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State of Michigan

In the Supreme Court

People of the State of Michigan,

Plaintiff-Appellee,

v

Cinneca Daquan Madison,

Defendant-Appellant.
_____/

Michigan Supreme Court: **167120**

Court of Appeals: 369559

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

Honorable Karen J. Miedema

Lee F. Fisher (P42384)
Ottawa County Prosecuting Attorney
Attorney for Plaintiff-Appellee
414 Washington Avenue, Room 120
Grand Haven, Michigan 49417
(616) 846-8215

Sarah Matwiejczyk (P59965)
Chief Assistant Prosecuting Attorney

By: JoEllen Haas (P59765)
Senior Assistant Prosecuting Attorney
_____/

Christopher M. Wirth (P70174)
CORE LEGAL PLC
Attorney for Defendant-Appellant
250 Monroe Avenue, NW, Suite 400
Grand Rapids, Michigan 49503
(616) 855-2145

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

Prepared by the Office of the Ottawa County Prosecuting Attorney: August 2, 2024

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Jurisdiction, Order Appealed from and Relief Sought

Defendant-Appellant seeks leave to appeal the Court of Appeals' May 10, 2024 order that denied Defendant-Appellant's Application for leave to appeal for failure to persuade the Court of Appeals of the need for immediate appellate review. On July 5, 2024, this Honorable Court directed Plaintiff-Appellee to answer Defendant-Appellant's Application for Leave to Appeal. This Court has jurisdiction to review the decision of the Court of Appeals pursuant to MCR 7.303(B)(1).

Both a competency evaluation and a criminal responsibility evaluation were ordered by the District Court. Defendant-Appellant was found competent to stand trial. (See Def. Exh. 4, Competency Eval, Dr. Michele Hill, 09-08-22 and District Court ROA, Judge Bocanegra, 09-22-22 -Finding and Order on Competency). Defendant-Appellant's case was bound over to the Circuit Court after a preliminary examination was held on October 20, 2022.

The criminal responsibility evaluation that was ordered by the District Court was not completed prior to bind over. After bind over, it was also ordered by the Circuit Court to be completed. Defendant-Appellant was found to be criminally responsible, not legally insane. (See Def. Exh.4, Criminal Responsibility Eval, Dr. Michele Hill, 12-29-2022; Def. Exh. 4, Criminal Responsibility Addendum, Dr. Michele Hill, 03-23-2023; Def. Exh 5, Criminal Responsibility Eval, Dr. Jeffery T. Kieliszewski, 10-06-2023; Def. Exh 1, Order After [01-05-2024] Hearing [on Criminal Responsibility], Judge Karen J. Miedema, 01-10-2024).

Defendant-Appellant filed an Application for Leave to Appeal (interlocutory) in the Court of Appeals on 01-31-2024 which the Court of Appeals denied for failure to persuade the Court of the need for immediate appellate review. (See Def. Exh. 2, Court of Appeals order, 05-

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10-2024). It is from both the 05-10-2024 Court of Appeals order as well as the Circuit Court order of 01-10-2024 that Defendant-Appellant now appeals.

Defendant-Appellant argues (1) that the Court of Appeals erred in denying immediate appellate review; (2) that *People v Carpenter*, 464 Mich 223 (2001) was wrongly decided; and (3) that Defendant-Appellant should be permitted to present evidence of diminished capacity to the jury with related jury instructions on *mens rea*, and "perception" regarding self-defense.

1) The Court of Appeals did not err in denying immediate appellate review.
2) *People v Carpenter* was not wrongly decided and should not be overruled. In *Carpenter*, the Court analyzed the statutory scheme enacted by the Legislature, as it was necessary to resolve the issue raised by the defendant—whether the Legislature intended the defendant to carry the burden of proof in a diminished capacity defense—and concluded that the Legislature intended to restrict any defense based on mental illness or mental retardation (*current version of the statute uses the term "intellectual disability" instead of "mental retardation"*) to that approved of by the statutory scheme. Thus, the burden is on the defendant to establish by a preponderance of the evidence that, as a result of mental illness or intellectual disability, as defined in the Mental Health Code, they lacked "substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or conform his or her conduct to the requirements of the law. Mental illness or having an intellectual disability does not otherwise constitute a defense of legal insanity." MCL 768.21a (1), (3).

The holding that a defense based on mental illness (*including mental illness that reduces one's capacity to possess specific intent*) must be pursued under MCL 768.21a as legal insanity should be retained. The interpretation of the statutory scheme by the

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Court in *Carpenter* is a rational application of the statutes passed by the Legislature in 1975 and 1994. The case law established over the past 23 years has shown this is a workable scheme and does not run afoul of the public policy chosen by the Legislature to address the treatment of mentally ill or intellectually disabled offenders accused of crime, whether they be convicted or acquitted.

Should this Court believe that *Carpenter* was wrongly decided, the decision should still not be overruled. *Carpenter's* statutory interpretation was rational and coherent. The ruling has not defied practical workability over the past 23 years, and the Legislature has not seen fit to alter the Court's application of the statutory scheme. While undue hardship resulting from a change of course would not be insurmountable, there is no reason to supplant *Carpenter* with a new interpretation. Where the statutory scheme does not violate Constitutional rights, the Court should leave it to the Legislature to enact or alter laws based on considerations of public policy.

3) Defendant-Appellate should not be permitted to present evidence of diminished capacity to the jury with related jury instructions on *mens rea*, and "perception" regarding self-defense.

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

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Counter-statement of Questions Presented

Question I

Did the Court of Appeals err when it denied Defendant's application for immediate appellate review?

Court of Appeals Answer:	Made no answer.
Trial Court Answer:	Made no answer.
Plaintiff-Appellee's Answer:	No.
Defendant-Appellant's Answer:	Yes.

Question II

Was *People v Carpenter*, 464 Mich 223 (2001) wrongly decided by this Court, and, if so, should *Carpenter* be overturned?

Court of Appeals Answer:	Made no answer.
Trial Court Answer:	Made no answer.
Plaintiff-Appellee's Answer:	No.
Defendant-Appellant's Answer:	Yes.

Question III

Should Defendant be permitted to present evidence of diminished capacity to the jury along with related jury instructions on *mens rea*, and "perception" regarding self-defense?

Court of Appeals Answer:	Made no answer.
Trial Court Answer:	No.
Plaintiff-Appellee's Answer:	No.
Defendant-Appellant's Answer:	Yes.

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Counter-Statement of Facts

A. *Introduction*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. *Reports of Defendant's mental illness—not legally insane,* discussed *infra*

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

C. *Reports of Defendant's mental illness,* discussed *infra*

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

D. *Defendant's Charges and Appeal*

On June 3, 2022, Defendant was charged with Count 1: Homicide—Open Murder of Antory Burrell (statutory short form) pursuant to MCL 750.316; Count 2: Assault with Intent to Murder Demontae Knight pursuant to MCL 750.83; and Counts 3 and 4, Felony Firearm pursuant to MCL 750.227b. His jury trial is currently scheduled to begin on September 4, 2024.

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

> "Defendant apparently wishes to assert that he lacked the *mens rea* required to convict him of first-degree murder due to his mental illness. By extension, he also wishes to assert that the mental illness provoked him to act as required to convict him of the lesser-included offense of manslaughter, and negating the malice requirement for a murder conviction … Because defendant does not meet the definition of legal insanity, he is prohibited from presenting evidence of his mental illness to negate the specific intent elements of the charged crimes or reduce his criminal responsibility… Defendant's request to admit evidence of diminished capacity and mental disturbance is denied." (See Def Exh. 1 Trial Court Order).

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On May 10, 2024, the Court of Appeals denied Defendant's interlocutory appeal on these issues for failure to persuade the Court of the need for immediate appellate review. (See Def. Exh. 2, Court of Appeals order, 05-10-2024). Defendant filed an interlocutory appeal with this Court and on July 5, 2024, this Court directed Plaintiff-Appellee to answer Defendant's Application for Leave to Appeal the May 10, 2024 order of the Court of Appeals.

Defendant argues (1) that the Court of Appeals erred in denying immediate appellate review; (2) that *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001) was wrongly decided; and (3) that Defendant should be permitted to present evidence of diminished capacity to the jury with related jury instructions on *mens rea*, and "perception" regarding self-defense.

It is from both the 05-10-2024 Court of Appeals order as well as the 01-10-2024 Circuit Court order that Defendant now appeals.

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Argument I

The Court of Appeals did not err when it denied Defendant's Application for immediate appellate review.

Issue Preservation:

The People agree that the issue has been preserved.

Standard of Review:

Defendant raised an issue of statutory interpretation regarding an affirmative defense. The interpretation and application of a statute presents a question of law that is reviewed *de novo*. *People v Zajaczkowski*, 493 Mich 6, 12; 825 NW2d 554 (2012). One of the grounds for review of a decision of the Court of Appeals is that the decision is clearly erroneous and will cause material injustice. MCR 7.305(B)(5)(a). This is the ground upon which Defendant filed his Application with this Court.

Discussion:

MCR 7.203(B)(1) Appeal by Leave. The Court of Appeals *may* grant leave to appeal from a judgment or order of the circuit court and court of claims that is not a final judgment appealable of right. (emphasis added). For example, an interlocutory appeal.

The Court of Appeals granted Defendant's motion for immediate consideration. It denied his Application for Leave to Appeal for failure to persuade the Court of the need for immediate appellate review. (See Def. Exh. 2, Court of Appeals order, 05-10-2024). Paraphrasing, Defendant argues that because he has a low IQ and a mental illness "the stress and stigma of [a] felony prosecution and incarcerating him as he appeals a conviction are all substantial harms [that could be] avoided by interlocutory review." [Def MSC App for Lve at 2-3].

Certainly, the Court of Appeals thoroughly reviewed Defendant's Application and determined there was no need for immediate review. Courts have the "inherent authority to

manage their dockets" to ensure the "efficient and expedient resolution of cases". *Dietz v Bouldin*, 579 US 40, 47; 136 S Ct 1885; 195 L Ed 2d 161 (2016).

Moreover, Defendant's argument that because he has a low IQ and a mental illness-- "the stress and stigma of [a] felony prosecution and incarcerating him as he appeals a conviction are all substantial harms [that could be] avoided by interlocutory review does not rise to the level of being a clearly erroneous decision by the Court of Appeals or cause material injustice.

Because the Court of Appeals properly exercised its discretion, it did not err when it denied Defendant's Application for immediate appellate review.

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Argument II

People v Carpenter, 464 Mich 223 (2001) was correctly decided by tbis Court and should not be overturned.

Issue Preservation:

The People agree that the issue has been preserved.

***Standard of Review*:**

Defendant has raised an issue of statutory interpretation regarding an affirmative defense. The interpretation and application of a statute presents a question of law that is reviewed de novo. *People v Zajaczkowski*, 493 Mich 6, 12; 825 NW2d 554 (2012).

Discussion:

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

"The Legislature is presumed to act with knowledge of appellate court statutory interpretations, and silence by the Legislature for many years following judicial construction of a statute suggests consent to that construction." *People v Higuera*, 244 Mich App 429, 436; 625 NW2d 444 (2001) (citations omitted). When the construction of two statutes or provisions lends themselves to a construction that avoids conflict, that interpretation of the provisions is controlling. *People v Ellis*, 224 Mich App 752, 756; 569 NW2d 917 (1997). Statutes that relate to the same matter are considered to be in pari materia. *People v Perryman*, 432 Mich 235, 240; 439 NW2d 243 (1989). "Statutes that address the same subject or share a common purpose are *in pari materia* and must be read together as a whole." *People v Harper*, 479 Mich 599, 621; 739

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NW2d 523 (2007) (emphasis in original). The general rule of in *pari materia* requires courts to examine the context of related statutes. *Id.*

In *Carpenter*, the Court considered the interplay between the several statutes through which the Legislature addressed the treatment of mentally ill or intellectually disabled defendants, including consideration of when their mental illness or intellectual disability would provide a defense or excuse for their criminal conduct. The Court's interpretation was rational and should not be overturned.

The diminished-capacity defense was first recognized by the Michigan Court of Appeals in *People v Lynch*, 47 Mich App 8, 208 NW2d 656 (1973); see *Carpenter*, 464 Mich at 233. At the time, the Michigan test for legal insanity asked "1) whether defendant knew what he was doing was right or wrong; and 2) if he did, did he have the power, the will power, to resist doing the wrongful act?" *People v Martin*, 386 Mich 407, 418; 192 NW2d 215 (1971); see *Carpenter*, 464 at 234 n 7. Based on this expression of the common law, the Court of Appeals rejected the view "that mental capacity is an all or nothing matter that only insanity …negates criminal intent." *Lynch*, 47 Mich App at 20, and held that a defendant may present relevant psychiatric "testimony bearing on intent," which is "sometimes called proof of diminished or partial responsibility." *Id* at 20-21.

Two years later, in 1975, the Legislature codified the insanity defense through enactment of 1975 PA 179 and 180; see MCL 330.1400a (defining "mental illness"); MCL 330.1100b (defining "intellectual disability"); MCL 768.20a (procedural requirements for defendant to pursue insanity defense); MCL 768.21a (legal insanity defined); and MCL 768.36 (creating verdict of "guilty but mentally ill" and resulting treatment). These statutory enactments amended the insanity defense by defining mental illness, expressing the manner and procedure in which

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mental illness or intellectual disability can excuse a defendant from criminal liability, and how the law treats a defendant whose insanity defense is rejected and is found guilty but is found to suffer from a mental illness or intellectual disability. As explained by Chief Justice Taylor in *People v Shahideh*, 482 Mich 1156, 1163-1164; 758 NW2d 536 (2008) (Taylor, CJ, concurring), the legislative action was meant to clarify the manner in which a defendant's mental deficiencies or capacity might present a defense for their criminal acts.

As Chief Justice Taylor explained:

> In response to the public outcry and perceived problems with the insanity defense, the Legislature enacted sweeping revisions to the Mental Health Code and the Code of Criminal Procedure. 1975 PA 179, 180. In particular, the Legislature:
>
> (1) adopted a statutory definition of insanity based on § 4.01 of the Model Penal Code,
>
> (2) created the guilty but mentally ill verdict,
>
> (3) required the guilty but mentally ill verdict to be an option every time the insanity defense was raised,
>
> (4) enacted a statute preventing an individual from claiming insanity because he or she was under the influence of voluntarily consumed alcohol or drugs at the time of the alleged offense, MCL 768.21a,
>
> (5) enacted a statute requiring that the jury be instructed regarding the law before trial starts whenever an insanity defense is presented, MCL 768.29a(1), and
>
> (6) required that a defendant who wishes to pursue an insanity defense serve written notice on the court and the prosecutor not less than 30 days before trial and submit to a court-ordered examination, relating to the claim of insanity, by personnel for the Center for Forensic Psychiatry or other qualified personnel. MCL 768.20a.
>
> Given the vastness of these legislative substantive and procedural changes, one can see why *People v Carpenter,* 464 Mich 223, 237; 627 NW2d 276 (2001), concluded that the Legislature had established a "comprehensive statutory framework" that determines "when mental incapacity can serve as a basis for relieving one from criminal responsibility." *[Shahideh*, 482 Mich at 1161–1163 (Taylor, CJ, concurring) (footnotes omitted).]

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

> 1) It is an affirmative defense to a prosecution for a criminal offense that the defendant was legally insane when he or she committed the acts constituting the offense. An individual is legally insane if, as a result of mental illness as defined in …MCL 330.1400, or as a result of having an intellectual disability as defined in … MCL 330.1100b, that person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law. Mental illness or having an intellectual disability does not otherwise constitute a defense of legal insanity.
>
> 2) An individual who was under the influence of voluntarily consumed or injected alcohol or controlled substances at the time of his or her alleged offense is not considered to have been legally insane solely because of being under the influence of the alcohol or controlled substances.
>
> 3) The defendant has the burden of proving the defense of insanity by a preponderance of the evidence.

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

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

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

Pursuant to MCL 768.36:

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

   a) That the defendant is guilty of an offense.

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

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

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

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

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

> MPC § 4.01(1) reads:
>
> > A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease ... he lacks substantial capacity either to appreciate the ... wrongfulness of his conduct or to conform his conduct to the requirements of the law.
>
> Michigan first adopted a statutory test of insanity modeled on the MPC test in 1975. 1975 PA 180. That test reads as follows:
>
> > A person is legally insane if, as a result of mental illness ... that person lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law. [*Jackson*, 245 Mich App at 19 n 1.]

Even before 1975, the very next section of the Model Penal Code, 4.02(1), set forth a model for the diminished capacity defense. See *People v Lynch*, 47 Mich App 8, 21 n 12; 208

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NW2d 656 (1973). In *Lynch*, 47 Mich App at 21 n 12, when recognizing the diminished capacity defense for the first time, the Court of Appeals noted that the ALI, Model Penal Code, s 4.02(1) provided:

> '(1) Evidence that the defendant suffered from a mental disease or defect shall be admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense.'

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

Following the 1975 statutory enactments, in *People v Mangiapane*, 85 Mich App 379, 395; 271 NW2d 240 (1978), the Court of Appeals held that the diminished capacity defense came "within the codified definition of legal insanity."

As such, a defendant asserting diminished capacity would have to establish that their mental illness or intellectual disability prevented them from possessing the "substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law." MCL 768.21a(1). The Court of Appeals provided that a defendant could pursue a diminished capacity defense ---alleging their mental illness prevented them from forming specific intent –as long as they comply with the requirements of the statute. *Mangiapane*, 85 Mich App at 395. Presumably, this would include

providing notice, submitting to a psychological examination, the jury being instructed as to legal insanity, and the availability of verdicts including guilty but mentally ill, and not guilty by reason of insanity. See *id*, citing MCL 768.20a, 29a, and 36.

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

It is in this setting that the defendant in *Carpenter* argued on appeal that the Act, particularly MCL 768.21a(3), did not require the burden of proving a lack of specific intent be shifted to a defendant asserting a diminished capacity defense. *Carpenter*, 464 Mich at 235. In analyzing the interplay between the statutes and the asserted affirmative defense of diminished capacity, the Court necessarily had to interpret the statutory scheme and to determine and effectuate the intent of the Legislature.

The *Carpenter* Court noted that following *Mangiapane*, the Court of Appeals continued to address diminished capacity as a form of the statutory insanity defense. *Id.* Therefore, in *Carpenter*, the Court of Appeals had held that when the defendant sought to present a diminished capacity defense, he bore the burden of establishing the defense by a preponderance of the evidence under MCL 768.21a(3). The defendant in *Carpenter* challenged that burden on appeal, "arguing that nothing in the language of § 21a suggests a legislative intent to place on defendants the burden of proving diminished capacity." 464 Mich at 235.

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

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

Carpenter addressed the issue before the Court by interpreting the statutory scheme enacted by the Legislature in codifying the insanity defense and providing for the manner in which a defense based on a defendant's mental capacity can excuse or limit criminal culpability. The Court's interpretation was a rational approach giving effect to the legislative intent, including that one who suffers from a mental illness or intellectual disability but who is not legally insane and is convicted of a crime receive treatment under a verdict of guilty but mentally ill. Furthermore, when enacting 1975 PA 180, the Legislature chose to adopt the statutory

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definition of insanity from the Model Penal Code, but did not enact a statute based on the Model Penal Code setting forth a diminished capacity defense. See *Metrish*, 569 US at 366; *Lynch*, 47 Mich App at 21 n 12.

This Court should not disturb this reasonable interpretation of legislative intent, even if the present Court would have decided the matter differently.

Should this Court believe that *Carpenter* was wrongly decided, the decision should still not be overruled. *Carpenter's* statutory interpretation was rational and coherent. The ruling has not defied practical workability over the past 23 years, and the Legislature has not seen fit to alter the Court's application of the statutory scheme. While undue hardship resulting from a change of course would not be insurmountable, there is no reason to supplant *Carpenter* with a new interpretation. Where the statutory scheme does not violate Constitutional rights, the Court should leave it to the Legislature to enact or alter laws based on considerations of public policy. This Court should not upset the rational, coherent, and workable statutory scheme that exists under current law.

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Argument III

Defendant should not be permitted to present evidence of diminished capacity to the jury with related jury instructions on *mens rea*, and "perception" regarding self-defense.

Issue Preservation:

The People agree that the issue has been preserved.

***Standard of Review*:**

Defendant raised an issue of statutory interpretation regarding an affirmative defense. The interpretation and application of a statute presents a question of law that is reviewed de novo. *People v Zajaczkowski*, 493 Mich 6, 12; 825 NW2d 554 (2012).

Discussion:

For the reasons already stated in Argument II of this brief, *supra*, and the reasons stated immediately below, Defendant should not be permitted to present evidence of his mental illness/diminished capacity to the jury to negate the element of specific intent for the crimes, nor should he be able to present evidence of his "perception" of the circumstances surrounding the crime (due to his mental illness/diminished capacity) regarding self-defense.

Defendant is afflicted with mental illness. He was forensically evaluated by three (3) different psychologists.

First, Defendant was forensically evaluated by a psychologist at the Forensic Center (Dr. Michele Hill) to give her written opinion on Defendant's competency to stand trial. Her opinion was that Defendant was ***competent to stand trial***. (See Def Exh 4, Dr. Michele Hill's Report (09-08-2022).

Next, he was forensically evaluated by Dr. Michele Hill for the purpose of giving her written opinion regarding Defendant's criminal responsibility. Her opinion was that Defendant was ***not legally insane at the time he committed the crimes and was criminally responsible for***

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his actions. (See Def. Exh 4, Dr. Michele Hill's Report (12-29-2022) and addendum (03-23-2023).

While the People appreciate Defendant drawing to this Court's attention the following from Dr. Hill's 03-23-2023 addendum at 3:

> This does not change my ultimate opinion that Mr. Madison was not legally insane. **Although it is entirely possible, given bis report to CMH prior to the alleged offense of hearing, seeing and believing things that were not real, that Mr. Madison could have *imagined* that the alleged victims were talking about him and planning to kill him, potentially impairing his capacity to appreciate the nature, quality or wrongfulness of his behavior, as well as the capacity to appreciate to conform his behavior to the requirements of the law, thus causing him to act in what he believed was genuine self-defense,** this cannot be shown to be true within reasonable or clinical certainty due to the lack of corroborating information. [italicized emphasis in original, bold emphasis added by Defendant]. [Def MSC App for Lve at 11].

The remainder of that paragraph, and the final paragraph is illustrative:

> First of all, jail and CMH records do not describe him to be experiencing a substantial disorder of thought or mood shortly after his arrest or any mental impairment that would have caused him to lack substantial legal capacities. In fact, CMH records indicate that Mr. Madison did not present with any indications of a thought disorder one week after the alleged offense, despite not being prescribed medication at that time.
>
> Second of all, Mr. Madison adamantly denied imagining the alleged victims talking about him or threatening to harm him when asked directly by this examiner and provided reasonable arguments for this denial. I have no other information about his mental state during the alleged offense itself to contradict his denial that he imagined the threat to his life.
>
> Overall, Mr. Madison adamantly denied any mental health involvement in the alleged offense and stated he was doing well at the time, was happy, and denied hallucinating during the alleged offense. **He also denied ever being commanded to act by hallucinations or any other psychiatric symptoms. He indicated he was in full control of his actions during the alleged offense and acted in self-defense.**
>
> Overall, although it seems Mr. Madison was experiencing a substantial disorder of thought during the months leading up to the alleged offense, and very well may have been mentally ill, there is no information to indicate within reasonable clinical certainty that during the alleged offense itself he acted irrationally due

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> to mental illness or that he lacked substantial capacity to appreciate the nature, quality or wrongfulness of his conduct or the substantial capacity to conform his conduct to the requirements of the law at the time, though this remains a *possibility*. Thus, it is my opinion that although possible, legal insanity cannot be opined within a reasonable medical or clinical certainty given available information and Mr. Madison's denial of such. [italicized emphasis in original, bold emphasis added by Plaintiff-Appellee]. [Dr. Hill's 03-23-2023 addendum at 3-4].

Many things in life are possible. For example, it is *possible* that if one timely purchased a ticket for the multi-million-dollar lottery with the winning numbers being drawn after the ticket was purchased, it is *possible* that that person could win that lottery, however wildly remote that possibility is.

When forensic evaluations are performed by psychologists for the purpose of determining competency to stand trial and/or criminal responsibility, those professionals are to work within the guidelines mandated by the law and their ethics. Making a determination in these areas requires a higher standard of certainty (i.e. "within a reasonable medical or clinical certainty"). That is precisely why the Legislature set forth the criteria in the Mental Health Code as it did and why they have not changed it since *Carpenter*.

While the People also appreciate Defendant drawing to this Court's attention the following from Dr. Kieliszewski's 10-06-2023 report at 6:

> Cinecca and I talked at length about his frame of mind prior to, during, and after the alleged offenses. His description indicates he was actively mentally ill at the time of the alleged offense. However, his description and other data in the records did not point to his choice of behavior and actions as a direct manifestation of the effects of the symptoms of his mental illness. **In essence, he described a scenario where in his perception he acted in self-defense.** [bold emphasis added by Defendant]. [Def MSC App for Lve at 11].

The final three (3) paragraphs immediately following the above paragraph are illustrative:

> After the alleged criminal incident, Cinecca reported he was quite worried about going to jail. Therefore, he fabricated a story about what happened, attempting to keep himself out of trouble.

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> Overall, the data did not support the notion that Cinecca did not understand the nature and consequences of his actions at the time of the alleged offense. Also, there was no nexus described between the symptoms of mental illness and Cinecca's behavior during the time of the alleged offense. Therefore, the data do not support an idea that Cinecca was not able to conform his behavior to the law due to mental illness.
>
> Given all the data, I opine Cinecca was criminally responsible and sane at the time of the alleged offenses. [Dr. Kieliszewski's 10-06-2023 report at 6].

Many people "perceive" things differently, even between individuals who do not suffer any kind of mental illness.

Here, the psychologist of Defendant's own choosing *cannot even find a nexus* between Defendant's mental illness and his actions of shooting the victims, much less provide a basis in his evaluation upon which Defendant can seriously argue that his "perception" of the circumstances surrounding the offense support a reduction of his charged offense of murder to manslaughter or to allow for Defendant's mental illness be considered for purposes of self-defense.

Lastly, while the People again appreciate Defendant drawing to this Court's attention the following from Dr. Wolff's 03-02-2024 report at 2:

> [Defendant] knew the individuals who were involved in this case. He knew that they had intent to commit a theft, but then became more suspicious of their behaviors, thinking that they might be out to attack him in some way. These qualities are certainly probable if not quite common in psychotic disorders where there was fear of others being out to harm them. **In combination with intellectual disability, it would be harder for him, in comparison to someone else in his age group, to combat the confusion that he was experiencing at and around the time of the alleged criminal activity.** [bold emphasis added by Defendant]. [Def MSC App for Lve at 12].

The specific questions upon which defense counsel asked Dr. Wolff to opine were:

1) ***Is it possible to consider Cinecca's intellectual abilities and apply to an age level?***

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Short answer: No, there is no validated equation or way to definitively provide an age equivalency. [Dr. Wolff's 03-02-2024 report at 1].

2) ***Could there be an influence on CJ's statement to the law enforcement in consideration of his intellectual abilities and mental health disorder?***

Short answer: "Given Cinecca's mental health disorder and intellectual disability, he would be more likely than someone in his typical age [to] try to be deceptive." [Dr. Wolff's 03-02-2024 report at 1-2].

3) ***Is it possible that there was additional stress or perception of stress by Cinecca knowing that the alleged victim was in possession of a weapon?***

Short answer: There was no dispute in any of the reports that Cinecca was mentally ill. The extent of symptom severity at or around the time of the alleged activity is challenging to delineate. [Dr. Wolff's 03-02-2024 report at 3].

Significantly, defense counsel requested that Dr. Wolff provide an opinion on human behavior in the context of the following:

1) ***Making a false statement to law enforcement in the context of Cinecca's mental stability around the time of the alleged offense:***

Short answer: "When someone is at risk of direct involvement and charges, distortion of details in favor of one's own opinion of what happened can be consciously or unconsciously enacted… knowing Mr. Madison's intellectual capacity is more consistent with a young adolescent with a severe mental illness, it would be common in those circumstances to fabricate a story to gain support and avoid consequences … Once a lie is given, there is a high rate of maintaining the deception now that guilt is involved and there may be additional consequences." [Dr. Wolff 05-

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16-2024 addendum at 7; note: pagination of the original report is pages 1-6, the addendum consists of pages 7- 8].

2) ***Perception of danger:***

Short answer: "Most people … will react out of self-preservation and safety. Reactions can be irrational, sometimes worsening the situation. Apparently, Mr. Madison was aware that an individual involved in this event commonly carried a firearm, increasing the threat in this circumstance, and there had been another crime reported committed that day with stolen bikes, further compounding the intensity. Occasionally though not often, significant fear can result in instinctual, irrational response that can lead to a physical response and overreaction… perceived danger can result in egregious responses that can be irrational, but they happen nonetheless. [Dr. Wolff 05-16-2024 addendum at 8; note: pagination of the original report is pages 1-6, the addendum consists of pages 7- 8].

Dr. Wolff agreed not to ask Defendant any questions pertaining to the alleged offenses [Dr. Wolff 03-02-2024 report at 3] which is fine. And he is still free to opine in his written report on Defendant's perception of fear at the time of the shooting as defense counsel requested him to do. However, Dr. Wolff's opinion must be considered in the context of having limited information regarding the offenses themselves and it important to remember that Defendant (obviously) possessed a handgun of his own … while he was riding his bike ***behind*** the two victims that he shot.

Even considering Defendant's mental illness, it did not justify his actions in murdering the victim, or assaulting with intent to murder the other victim. The evaluations prepared by all three (3) of the psychologists did not indicate that Defendant has a diminished capacity that

would prevent him from acting with specific intent. For example, even if Defendant knew that the murder victim typically carried a handgun, and even if Defendant believed he heard the victims whispering to each other saying "get em"—neither of these beliefs diminished his ability to act intentionally (i.e. shoot them) and certainly would not support a self-defense claim (i.e. he would have had a duty to retreat, was illegally possessing a handgun *and* he shot both the victims from behind).

The Legislature has set forth the criteria in the Mental Health Code and have not changed it since *Carpenter* because the Legislature enacted into law a workable scheme that does not run afoul of the public policy chosen by the Legislature to address the treatment of mentally ill or intellectually disabled offenders accused of crime, whether they be convicted or acquitted.

As such, Defendant's attempt to utilize or present his mental illness to the jury as evidence of his *mens rea* for the charged crimes or as evidence to support his "perception" of the circumstances surrounding his crimes regarding self-defense or a reduction of his murder charge to manslaughter should not be allowed as it is inconsistent with the holding in *Carpenter* is inconsistent with this Legislative intent.

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Conclusion

In 1975, the Legislature enacted a comprehensive statutory scheme for criminal defenses based on mental illness and intellectual disability, including required notice, evaluation, and post-trial treatment. *Carpenter's* holding that the Legislature intended to establish an all-or-nothing insanity defense is logical and coherent. The *Carpenter* Court was correct in its interpretation of the intent and effect of the statutory scheme, and *Carpenter* should not be overruled.

Should this Court believe that *Carpenter* was wrongly decided, the decision should still not be overruled. *Carpenter's* statutory interpretation has not defied practical workability over the past 23 years, and the Legislature has not seen fit to alter the Court's application of the statutory scheme. While undue hardship resulting from a change of course would not be insurmountable, there is no reason to supplant *Carpenter* with a new interpretation. Where the statutory scheme does not violate Constitutional rights, the Court should leave it to the Legislature to enact or alter laws based on considerations of public policy.

For these reasons, Defendant should not be permitted to present evidence of his mental illness/diminished capacity to negate the element of specific intent for the crimes nor should he be able to present evidence of his "perception" of the circumstances surrounding the crime (due to his mental illness/diminished capacity) regarding self-defense.

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Relief Requested

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

Respectfully submitted,

LEE F. FISHER (P42384)
Prosecuting Attorney, Ottawa County
414 Washington Avenue, Room 120
Grand Haven, Michigan 49417
(616) 846-8215

Sarah Matwiejczyk (P59965)
Chief Assistant Prosecuting Attorney

By: JoEllen Haas (P59765)
Senior Assistant Prosecuting Attorney

JoEllen Haas (P59765)

Dated: August 2, 2024

Statement of Word Count

Pursuant to MCR 7.212(B)(3), the counter-statement of facts, argument, conclusion and relief section of this brief are comprised of approximately 6970 total countable words set in Times New Roman, and the text is 12-point type.