished-capacity defense. *Id.* at 238-239. The Court also determined that precluding a diminished-capacity defense did not violate due process. *Id.* at 240.

Jones did not attempt to present an insanity defense at trial, and he could not present evidence that he had mental-health problems short of insanity to negate the specific-intent element of the charges against him under *Carpenter*. He could have presented evidence of his mental-health problems short of insanity for a purpose other than to negate specific intent, see *People v Yost*, 278 Mich App 341, 355-356; 749 NW2d 753 (2008), but he did not do so. He also could not negate the specific-intent element of his charges by presenting evidence of his voluntary intoxication on methamphetamine. See MCL 768.21a(2); MCL 768.37(1).

On appeal, Jones asks this Court to reverse and remand for a new trial to allow him to present a diminished-capacity defense. This Court, however, is bound by the rule of stare decisis to follow the decisions of our Supreme Court. *Duncan v Michigan*, 300 Mich App 176, 193; 832 NW2d 761 (2013). Only the Supreme Court has the authority to overrule its previous decisions. *Paige v Sterling Hts*, 476 Mich 495, 524; 720 NW2d 219 (2006). Consequently, we conclude that the trial court did not err—plainly or otherwise—when it directly or impliedly prevented Jones from presenting a diminished-capacity defense to negate the specific-intent element of the charges against him.

Jones also suggests that his lawyer should have obtained an expert to evaluate him and present evidence that his habitual use of methamphetamine had altered his ability to make decisions. It is evident that such testimony would only be relevant to show that Jones lacked the ability to form the specific intent to commit the charges at issue in his trial. Under *Carpenter*, Jones would only be able to present evidence to challenge whether he had the mental capacity to form the specific intent if he met the definition of legal insanity. The record evidence showed that Jones did not meet the statutory definition of legal insanity at the time that he committed the acts at issue. For that reason, his lawyer could reasonably conclude that the defense of insanity was not available to Jones. See *Vaughn*, 491 Mich at 670. Moreover, because our Supreme Court abolished the diminished-capacity defense, Jones’s lawyer cannot be faulted for failing to hire an expert and attempting to present a defense that contradicted Michigan law. See *People v Leffew*, 508 Mich 625, 638; 975 NW2d 896 (2022) (stating that a defense lawyer is not ineffective for failing to advance a meritless argument); *People v Reed*, 453 Mich 685, 695; 556 NW2d 858 (1996) (stating that defense counsel cannot be faulted for failing to advance a legal argument that had not been recognized by any Michigan authority). For these reasons, Jones’s claim of ineffective assistance also fails.

### III. STANDARD 4 BRIEF

In a brief filed under Administrative Order 2004-6, Standard 4, Jones argues that the trial court violated his constitutional right to due process by proceeding with trial. He contends that he sent the trial court numerous letters detailing the failing of his defense lawyer. Specifically, he informed the court that his lawyer led him astray, lied to him numerous times, and was “absolutely” unprepared for trial. He contends that by denying the motion to withdraw despite knowing that Jones’s lawyer was ineffective, the trial court violated his due process rights. We disagree.

Trial began on June 9, 2022. After Jones refused to change out of his orange prison attire, the trial court stated that it was going to give him an opportunity to change. Jones responded that he would not change and that he was “not willing to proceed” with the trial. He noted that he had written “numerous letters in the last four and a half months” informing the court of what he perceived to be shortcomings of his defense lawyer. He complained that he had tried to “get rid of his” lawyer because she had done “nothing” on his case and because he was being ignored by her. In response, his lawyer expressed that her relationship with Jones had “irretrievably broken down” during a telephone call the previous day. She did not request to be removed. Moreover, Jones did not request a new lawyer. Rather, he simply stated that he was unwilling to proceed with his trial.

The court stated that it would not remove Jones's lawyer and delay the trial further. The court reasoned that the trial had already been adjourned multiple times and that it was unwilling to adjourn it again. Further, the court noted that two months earlier Jones had requested that his lawyer be removed. The complaints raised in the letters were addressed at that time. The court denied that motion. According to the court's recollection, Jones agreed at that time that he was "okay" with his lawyer continuing to represent him. Jones does not challenge the April decision. Finally, the trial court noted that it had over 100 potential jurors waiting, that the prosecution was ready, and that the victims had already been waiting since 2019 for a resolution of the matter. Given the record in this case, we conclude that the trial court did not abuse its discretion by denying Jones's untimely request that his lawyer be removed and his trial delayed. See *People v Strickland*, 293 Mich App 393, 399; 810 NW2d 660 (2011) (stating that a court does not abuse its discretion by denying an untimely request to substitute counsel raised the day of trial because a substitution of counsel at that time would have unreasonably delayed the judicial process).

Jones maintains that his trial lawyer provided ineffective assistance because she was unprepared and had done "nothing" for his defense. At the outset, Jones suggests that the prosecution bears the burden of proving by clear and convincing evidence that his trial lawyer was prepared and competent to represent him. The burden, however, is not on the prosecution. Rather, effective assistance is presumed, and it is the defendant's burden to prove that his lawyer provided ineffective assistance. *People v Solmonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004). Moreover, as it relates to a claim of ineffective assistance, the defendant bears the burden of establishing the factual predicate for his or her claim. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). Jones has failed to do so.

Jones's trial lawyer was the third lawyer to represent him on this matter. It appears that all three of his lawyers are part of the same law firm. The reason why his first lawyer was replaced is unclear. However, one of Jones's letters to the court included allegations that his second lawyer had essentially done "nothing" on his case and, as a result, he asked that she be removed and be replaced by two new lawyers. Thereafter, Jones's trial lawyer entered her appearance on the record. Jones's trial lawyer filed a successful motion to adjourn the trial to allow for enough time to prepare for trial and because a potential expert witness for the defense would be unavailable at the scheduled time. Thus, although an expert was not ultimately called on behalf of the defense, the record clearly shows that Jones's lawyer investigated the possibility of an expert witness and was preparing for trial. Further, based upon Jones's letters, which detail numerous contacts between him and his lawyer, it is clear that she was not simply ignoring him and his case. Moreover, although Jones complains that no witnesses were called on his behalf, he has not directed this Court to any evidence during the trial that demonstrated that his lawyer was unprepared. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment [of an issue] with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Thus, to the extent that he argues that his lawyer provided him with ineffective assistance, we conclude that he has not established that he is not entitled to relief.

Affirmed.

/s/ Thomas C. Cameron  
/s/ Michael J. Kelly  
/s/ Christopher P. Yates

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**Appendix G**  
***People v Lancaster* (COA 2006)**

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BURT R. LANCASTER,

Defendant-Appellant.

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UNPUBLISHED

December 21, 2006

No. 263483

Oakland Circuit Court

LC No. 1993-127632-FC

Before: Owens, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Following a bench trial defendant was convicted of first-degree premeditated murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life imprisonment for the murder conviction and a consecutive two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant was not denied his constitutional right to present a defense. The trial court permitted defendant to present evidence in support of his theory that he did not have the requisite intent for first-degree murder. The court only precluded defendant from pursuing a defense of diminished capacity. The trial court properly disallowed the diminished capacity defense because such a defense is not recognized in Michigan. *People v Carpenter*, 464 Mich 223, 241; 627 NW2d 276 (2001). Further, the refusal to allow evidence of a mental disorder short of insanity to negate the mens rea element of the charged crime did not violate defendant's right to due process. *Clark v Arizona*, \_\_\_ US \_\_\_; 126 S Ct 2709, 2732-2737; 165 L Ed 2d 842 (2006).

We reject defendant's claim that retroactive application of our Supreme Court's decision in *Carpenter*, *supra*, violates the Ex Post Facto Clauses of the United States<sup>1</sup> and Michigan<sup>2</sup> Constitutions. The general rule is that judicial decisions are given full retroactive effect. *People v Neal*, 459 Mich 72, 80; 586 NW2d 716 (1998). In criminal cases, however, ex post facto and due process concerns prevent retroactive application in some cases. *People v Doyle*, 451 Mich 93, 100-101; 545 NW2d 627 (1996). This is especially true where the decision is unforeseeable

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<sup>1</sup> US Const, art I, § 10, cl 1; art I, § 9, cl 3.

<sup>2</sup> Const 1963, art 1, § 10.

and has the effect of changing existing law. *Id.* at 101. But retroactive application does not implicate due process or ex post facto concerns where the decision does not change the law and is not unforeseeable. *Id.*

In this case, as in *Doyle, supra*, the prior decision did not involve a change in the law because it concerned an unambiguous statute that was interpreted by the Supreme Court for the first time. See *id.* at 113. In *Carpenter, supra* at 230-237, our Supreme Court addressed a question of statutory interpretation that had not previously been decided, i.e., whether diminished capacity was a valid defense. In doing so, the Court determined that the comprehensive statutory framework encompassing insanity disclosed that the Legislature intended that evidence of mental incapacity short of insanity cannot be used to avoid or reduce criminal responsibility by negating specific intent. *Id.* at 237. Specifically, the Court found that there was no indication that the Legislature intended to make diminished capacity an affirmative defense. *Id.* at 235-236. In these circumstances, retroactive application of *Carpenter* does not violate the Ex Post Facto Clauses or implicate any due process concerns.<sup>3</sup>

Affirmed.

/s/ Donald S. Owens

/s/ Helene N. White

/s/ Joel P. Hoekstra

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<sup>3</sup> We note that this Court reached this same conclusion in *People v Talton*, unpublished opinion per curiam of the Michigan Court of Appeals, issued June 25, 2002 (Docket No. 231986), slip op at 4-6, which is cited by plaintiff. Although unpublished decisions are not precedentially binding under the rule of stare decisis, MCR 7.215(C)(1), we find the reasoning in *Talton* persuasive.

**Appendix H**  
***People v Ricketts (COA 2023)***

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**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN MARK RICKETTS,

Defendant-Appellant.

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UNPUBLISHED

August 17, 2023

No. 361139

Kent Circuit Court

LC No. 19-002774-FH

Before: YATES, P.J., and BORRELLO and PATEL, JJ.

PER CURIAM.

Defendant, Stephen Mark Ricketts, appeals by right his conviction of one count of second-degree child abuse, MCL 750.136b(3). The trial court sentenced defendant to 365 days in jail and three years of probation. On appeal, defendant argues that the trial court abused its discretion by denying defendant the opportunity to present expert testimony regarding defendant's intellectual diagnosis and susceptibilities. For reasons stated herein, we agree and remand for a new trial.

**I. RELEVANT FACTS AND PROCEEDINGS**

This case arises out of a pediatrician discovering significant injuries to a four-month-old child at the child's doctor appointment. The child was seen by his pediatrician at the request of the parents, defendant and Alycia (Aly) Hughes, because of fussiness, spitting up, and a mass on his lower, right back. Upon evaluation, it was determined that the child suffered 28 healing rib fractures and a healing tibia fracture.

The Department of Health and Human Services, Children's Protective Services (CPS), and the Kent County Sheriff's Department began an investigation. Initially, when asked to discuss the child's injuries, both parents refused to speak about the incident without a lawyer. During the hospital stay, Aly's mother testified that defendant said that he was afraid to tell her something for fear that she would hate him; he was afraid that he caused the child's injuries, but he could not remember. Defendant then explained that he once pushed too hard on the child's legs during a diaper change. While still at the hospital for the child's treatment and upon additional questioning by CPS, neither parent was able to explain the child's injuries, but Aly mentioned how defendant bruised the child's thighs once when he changed the child's diaper. Defendant remembered

changing the child when he was squirmy and holding his upper thighs to hold him still, but he did not recall leaving any bruising. During the same conversation, defendant tearfully denied ever grabbing the child by the ribs or hurting his leg. Subsequently, a court order to remove the child from the home was granted.

The following day, both Aly and defendant agreed to meet with Aly's parents to discuss what happened to the child. Aly, defendant, Aly's parents, and two police officers who were friends with Aly's parents, met at Aly's parents' home. During the meeting, defendant explained that one time he was walking down the stairs of the duplex with the child in his arms and slipped, grabbing the child to make sure the child did not fall, and he wondered if he crushed the child's ribs when he grabbed him.

The foster-care case manager at Bethany Christian Services, Kristen Garrett, was assigned the case. Garrett initiated a treatment plan for both parents, and they both fully cooperated. At first, both parents expressed that they were unsure about what had happened. At some point, Aly expressed that she did not cause the child's injuries and that it was probably defendant. Defendant also informed Garrett that he was unsure how the child was injured but shared the same story about falling down the stairs that he shared with Aly's family. Defendant denied knowledge regarding what specifically happened to the child during his early interactions with CPS. Because of observations that defendant "was a little slow to process" things, including questions regarding his basic biographical information, CPS eventually requested a guardian ad litem for defendant to make sure that defendant understood the court process.

Both parents continued their individual treatment plans. On the basis of defendant's disclosure that he received special education services during high school and how he would bring his sister to meetings to make sure that he understood all the paperwork, defendant "was assessed with needs in the area of intellectual capacity and literacy." As a result, defendant was given an IQ assessment and was diagnosed with an intellectual disability and a very low reading level. Because of this result, Garrett increased her visits with defendant and provided additional accommodations to ensure that defendant understood everything that was expected from him.

As part of his treatment plan, defendant had continuous appointments with Dr. Daniel Ehnis and another doctor for counseling. On the basis of his psychological diagnoses and IQ assessment provided by both doctors, Garrett determined that defendant would need to live with a support person if the child were to be returned to his care. Furthermore, Garrett expressed concerns about defendant's marijuana use and how he could easily be manipulated because his drug use could affect his already diminished level of functioning. Garrett also received several allegations from defendant's family members that Aly was manipulating and controlling defendant.

Aly testified that defendant eventually told her that the child would not stop crying, he got angry, and he did not mean to hurt the child; Aly instructed defendant to tell Garrett. Shortly after, defendant scheduled a spontaneous meeting with Garrett, and defendant emotionally explained that he had caused harm to the child and that he had broken the child's ribs. According to Garrett, defendant specifically stated, "I did it Kristen," "I broke [the child's] ribs," and

I felt them break. I remember that night [the child] was crying and I couldn't get him to stop, so I squeezed him and felt the bones break. I didn't mean to, I was

really scared to come forward at the beginning of the case because all of the doctors were saying it was on purpose and I promise it was an accident.

Five days after defendant met with Garrett, defendant left a voicemail for Garrett repeating his story regarding how the child was injured but stating that he did not actually hear the bones break. Shortly after, Garrett met with both parents to discuss the ongoing case and briefly spoke to defendant alone. Defendant did not repeat the details of what happened to the child but explained that he was mad at himself and expressed disbelief that he did it.

The criminal investigation was reopened, which limited Garrett's contact with defendant, and reunification with Aly began. Both parents remained compliant with their treatment plans, and the child was eventually returned to Aly. Aly was granted full physical custody of the child. As a result of the investigation, defendant was charged with first-degree child abuse.

An extensive trial occurred during which several witnesses were called to testify regarding the circumstances leading up to the child's injuries and the circumstances during the duration of the reunification process once the child was removed from the home. Relevant to this appeal was the exclusion of expert witness, Dr. Ehnis. Dr. Ehnis provided psychiatric treatment for defendant for two months as a result of defendant's treatment plan for reunification. Before the fifth day of trial, defendant moved for the admission of Dr. Ehnis to testify regarding defendant's diagnosis and psychological profile. Defendant explained that Dr. Ehnis was an expert in psychiatry who would be able to provide testimony about defendant's diagnosis beyond what Garrett was able to provide because of her lack of credentials. Defense counsel explained that defendant's psychological profile made him easy to manipulate and that defendant was not sophisticated enough to manipulate Aly despite Aly's testimony that defendant was manipulative towards her. Defense counsel further contended that Dr. Ehnis would explain that, because of defendant's susceptibility to manipulation, defendant could potentially make a false confession. Defense counsel reiterated that Dr. Ehnis would not provide any type of conclusion regarding whether defendant's confession was true or false, making Dr. Ehnis's expert testimony admissible.

The prosecution argued that Garrett provided the necessary information regarding defendant's diagnosis and that defendant could still make the manipulation and false-confession argument on the basis of Garrett's testimony. The prosecution explained that defendant's counseling with Dr. Ehnis was self-reported information from defendant, which would undermine the rules of evidence and allow defendant's statements to be admitted without defendant actually testifying. The prosecution requested the trial court to limit Dr. Ehnis's testimony to general information regarding defendant's diagnosis and nothing about manipulation.

Following oral arguments on the motion, the trial court confirmed that defense counsel was arguing that defendant provided a false confession as a result of coercion. The trial court questioned the validity of the coercion claim, challenging defense counsel regarding the details of how defendant confessed and the multiple confessions to various people that defendant made, including a voicemail left to Garrett after the fact. The trial court then referred to the testimony provided by Garrett regarding defendant's limitations and diagnosis. Defense counsel clarified that Garrett's testimony referred to defendant's diagnosis as "mild" and that the jury would have no idea what that categorization means. Defense counsel explained that Dr. Ehnis would explain

that individuals with defendant's particular psychological profile were easily manipulated, naïve, and confused about the consequences of their words or actions.

The trial court explained that defendant did not confess to the police or as a result of an interrogation. Instead, defendant confessed to Garrett, the person who was trying to help him get his child back. Additionally, Dr. Ehnis's psychological profile was based on what defendant told him during treatment instead of a profile based on various data sources, distinguishing the caselaw that defense counsel referred to. The trial court explained that Dr. Ehnis would not assist the trier of fact to understand the evidence or determine the fact and issue. The trial court further explained that Dr. Ehnis saw defendant for treatment purposes to determine if defendant was a safe parent for the child and could not apply his testing to the facts in the criminal case.

The trial court further reasoned that even if it found Dr. Ehnis's testimony relevant, it would confuse the issues for the jury because there was already record evidence regarding defendant's mental capacity and diagnosis. And Dr. Ehnis would not be permitted to testify that defendant was coerced or manipulated to confess. The trial court determined that the expert testimony did not comply with MRE 702 and MRE 403 and excluded the expert witness. Ultimately, the jury found defendant guilty of the lesser included offense of second-degree child abuse.

Defendant now appeals.

## II. ANALYSIS

Defendant argues that the trial court abused its discretion by denying defendant's request for Dr. Ehnis to present expert testimony at trial. We agree.

This Court reviews the qualification of a witness as an expert and the admissibility of the expert's testimony for an abuse of discretion. *People v Steele*, 283 Mich App 472, 480; 769 NW2d 256 (2009). An abuse of discretion occurs when the trial court's "decision falls outside the range of principled outcomes." *Id.* (cleaned up). A trial court "necessarily abuses its discretion when it makes an error of law." *People v Gerhard*, 337 Mich App 680, 685; 976 NW2d 907 (2021) (cleaned up). Questions of statutory interpretation or constitutional law are reviewed de novo. *People v Miller*, 498 Mich 13, 16-17; 869 NW2d 204 (2015).

A court considering whether to admit expert testimony under MRE 702 acts as a gatekeeper and has a fundamental duty to ensure that the proffered expert testimony is both relevant and reliable. *People v Kowalski*, 492 Mich 106, 119; 821 NW2d 14 (2012). MRE 702 establishes prerequisites for the admission of expert witness testimony. The rule provides:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. [MRE 702.]

The party proffering the expert bears the burden of persuading the trial court that the expert has specialized knowledge that will aid the fact-finder in understanding the evidence or determining a fact in issue, *People v Smith*, 425 Mich 98, 112; 387 NW2d 814 (1986), and that the opinion is based on a recognized field and methodology, *Craig v Oakwood Hosp*, 471 Mich 67, 80, 83; 684 NW2d 296 (2004). The preliminary determination of the qualification of an expert is an issue for the court to decide. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 780; 685 NW2d 391 (2004). Generally, when determining whether a witness is qualified as an expert, the trial court should not weigh the proffered witness's credibility. *Surman v Surman*, 277 Mich App 287, 309; 745 NW2d 802 (2007). Rather, a court's doubts as to credibility, or an opposing party's disagreement with an expert's opinion or interpretation of facts, are issues regarding the weight to be given the testimony, and not its admissibility. *Lenawee Co v Wagley*, 301 Mich App 134, 166; 836 NW2d 193 (2013). The extent of a witness's expertise is usually for the jury to decide. *People v Whitfield*, 425 Mich 116, 123-124; 388 NW2d 206 (1986).

The critical inquiry is whether the expert testimony will aid the fact-finder in making the ultimate decision in the case. *Smith*, 425 Mich at 105. In determining whether the testimony would aid the trier of fact, it is helpful to apply the common-sense inquiry whether an untrained layman would be qualified to determine intelligently and to the best possible degree the particular issue without enlightenment from experts. *Id.* at 106. The facts of a particular case on which an expert bases his or her testimony must be in evidence. MRE 703. Expert testimony may be excluded when it is based on assumptions that do not comport with the established facts. *People v Dobek*, 274 Mich App 58, 94; 732 NW2d 546 (2007).

Our Supreme Court has determined that a defendant may not present evidence of diminished mental capacity to negate specific intent and that a trial court could properly exclude evidence of defendant's mental limitations offered for that purpose. *People v Carpenter*, 464 Mich 223, 236; 627 NW2d 276 (2001). However, just because the rules of evidence preclude the use of evidence for one purpose, does not render it inadmissible for other purposes. "Rather, the evidence is admissible for a proper purpose, subject to a limiting instruction under MRE 105." *People v Sabin (After Remand)*, 463 Mich 43, 56; 614 NW2d 888 (2000). Therefore, a defendant could present evidence of limited intellectual capabilities if offered for a relevant purpose other than to negate the specific intent element of the charged crime. *People v Yost*, 278 Mich App 341, 355; 749 NW2d 753 (2008). Relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. There are circumstances in which a defendant's mental capacity may make a fact that is of consequence to the determination of the action more or less probable. *Yost*, 278 Mich App at 355-356.

This Court, in *Yost*, held that the trial court abused its discretion by precluding expert testimony about the defendant's limited intellectual functioning and how that functioning might have affected the defendant's communication skills and behavior. This Court determined that a defendant's reactions and statements could not be fully evaluated by the jury without understanding the defendant's intellectual limitations. *Id.* at 365-366. The facts in this case overlap considerably with the facts in *Yost*.

In *Yost*, the defendant was charged with the murder of his daughter. The defendant had limited intellectual capabilities and was functioning at a second-grade level, *id.* at 350, similar to

defendant in this case. The defense counsel sought to elicit testimony from the defendant's psychologist regarding the defendant's intellectual functioning; cognitive processing; judgment; and problem-solving abilities including the defendant's susceptibility to manipulation into making statements that made the defendant seem guilty. *Id.* One of the key questions at trial was whether the defendant's child died on her own, whether deliberately or accidentally, or if the defendant caused her death. The circumstances, timing, and context surrounding the defendant's statements and actions were highly relevant, and the prosecution relied heavily on testimony regarding the defendant's statements and actions from both before and after the daughter's death to suggest that the defendant had a guilty conscience. *Id.* at 357. Defense counsel wanted to show that the defendant's statements and actions were not evidence of guilt when understood in light of the defendant's limited education and intellectual capabilities and that a person of defendant's intellect could easily be manipulated into making statements that might appear to reflect a guilty conscience. *Id.* Defense counsel explained that the evidence would "explain why [the defendant] said what she did, or the way she said it, or how she said it, and put[] it into context why some people either misunderstood statements or why someone [who] was functioning at a second[-]grade level would act in a certain way or talk in a certain way." *Id.* at 350.

This Court determined that the defendant was entitled to a new trial because the trial court abused its discretion when it prevented the defendant's psychologist from testifying. *Id.* at 365. This Court explained that, although the expert relied on defendant's statements during testing, it did not necessarily mean that defendant had to offer the statements to prove the truth of the matter asserted and that the expert could "very well have been able to evaluate defendant's intellectual functioning on the basis of defendant's answers regardless of the veracity of those answers." *Id.* at 363. This Court recognized that statements made to a mental-health professional by a patient are often valuable for evaluation without regard to their truth. *Id.* at 363-364, citing *People v Beckley*, 434 Mich 691, 728; 456 NW2d 391 (1990). Therefore, the fact that the tests reflected the defendant's responses did not necessarily require a conclusion that the tests and responses were inadmissible hearsay. *Yost*, 278 Mich App at 364.

This Court explained that the expert's opinion was based on records that were likely admissible under a hearsay exception because the expert evaluated records that pertained to the prior and current treatment of the defendant and would likely be considered records of regularly conducted activity. *Id.* at 365; see MRE 803(6). Additionally, the statements within the records were likely admissible as statements made for the purpose of medical treatment or diagnosis in connection with treatment. *Yost*, 278 Mich App at 365, citing MRE 803(4).

Similar to *Yost*, defense counsel sought expert testimony from Dr. Ehnis to provide context to the jury regarding defendant's statements to various individuals throughout the case. Defendant was diagnosed and treated by two medical professionals, including Dr. Ehnis, and the diagnosis and treatment were relied upon by the CPS case manager. Evidence of defendant's intellectual limitations was only briefly introduced as evidence during the trial because the case manager did not have the credentials to explain defendant's diagnosis thoroughly. Additionally, the prosecution introduced evidence during trial regarding the statements made by defendant to various individuals, including Aly, Aly's parents, the police, and Garrett, regarding the details of the incident that may have contributed to the injuries that the child sustained. Defendant's statements significantly ranged in consistency. It is clear that defendant's statements were an extremely important aspect of this case and the jury should have been informed regarding all aspects of

defendant's behavior and statements, including his intellectual limitations, so that it could make a knowledgeable determination of the facts presented.

Dr. Ehnis was one of defendant's treatment providers and should have been permitted to provide testimony under MRE 803(4). Regardless of whether MRE 803(4) applies, Dr. Ehnis was prepared to testify regarding defendant's diagnosis and how his diagnosis impacted his behavior and susceptibility to manipulation, similar to the expert in *Yost*. Therefore, his testimony would likely qualify under other hearsay exceptions and should have been permitted. And the trial court could have provided an additional jury instruction to limit any prejudice as this Court recommended in *Yost*.

Reversed and remanded. We do not retain jurisdiction.

/s/ Christopher P. Yates  
/s/ Stephen L. Borrello  
/s/ Sima G. Patel

**Appendix I**  
***People v Tait* (COA 2017)**

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED  
May 16, 2017

Plaintiff-Appellee,

v

No. 332252  
Huron Circuit Court  
LC No. 15-305966-FH

TIMOTHY ALLEN TAIT,

Defendant-Appellant.

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Before: SERVITTO, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of assault with intent to commit murder (AWIM), MCL 750.83, and possessing a weapon as a prisoner, MCL 801.262(2). He was sentenced as a third-offense habitual offender, MCL 769.11, to concurrent prison terms of 17 to 30 years for AWIM and 3 to 10 years for possessing a weapon as a prisoner. We affirm.

Defendant was in the Huron County jail when he attacked Corporal Steven Bischer, who was responsible for maintaining security at the jail. Defendant attacked Bischer with an ink pen that he had fashioned into a makeshift stabbing implement known as a “shank,” using plastic wrap as a handle. Defendant stabbed Bischer at least two to three times in the back and neck areas. After defendant was disarmed and restrained, Bischer immediately felt pain in his shoulder area. He sought medical treatment at the emergency room of a local hospital. Upon examination, it was determined that Bischer suffered superficial abrasions and a half-centimeter stab wound to his neck area, and he was given a tetanus shot.

Defendant first challenges his AWIM conviction on the ground that the evidence was insufficient to establish that he intended to kill Bischer. We review this issue de novo, *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010), considering the evidence “in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt,” *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). We resolve all conflicts in the evidence in favor of the prosecution, and we will “not interfere with the trier of fact’s role of determining the weight of the evidence or the credibility of witnesses.” *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

To establish that defendant committed AWIM, the prosecution was required to prove that defendant committed “(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder.” *People v Jackson*, 292 Mich App 583, 588; 808 NW2d 541

(2011) (quotation marks and citation omitted). “The intent to kill may be proved by inference from any facts in evidence.” *Id.*

Defendant argues there was insufficient evidence that he intended to kill Bischer. Testimony at trial included that defendant had told multiple corrections officers that he intended to kill Bischer, including Bischer himself. And, after stabbing Bischer in the neck with a shank, he expressed regret for not having succeeded and stated his intent to try again. The jury could infer defendant’s intent to kill from these statements. Therefore, there was sufficient evidence to establish the intent element. See *id.*

Next, defendant argues that the court erred by excluding evidence relating to his mental health pursuant to *People v Carpenter*, 464 Mich 223, 241; 627 NW2d 276 (2001), which held that evidence of a defendant’s lack of mental capacity short of legal insanity was inadmissible to establish a lack of specific intent. We review the trial court’s decision to admit or exclude evidence for an abuse of discretion. *People v Yost*, 278 Mich App 341, 353; 749 NW2d 753 (2008). An abuse of discretion occurs when the trial court “selects an outcome that does not fall within the range of reasonable and principled outcomes.” *Id.* Whether the admission of evidence is precluded by rule or statute is a question of law that is reviewed de novo. *Id.*

Defendant does not challenge the trial court’s determination that he did not meet the requirements for establishing an insanity defense. Rather, he argues that the trial court erred by rejecting his argument that evidence of the mood disorder that made him impulsive and aggressive was relevant for purposes other than negating his specific intent and, therefore, was admissible under *Yost*. In *Yost*, this Court held that “[a]lthough a defendant may no longer present evidence of diminished capacity to negate the intent element of a crime, there are circumstances where a defendant’s mental capacity may make a fact that is of consequence to the determination of the action more or less probable without such evidence being offered to negate the specific-intent element of the charged offense” and would, therefore, be admissible under MRE 402. *Id.* at 355-356.

It is not clear, however, for what purpose defendant believes the evidence of his mental-health issues is relevant, if not to show that his statements of intent to kill Bischer should not have been taken as evidence of his specific intent to do so. Defendant claims that the evidence was relevant “to explain factual circumstances that would otherwise be used by the prosecution as alleged evidence of [defendant’s] calculated and rational pronouncement that he intended to kill Bischer,” and that “the jury [was] entitled to consider his mental state when assessing the proper weight to be given to the alleged threats.” While defendant insists that this “is not a semantical argument that presents a distinction without a difference,” given that the proffered alternative purpose appears to be undermining the significance of defendant’s express threats to kill Bischer, which were evidence of his specific intent, we agree with the trial court that the evidence was properly excluded under *Carpenter*.

Finally, defendant challenges the scoring of three offense variables on appeal. The proper interpretation and application of the sentencing guidelines are legal questions that are reviewed de novo. *People v Morson*, 471 Mich 248, 255; 685 NW2d 203 (2004). The sentencing court’s factual determinations must be supported by a preponderance of the evidence and are reviewed for clear error. *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013).

First, defendant challenges the scoring of OV 2, which requires five points to be assessed if defendant “possessed or used a pistol, rifle, shotgun, or knife or other cutting or stabbing weapon,” MCL 777.32(1)(d), and requires one point to be assessed if defendant “possessed or used any other potentially lethal weapon,” MCL 777.32(1)(e). Five points were assessed for OV 2 and there was no objection to the score raised at sentencing; thus, we review the issue for plain error affecting defendant’s substantial rights. *People v Chelmicki*, 305 Mich App 58, 69; 850 NW2d 612 (2014). Defendant contends that he should have received one point under OV 2. The statute does not define “cutting or stabbing weapon.” While it is unclear whether an ink pen alone would qualify if used as a stabbing weapon, in this case, evidence indicated that defendant had deliberately fashioned a handle onto the pen to transform it into a shank, that he used it to attack Bischer, and that Bischer was subsequently diagnosed with a “[s]tab wound.” Given that the instrument at issue was in fact used to inflict a stab wound, the trial court did not plainly err by classifying it as a stabbing weapon for purposes of scoring OV 2. See *id.*

Next, defendant challenges the scoring of OV 3, which requires 10 points to be assessed if “[b]odily injury requiring medical treatment occurred to a victim,” MCL 777.33(1)(d), and five points if “[b]odily injury not requiring medical treatment occurred to a victim,” MCL 777.33(1)(e). The phrase “requiring medical treatment” “refers to the necessity for treatment and not the victim’s success in obtaining treatment.” MCL 777.33(3). At sentencing, defendant’s attorney challenged the assessment of 10 points because Bischer was directed to seek medical treatment by a superior at the jail. Bischer testified that after the attack, he immediately felt pain in his shoulder. The practical nurse who was on site examined him and suggested that he seek additional medical treatment. Bischer sought treatment at the emergency room of a local hospital, where the doctor diagnosed superficial abrasions and a half-centimeter stab wound to his neck. Bischer was also given a tetanus shot. Accordingly, OV 3 was properly scored at ten points. However, even if OV 3 should have been scored at five points, reducing defendant’s total OV score by five points does not alter his recommended minimum sentence range, MCL 777.62; thus, resentencing would not be required. See *People v Francisco*, 474 Mich 82, 89 n 8; 711 NW2d 44 (2006).

Defendant also raises a challenge to the scoring of OV 19, which requires 25 points to be assessed if defendant, by his conduct, “threatened the security of a penal institution or court.” MCL 777.49(a). The trial court should assess 15 points if the defendant “used force or the threat of force against another person . . . to interfere with, attempt to interfere with, or that results in the interference with the administration of justice or the rendering of emergency services.” MCL 777.49(b). At sentencing, defendant’s attorney argued that 15 points would be more appropriate “under the circumstances.” In this case, the jury found that defendant attacked the person who was responsible for maintaining security at the jail with a weapon. This alone was sufficient to support the score. Further, the record reflects that disarming and restraining defendant required the resources of two additional officers. Under these circumstances, the evidence supported the score of 25 points.

Defendant also argues that assessing 25 points for OV 19 on the basis of the underlying offense penalizes him twice for the same conduct. However, this Court has held that points may be assessed for OV 19 “when the sentencing offense itself necessarily involves interfering with the administration of justice,” such as cases involving perjury. *People v Sours*, 315 Mich App 346, 349 n 1; 890 NW2d 401 (2016), citing *People v Underwood*, 278 Mich App 334, 340; 750

NW2d 612 (2008). Because possessing a weapon as an inmate and using that weapon against a corrections officer necessarily threatens the security of a penal institution, the score was properly assessed.

Affirmed.

/s/ Deborah A. Servitto  
/s/ Mark J. Cavanagh  
/s/ Karen M. Fort Hood

**Appendix J**  
***People v Uncapher* (COA 2004)**

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH JOHN UNCAPHER,

Defendant-Appellant.

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UNPUBLISHED

April 13, 2004

No. 246222

Wayne Circuit Court

LC No. 01-014257-01

Before: Talbot, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree murder, MCL 750.316, in the stabbing death of Robin Howard, and second-degree murder, MCL 750.317, in the stabbing death of Roger Sanford. Defendant was sentenced to concurrent terms of natural life, and twenty-five to fifty years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first claims on appeal that the trial court erred in excluding two types of evidence: 1) testimony regarding a condition that allegedly interfered with his ability to deliberate, and 2) testimony regarding his state of mind as to his relationship with Howard, whom he had dated for several months. We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *People v Jones*, 240 Mich App 704, 706; 613 NW2d 411 (2000); *People v Herndon*, 246 Mich App 371, 406; 633 NW2d 376 (2001). A preserved nonconstitutional error is not grounds for reversal unless it is more probable than not that the error was outcome determinative. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Defendant sought to admit the following evidence: 1) the results of a spinal tap procedure performed on defendant; 2) the results of a glucose tolerance test performed on defendant; and, 3) expert testimony regarding the effects on the human body of the conditions uncovered by the tests performed on defendant, such as defendant's low serotonin level. According to defense counsel, the evidence was not being offered to negate defendant's intent to kill one of the victims, but to show that defendant was unable "[t]o rationally think through decisions." It appears that the trial judge viewed defendant's proffered evidence as the basis of a "diminished capacity" defense, and denied defendant's motion in reliance on *People v Carpenter*, 464 Mich 223, 226; 627 NW2d 276 (2001), where our Supreme Court interpreted MCL 768.21a, which addresses which persons are deemed legally insane. Defendant denied that he was claiming diminished capacity and argued that he was not trying to negate specific intent;

rather, he was admitting he had the ability to form intent, but alleging that he was incapable of premeditation or deliberation. Defendant argued that the proffered evidence would show a biological, physical problem, rather than a psychological problem as anticipated in *Carpenter, id.*

The core of our Supreme Court's decision in *Carpenter* involved the admissibility of evidence regarding the defendant's mental capacity. Although defendant here tried to distinguish between a "psychological" and a "biological" conditions affecting the brain, we note that, in *Carpenter*, the defendant wanted to reduce his criminal culpability by showing that he suffered from organic brain damage. *Id.*, 464 Mich 228. Similarly, defendant here sought to reduce his criminal culpability by showing that he had "biological" problems that diminished his ability to reason and control his impulses.

Defendant also suggests that *Carpenter* does not apply here because specific intent was the element at issue there, while premeditation and deliberation are at issue in this case. However, our Supreme Court relied in part on the United States Supreme Court decision in *Fisher v United States*, 328 US 463; 66 S Ct 1318; 90 L Ed 1382 (1946), where the U.S. Supreme Court upheld the exclusion of evidence, short of insanity, pertaining to "the fact of and the . . . capacity for premeditation and deliberation." *Carpenter, supra*, 464 Mich 240, quoting *Fisher, supra*, 328 US 470. Our Supreme Court clearly concluded that "the insanity defense as established by the Legislature is the sole standard for determining criminal responsibility" when it is based on either mental illness or retardation. *Carpenter, supra*, 464 Mich 228, 239, 241. Quoting *State v Mott*, 187 Ariz 536, 541; 931 P2d 1046 (1997), our Supreme Court noted, "*Fisher* stands for the proposition that state legislatures, without violating the constitution, may preclude defendants from offering evidence of mental and psychological deficiencies to challenge the elements of a crime." *Carpenter, supra*, 464 Mich 241.

Here too, no matter how defendant frames it, the defense argument was that defendant should be relieved of criminal responsibility because he was incapable, because of "a biological disorder," of forming a mental element of the crime. As the trial court indicated, the ruling in *Carpenter* precludes admission of such evidence. The trial court did not abuse its discretion in excluding the evidence of defendant's "chemical imbalance." *Jones, supra*, 240 Mich App 706.

Defendant also argues that the trial court erred in excluding testimony regarding a telephone conversation the day before the victims were murdered. Defendant's friend testified that defendant called Howard on a cell phone while defendant and the witness were in a vehicle. The witness said he could hear what defendant said during the conversation, and that defendant relayed Howard's part of the conversation to him. The trial court sustained, on the basis of hearsay, the prosecutor's objection to testimony regarding specific statements. However, through later questions, defense counsel effectively obtained the substantive information he claimed he had been seeking previously. The witness testified without objection that Howard told defendant in detail about an apartment she found for her and defendant to rent together. Thus regardless of the merits of defendant's challenge on appeal, defendant was not precluded from presenting the evidence and the trial court's ruling on the phrasing of a single question was clearly not outcome determinative. *Lukity, supra*, 460 Mich 495-496.

Defendant also argues that there was insufficient evidence of premeditation and deliberation to convict him of the first-degree murder of Howard. We disagree. This Court reviews the evidence de novo in a light most favorable to the prosecution to determine whether a

rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979); *People v Oliver*, 242 Mich App 92, 94-95; 617 NW2d 721 (2000).

Viewing the evidence in a light most favorable to the prosecution, there was ample evidence here of premeditation and deliberation. Several witnesses testified regarding defendant's prior relationship with Howard, and of defendant's jealousy. Defendant himself testified that, the night before the stabbings, he suspected that Howard was being unfaithful to him and "just drove around for a while thinking." There was evidence that defendant had previously threatened to kill Howard and told her he wished she were dead. Defendant acquired a large hunting knife, which he carried with him in his vehicle. Defendant followed the victims' cars with his vehicle, rammed Howard's car in an effort make her pull over, and waited until she was alone in a parking lot to approach her. There was evidence that Sanford also pulled into the parking lot and put himself between defendant and Howard. Defendant testified that he concealed the knife and took it with him as he confronted the two victims. Defendant said that he stabbed Sanford in the back, prevented Howard from seeking safety in her car, and stabbed her to death. On this evidence, a rational trier of fact could have found that the essential elements of first-degree murder were proven beyond a reasonable doubt. *Hampton, supra*, 407 Mich 368.

Affirmed.

/s/ Michael J. Talbot

/s/ Janet T. Neff

/s/ Pat M. Donofrio