Order

Michigan Supreme Court
Lansing, Michigan

July 14, 2023

162968

Elizabeth T. Clement,
Chief Justice

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 162968
COA: 350932
Genesee CC: 18-042597-FC

JACQUELYNE FAYE TYSON,
Defendant-Appellant.

____/

On May 10, 2023, the Court heard oral argument on the application for leave to appeal the April 15, 2021 judgment of the Court of Appeals. On order of the Court, the application is again considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

CLEMENT, C.J. (*concurring*).

I agree with this Court's decision to deny leave to appeal. Like Justice CAVANAGH, I conclude that *People v Carpenter*, 464 Mich 223 (2001), was wrongly decided, but I write separately to explain why I do not think this case is an appropriate vehicle to overturn the decision. Instead, I urge the Legislature to reconsider the statutory scheme that applies when a criminal defendant suffers from mental illness during the commission of a crime.

I agree with Justice CAVANAGH's analysis explaining why *Carpenter* was wrongly decided. However, I believe that preservation concerns present a barrier to overruling *Carpenter* through this case. As Justice CAVANAGH explains, the defendant did not raise the issue of diminished capacity at the trial court, and therefore it is unpreserved. The unpreserved issue must be reviewed for plain error, meaning that the defendant must show "1) error . . . occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *People v Carines*, 460 Mich 750, 763 (1999). Reversal is only warranted when "the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *People v Randolph*, 502 Mich 1, 10 (2018) (quotation marks and citation omitted).

I conclude that the defendant cannot meet the requirements of showing plain error. First, given that *Carpenter* shut the door to diminished-capacity evidence, the court's failure to consider it does not present an error—let alone a plain error—whatsoever. Moreover, I question whether the defendant's inability to present diminished-capacity evidence "seriously affected the fairness, integrity or public reputation of judicial proceedings" considering the specific procedural details of this case.

The defendant was charged with two counts of first-degree premeditated murder. Because she sought to excuse her crimes through the affirmative defense of legal insanity, the judge presiding over her bench trial heard extensive testimony from expert witnesses about her mental state at the time of the crime. Ultimately, the judge found her guilty of first-degree premeditated murder with respect to one victim, but found her guilty only of the lesser-included offense of second-degree murder with respect to the other. We know that the judge, therefore, took the issue of specific intent into account and, despite all the evidence of the defendant's mental illness, concluded that she had premeditated and deliberated with respect to only one victim. Therefore, it seems clear to me that this particular defendant cannot establish that the failure to consider diminished-capacity evidence affected the fairness of her proceedings, given that the court took her mental state into consideration overall and clearly did not presume lightly that she had the requisite specific intent for first-degree murder.

As Justice CAVANAGH notes, "The purpose of the appellate preservation requirements is to induce litigants to do what they can in the trial court to prevent error and eliminate its prejudice, or to create a record of the error and its prejudice." *People v Mayfield*, 221 Mich App 656, 660 (1997). Here, had the defendant attempted to raise the issue of diminished capacity in the trial court, it is almost certain that the judge would have simply denied the request, citing *Carpenter*, and moved on without further discussion. Preserving the issue would not have added much to the record; the animating purpose of preservation would not have been served either way. However, I do not think this means we should excuse the preservation requirement in this case—or in cases like it. To do so would require courts to be in the business of deciding which errors must be preserved and which can be excused, upending the stability of our preservation framework.

Moreover, even if the defendant had preserved the issue, I question whether the Court is the appropriate body to reconsider the viability of a diminished-capacity defense in Michigan. The Legislature has not meaningfully changed the legal framework that applies to criminal defendants experiencing mental illness since 1975. Since then, scientific understanding and social policy surrounding mental illness has changed drastically. I encourage the Legislature to reconsider the all-or-nothing approach of the legal insanity defense. What is the best way for courts to consider evidence of a defendant's mental illness that falls short of legal insanity, but still affects their state of mind at the time of their crime? The answer to that question, in my view, is complex, multifaceted, and worthy of careful consideration by our elected officials. For these

reasons, I concur in the decision to deny leave in this case but implore the Legislature to reconsider broadly the role of mental illness evidence in criminal trials.

CAVANAGH, J. (*dissenting*).

This case presented the Court with the opportunity to correct the flawed statutory interpretation of *People v Carpenter*, 464 Mich 223 (2001), restore a criminal defendant's right to present evidence of diminished capacity to negate specific intent, and reestablish the prosecution's responsibility to prove *all* elements of a crime beyond a reasonable doubt. Because the Court majority instead denies leave to appeal, I respectfully dissent.

I. FACTS & PROCEEDINGS

It is undisputed that defendant suffers from severe mental illness, including schizoaffective disorder with psychosis and mood symptoms. She has long experienced various delusional behaviors. In the months before this tragic incident, respondent experienced delusions that "toxins" were seeping into her vehicle and apartment. On July 26, 2016, defendant went to the apartment complex office to complain about these perceived toxins. Once inside, defendant confronted the assistant manager, Tamara Johnson. After a brief exchange, defendant pulled out her revolver and shot Ms. Johnson in the head. When later describing the shooting, defendant stated:

> I told her you have to do something about the toxins. She was on a chair with wheels. She started rolling across the room toward me with hands up on top of each other.
>
> I saw a flash of her dead as she was rolling across the room like a picture. She continued to roll. I saw a flash between her hands and [Johnson] said it's probably just dust and that's when I shot her.

Next, defendant entered the clubhouse building of the apartment complex and confronted leasing consultant Lyric Work. Defendant fired her gun at Ms. Work, shooting her in the head. Another woman in the clubhouse cried and pleaded with defendant not to kill her. According to that witness, defendant told her to leave, stating, "[G]et out of here. I'm not here for you." Another witness recalled hearing defendant tell the crying woman to "shut the f**k up" because "I'm not coming for you." When later describing this second shooting, defendant explained that she was not "thinking or feeling anything."

Tragically, both victims died from the injuries defendant inflicted. The prosecution charged defendant with two counts of first-degree premeditated murder, MCL 750.316(1)(a), and two counts of carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b(1). She was not found competent to stand trial until approximately two years after the crime. After defendant was finally declared competent,

defense counsel filed a notice of intent to assert an insanity defense. See MCL 768.20a(1). At defendant's bench trial, the defense presented two expert witnesses who opined that defendant was legally insane. The prosecution presented an expert who testified that defendant was not legally insane. The trial court credited the prosecution's expert and concluded that defendant was guilty but mentally ill with respect to the second-degree murder charge for killing Ms. Johnson, and guilty but mentally ill with respect to the first-degree murder charge for killing Ms. Work.[1]

On appeal, defendant argued for the first time that *Carpenter* was wrongly decided. The Court of Appeals rejected this argument, holding that it was bound to apply *Carpenter*. Defendant then sought leave to appeal in this Court, and we ordered oral argument on the application, directing the parties to address:

> (1) whether *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001), should be overruled; (2) if so, whether it should nonetheless be retained under principles of stare decisis, *Coldwater v Consumers Energy Co*, 500 Mich 158, 172-174, 895 NW2d 154 (2017); and (3) if *Carpenter* is overruled, what relief, if any, the defendant is entitled to, given that she did not seek to admit evidence of diminished capacity at trial. [*People v Tyson*, 509 Mich 1049 (2022).]

Following oral argument, a majority of the Court now votes to deny leave to appeal.

II. STANDARD OF REVIEW

This Court reviews questions of statutory interpretation de novo. *People v Gardner*, 482 Mich 41, 46 (2008).

III. LEGAL PRINCIPLES

The common law established various affirmative defenses to murder, including insanity. *People v Spears*, ___ Mich App ___, ___ (2023) (Docket No. 357848); slip op at 11; *Kahler v Kansas*, ___ US ___; 140 S Ct 1021, 1030 (2020). "An affirmative defense admits the crime but seeks to excuse or justify its commission. It does not negate specific elements of the crime." *People v Dupree*, 486 Mich 693, 704 n 11 (2010).

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[1] Defendant was also found guilty of both accompanying felony-firearm charges. These convictions are not directly relevant for the purposes of diminished-capacity evidence, as they contain no specific-intent element and are necessarily predicated on a finding of guilt as to the underlying murder charges that do contain a specific-intent element.

The presentation of diminished-capacity evidence, on the other hand, does not constitute an affirmative defense. Instead, it allows a defendant "to offer evidence of some mental abnormality to negate the specific intent required to commit a particular crime." *Carpenter*, 464 Mich at 232. The Court of Appeals first recognized the concept of "diminished capacity" in *People v Lynch*, 47 Mich App 8 (1973).[2] It acknowledged that some states viewed mental capacity "as an all or nothing matter and that only insanity . . . negates criminal intent." *Id*. at 20. However, in recognizing the defense in Michigan, the *Lynch* panel explained that diminished-capacity evidence was relevant to "intent generally or at least on those special states of mind where a specific intent is required or where the state of mind by definition determines the degree of the offense . . . ." *Id*. It explained the distinction between "negating any possible criminal intent" (insanity defense) and "the state's burden to prove a specific or special state of mind as an element of a particular offense" (diminished capacity). *Id*. at 21.

Soon after *Lynch*, the Legislature codified the insanity defense. MCL 768.21a now provides, in 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 . . . or as a result of having an intellectual disability . . . , that person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law. Mental illness or having an intellectual disability does not otherwise constitute a defense of legal insanity.

If a defendant seeks to lodge an insanity defense, they must adhere to various procedural requirements imposed by the statutory scheme. *Carpenter*, 464 Mich at 231. These include a notice requirement and submission to various psychiatric examinations. A defendant bears the burden of proving insanity by a preponderance of the evidence. MCL 768.21a(3).

Shortly after the enactment of MCL 768.21a, the Court of Appeals interpreted the new codified definition of legal insanity to include the diminished-capacity concept. *People v Mangiapane*, 85 Mich App 379, 392 (1978).[3] As a result, the Court of Appeals held that a defendant pursuing a diminished-capacity defense was required to comply with the various procedural requirements applicable to defendants raising an insanity defense. *Id*. at 396. This Court never formally endorsed the concept of diminished capacity, but it

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[2] The *Lynch* panel referred to the concept as "diminished or partial responsibility."

[3] In my judgment, this is where the concepts of insanity and diminished capacity first became wrongly intertwined, ultimately leading to the *Carpenter* decision.

lived on in the Court of Appeals and in our trial courts for decades. See, e.g., *People v Cramer*, 97 Mich App 148 (1980); *People v Hughley*, 186 Mich App 585 (1990); *People v Howard*, 226 Mich App 528 (1997).[4]

That is, it lived on until this Court's decision in *People v Carpenter*, 464 Mich 223 (2001). In that case, the defendant argued in the Court of Appeals that the trial court had erred by placing the burden on him to prove his claim of diminished capacity. The panel rejected this argument, and the defendant appealed. On appeal, this Court affirmed, but in doing so did away with the diminished-capacity defense in total.

The *Carpenter* Court noted that the "so-called 'diminished capacity' defense," which allows a defendant to offer evidence of some mental abnormality to negate specific intent, had been "the subject of much debate" and that there was a "wide divergence of views among the states concerning the admissibility of evidence of mental illness short of insanity." *Id*. at 232, 236. This Court concluded that Michigan's Legislature, through its "comprehensive statutory framework," had created an "all or nothing insanity defense" that was the only avenue by which mental incapacity could relieve one of criminal responsibility. *Id*. at 237. Specifically, through enactment of MCL 768.21a and MCL 768.36(3) (creating the guilty-but-mentally-ill verdict), "the Legislature has demonstrated its policy choice that evidence of mental incapacity short of insanity cannot be used to avoid or reduce criminal responsibility by negating specific intent." *Id*.

This Court further noted that persons acquitted by reason of insanity can still be confined and required to undergo mental health evaluation and treatment. *Id*. at 238, citing MCL 330.2050. However, if a defendant is acquitted because they introduce diminished-capacity evidence that impedes the prosecution's ability to prove the applicable *mens rea*, there is no similar statute requiring further treatment. Additionally, " '[i]f . . . psychiatric testimony were generally admissible to cast a reasonable doubt upon whatever degree of mens rea was necessary for the charged offense, . . . there would be scant reason indeed for a defendant to risk such confinement by arguing the greater form of mental deficiency [i.e., insanity.]' " *Id*. at 238-239, quoting *Bethea v United States*, 364 A2d 64 (DC, 1976). This, said the Court, "could swallow up the insanity defense and its attendant commitment provisions." *Carpenter*, 464 Mich at 239 (quotation marks and citation omitted).[5]

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[4] This Court did hold that lodging a defense based on presenting diminished-capacity evidence instead of an insanity defense was objectively reasonable trial strategy in *People v Lloyd*, 459 Mich 433, 450 (1999).

[5] The Court also concluded that it did not violate due process to preclude a defendant from introducing evidence that they lacked the mental capacity to form a specific intent, finding that *Fisher v United States*, 328 US 463 (1946), "dispositively answer[ed] this contention . . . ." *Carpenter*, 464 Mich at 240. See also *Muench v Israel*, 715 F2d 1124,

In dissent, Justice KELLY[6] wrote that she disagreed that the existence of the insanity statute or the guilty-but-mentally-ill (GBMI) statute foreclosed the ability to argue diminished capacity, noting that neither statute "mentions the permissibility of using evidence of mental abnormality to negate specific intent." *Id*. at 251. She noted that both statutes concerned affirmative defenses available to a legally insane defendant, but the introduction of diminished-capacity evidence does not constitute an affirmative defense. *Id*. "[T]he distinction between the two, coupled with the absence of language in the insanity and GBMI statutes addressing the use of evidence of mental abnormality to negate the mens rea," led Justice KELLY to the conclusion that the Legislature did not aim to "bar the use of evidence of one's mental abnormality short of insanity to negate specific intent when it enacted the insanity and GBMI statutes." *Id*. at 251-252. Although she shared the *Carpenter* majority's concern that a defendant "who successfully show[s] that their mental illness negated the requisite mens rea may be set free without treatment or imprisonment," she did not believe this justified "reading into legislation a rule of exclusion per se where none exists." *Id*. at 252. The Legislature's intent was that the prosecution must prove every element, including the necessary *mens rea*, beyond a reasonable doubt. *Id*. And, notably, a defendant who negates the prosecution's proofs on specific intent will generally be convicted of a lesser, general offense. *Id*. at 253.[7]

IV. ANALYSIS

In my view, *Carpenter* was wrongly decided.

To begin, the *Carpenter* Court improperly read meaning into the Legislature's silence. We "determine the Legislature's intent from its *words*, not from its silence." *Donajkowski v Alpena Power Co*, 460 Mich 243, 261 (1999). While the Legislature certainly "has the authority to abrogate the common law, . . . [w]hen it does so, it should speak in no uncertain terms." *Hoerstman Gen Contracting, Inc v Hahn*, 474 Mich 66, 74 (2006). The Legislature has never abolished the diminished-capacity defense[8] or expressed

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1144-1145 (CA 7, 1983) ("[A] state is not constitutionally compelled to recognize the doctrine of diminished capacity and hence a state may exclude expert testimony offered for the purpose of establishing that a criminal defendant lacked the capacity to form a specific intent.").

[6] Justice KELLY was joined by Justice M. F. CAVANAGH.

[7] Justice KELLY also concluded that precluding diminished-capacity evidence violated a defendant's due-process rights. *Carpenter*, 464 Mich at 242-250 (KELLY, J., dissenting).

[8] The prosecution points out that the Legislature did not codify the diminished-capacity defense like it did with the common-law insanity defense. There is a meaningful

any unambiguous intent to preclude a defendant from producing evidence of diminished capacity.[9] This makes sense because it is well-settled that "[t]he prosecution must carry the burden of proving every element beyond a reasonable doubt . . . ." *People v Mills*, 450 Mich 61, 69-70 (1995), mod 450 Mich 1212 (1995).[10] This necessarily includes the *mens rea* of an offense, and diminished-capacity evidence may be used to negate a specific-intent *mens rea*.

In addition, the *Carpenter* Court failed to examine *all* the language actually employed by the Legislature. When the Legislature codified the version of the insanity defense under consideration in that case, it provided:

> 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 . . . . *Mental illness or being mentally retarded*[11] *does not otherwise constitute a defense of legal insanity*. [MCL 768.21a(1), as amended by 1994 PA 56 (emphasis added).]

The last sentence of MCL 768.21a(1), while providing that mental illness or intellectual disability short of the statutory standard did not constitute a legal insanity defense, is silent as to whether mental illness or intellectual disability may be admitted to negate specific intent. As one commentator has persuasively explained:

> Contrary to clear rules of statutory construction, the Michigan Supreme Court's reading pretends that the last three words of this sentence do not exist. The legislature expressly defined exclusivity and left open the possibility that other defenses, like diminished capacity, might rest on mental conditions. If the legislature actually wanted to eliminate the diminished

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difference, however, between failing to codify a recognized common-law defense and explicitly abolishing it.

[9] Notably, when *Carpenter* was decided, a criminal defendant could argue a lack of *mens rea* on the basis of voluntary intoxication. See *People v Langworthy*, 416 Mich 630 (1982). In 2002, the Legislature amended MCL 768.37(1) to provide that voluntary intoxication is not a defense to any crime. This demonstrates that the Legislature is well capable of enacting a statute barring specific evidence from being introduced to negate *mens rea*.

[10] This is a requirement of due process, *People v Oros*, 502 Mich 229, 240 n 3 (2018), and it exists "to ensure that there is a presumption of innocence in favor of the accused," *People v Hartwick*, 498 Mich 192, 216 (2015) (quotation marks and citation omitted).

[11] This language was later replaced with the phrase "having an intellectual disability." See 2014 PA 76.

> capacity defense, it could have done so simply by omitting the words "of legal insanity." That would have expressly channeled all mental illness evidence into the insanity defense. [Vars, *When God Spikes Your Drink: Guilty Without* Mens Rea, 4 Cal L Rev Circuit 209, 211 (2013).]

Given the Legislature's silence on diminished-capacity evidence and the actual language used in MCL 768.21a, I would conclude that the Legislature did not implicitly modify the common law to preclude a defendant from arguing that they lacked specific intent on the basis of diminished capacity. See *Smith v Martin*, 124 Mich 34, 35 (1900) ("Courts will not hold the principles of the common law abrogated by implication, unless the common law and the statute are in direct conflict.").

The bulk of the *Carpenter* Court's attention focused on the GBMI statute, MCL 768.36. Addressing the GBMI statute requires a bit of exposition. This statute was enacted in response to *People v McQuillan*, 392 Mich 511, 519 (1974), in which the defendant was charged with assault with intent to rape and indecent liberties in connection with a sexual attack on a minor female but found not guilty by reason of insanity. At that time, MCL 767.27b provided that a person acquitted by reason of insanity was committed to the Department of Mental Health for appropriate treatment. *Id*. at 525-526. This Court held that, after the initial commitment to the Department of Mental Health, a sanity hearing was required to ascertain the defendant's present mental condition. *Id*. at 533. Thereafter, "[i]f the result of the sanity hearing is such that [the] defendant is not found insane, . . . he is released." *Id*. at 538. The result was that, if a person was found legally insane and acquitted of a crime, they could be released back to the public in as little as 60 days. *Id*. at 547.

In the Legislature's view, *McQuillan* raised concerns that "the release of persons acquitted of crimes due to insanity create[d] a potential threat to the public safety."[12] Thus, soon after *McQuillan* the GBMI verdict was enacted, which allows the trial court to find a defendant *guilty* but mentally ill, such that a court could constitutionally "impose any sentence that could be imposed by law upon a defendant who is convicted of the same offense." MCL 768.36(3). The GBMI statute, MCL 768.36, provides, in relevant part:

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

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[12] House Legislative Analysis, HB 4363 (March 20, 1975).

> (b) The defendant has proven by a preponderance of the evidence that he or she was mentally ill at the time of the commission of that offense.
>
> (c) The defendant has not established by a preponderance of the evidence that he or she lacked the substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law.

The *Carpenter* Court concluded that the creation of the GBMI statute demonstrated the Legislature's "policy choice that evidence of mental incapacity short of insanity cannot be used to avoid or reduce criminal responsibility by negating specific intent." *Carpenter*, 464 Mich at 237.

I do not agree that a prohibition on the ability to introduce diminished-capacity evidence to negate specific intent follows from the Legislature's enactment of the GBMI verdict. Nowhere in the GBMI verdict statute—a statute tied to the affirmative and complete defense of legal insanity—is there a mention of diminished-capacity evidence or how it may be used to negate specific intent. Courts "should refrain from speculating about the Legislature's intent beyond the words employed in the statute." *In re MCI Telecom Complaint*, 460 Mich 396, 414-415 (1999). To the extent it is permissible to speculate about the Legislature's intent by looking at legislative history, the ability to present diminished-capacity evidence does not undermine the stated goal of the GBMI verdict—to ensure that mentally ill criminals do not threaten public safety if they are prematurely released back into the public—because a defendant who negates specific intent does not raise a complete defense requiring an acquittal. Instead, generally, a defendant who negates specific intent through the introduction of diminished-capacity evidence could still be convicted of a lesser offense that requires only a general intent.

Similarly, the ability to present diminished-capacity evidence to negate specific intent does not render the GBMI verdict nugatory. For example, a defendant charged with first-degree murder might raise both an affirmative insanity defense and also make a diminished-capacity argument. The finder of fact could find the defendant guilty but mentally ill if it believes that the defendant proved mental illness by a preponderance of the evidence and that the prosecution had proven all the elements of the crime, including specific intent, beyond a reasonable doubt. On the other hand, a fact-finder could instead conclude that because of the defendant's mental illness (diminished capacity), the prosecution did not prove the specific intent necessary for first-degree murder and instead find the defendant guilty of second-degree depraved-heart murder, a general-intent crime. See *People v Goecke*, 457 Mich 442, 466 (1998). Because diminished capacity is not mutually exclusive or in direct conflict with the GBMI verdict, the *Carpenter* Court erred when it held that existence of the GBMI verdict prohibited the introduction of diminished-capacity evidence. *Smith*, 124 Mich at 35.

In sum, the *Carpenter* majority mischaracterized the codification of the insanity defense and its attendant provisions as a "comprehensive statutory framework" that requires all evidence of mental illness to be funneled into the insanity defense. Along the way, the *Carpenter* Court ignored a host of statutory canons by improperly interpreting and speculating about legislative silence, ignoring statutory language, and failing to recognize that the Legislature must "speak in no uncertain terms" to abrogate the common law. For all these reasons, I believe that *Carpenter* was wrongly decided.

V. STARE DECISIS

Simply because a case was wrongly decided does not mean that overruling it is appropriate. *Coldwater v Consumers Energy Co*, 500 Mich 158, 172 (2017). Although this Court is not constrained to follow precedent that is "badly reasoned," *Robinson v Detroit*, 462 Mich 439, 464 (2000), it is necessary to consider whether *Carpenter*'s precedential value is compelling enough to retain its rule under principles of stare decisis, *In re Ferranti*, 504 Mich 1, 25 (2019). In doing so, this Court examines "whether the decision defies practical workability, whether reliance interests would work an undue hardship were the decision to be overruled, and whether changes in the law or facts no longer justify the decision[.]" *Id*. (quotation marks and citation omitted).

I conclude that none of the stare decisis factors warrants retaining *Carpenter*. The "practical workability" factor is neutral at best. *Carpenter*'s erroneous abolishment of a criminal defendant's ability to present diminished-capacity evidence is certainly workable, but precluding such important evidence in the interest of convenience is a poor reason to retain such an obvious misconstruction of the statute. See *Gardner*, 482 Mich at 62 (noting that "practical workability bears little on our decision to overrule [a] previous erroneous interpretation[]" of a statute even though the erroneous interpretation was "arguably simpler to apply in practice").

Reliance interests similarly do not justify retaining *Carpenter* any longer. "[T]o have reliance the knowledge must be of the sort that causes a person or entity to attempt to conform his conduct to a certain norm before the triggering event." *People v Hawthorne*, 474 Mich 174, 184 (2006) (quotation marks and citation omitted). It would be nonsensical to suggest that defendants—particularly mentally ill defendants—are relying on the prohibition of the diminished-capacity defense in committing (or not committing) crimes. Nor would it appear that prosecutors make charging decisions on the basis of the unavailability of this defense. Therefore, restoring a criminal defendant's ability to present diminished-capacity evidence would not work any undue hardship.

Moving next to "changes in the law or facts." Because we must review the intent behind the enactment of the insanity statute from several decades ago, any subsequent change in the law or facts is not directly relevant to that intent. Nonetheless, it is worth mentioning that our society's understanding of mental illness and culpability has

substantially evolved in the decades since the insanity statute was enacted and *Carpenter* was decided. Although the *Carpenter* Court suggested that people are either legally sane or legally insane with no " 'gradations of culpability,' " *Carpenter*, 464 Mich at 236-237, quoting *State v Wilcox*, 70 Ohio St 2d 182, 193 (1982), such a position is inconsistent with our evolved understanding of mental illness. As amici curiae, the American Psychological Association, the Michigan Psychological Association, and the National Association of Social Workers explained:

> This framing of mental-health disorders as a series of diagnostic points along a gradient stretching from sanity to insanity does not reflect the modern scientific understanding about the nature of mental illness. By studying the symptoms of mental illness, their occurrence across a variety of disorders, and the cognitive and behavioral functions that they may impair, scientists have come to recognize that individuals can exhibit symptoms of multiple, seemingly unrelated disorders simultaneously, and that symptoms of a particular disorder can manifest differently in different people.

Our state court system has recognized as much, and courts across Michigan now participate in mental health court programs "developed in response to the overrepresentation of people with mental illness in the criminal justice system" that "divert[] select defendants with mental illness into judicially-supervised, community-based treatment."[13] See MCL 600.1091(1).

In sum, the stare decisis factors do not support retaining *Carpenter*'s flawed statutory interpretation. Rather than adhere to the "distorted reading" of a statute under the stare decisis doctrine, a subsequent court "should overrule the earlier court's misconstruction." *Robinson*, 462 Mich at 467. Distorting a statute is "a form of judicial usurpation that runs counter to the bedrock principle of American constitutionalism, i.e., that the lawmaking power is reposed in the people as reflected in the work of the Legislature . . . ." *Id.* Therefore, the Court is "most strongly justified in its reversal of precedent when adherence to such precedent would perpetuate a plainly incorrect interpretation of the language of a . . . statute." *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 181 (2000). With those principles in mind and no stare decisis factors supporting retaining *Carpenter*, I would overrule the case.

VI. OTHER CONSIDERATIONS

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[13] Michigan Courts, *About Mental Health Courts*, available at <https://www.courts.michigan.gov/administration/court-programs/problem-solving-courts/about-mental-health-courts/> (accessed June 29, 2023) [https://perma.cc/F7YP-6JB3].

I recognize that this case comes before the Court in a less than ideal vehicle, procedurally speaking. Defendant's trial counsel, likely relying on this Court's binding precedent, did not seek to introduce evidence of diminished capacity to negate specific intent in the trial court even though there was ample evidence to support such a defense strategy. Rather, diminished capacity was raised for the first time in the Court of Appeals. Generally, issues not raised in the lower courts cannot be raised in this Court absent compelling or extraordinary circumstances. See *People v Grant*, 445 Mich 535, 546 (1994). However, I would excuse the preservation requirement under these unique circumstances. "The purpose of the appellate preservation requirement is to induce litigants to do what they can in the trial court to prevent error and eliminate its prejudice, or to create a record of the error and its prejudice." *People v Mayfield*, 221 Mich App 656, 660 (1997). But the only error here was this Court's mistaken decision in *Carpenter*, which only this Court can correct and which the lower courts were bound to follow. Because of *Carpenter*, there was no error on the part of defense counsel or the trial court. Enforcing the preservation requirement here would serve only as a "perverse incentive for criminal defendants to make 'a long and virtually useless laundry list of objections to rulings that were plainly supported by existing precedent.' " *State v Robinson*, 253 P3d 84, 90 (Wash, 2011), quoting *Johnson v United States*, 520 US 461, 468 (1997).

That said, even assuming this defendant is not entitled to relief because this issue is unpreserved and she cannot satisfy plain-error review, see *People v Carines*, 460 Mich 750 (1999), or demonstrate ineffective assistance of counsel, I would still use this case to overrule *Carpenter*. While perhaps a prudential concern, it is not necessary that a particular criminal defendant be entitled to relief for this Court to say what the law is.[14] See, e.g., *People v Lockridge*, 498 Mich 358 (2015) (holding that Michigan's sentencing guidelines violated the Sixth Amendment and clarifying how the new holding would apply to future defendants even though that defendant was not entitled to relief under plain-error review).[15]

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[14] At oral argument, the prosecution itself suggested that, if the Court was inclined to overrule *Carpenter*, it should deny defendant relief and have any such ruling apply prospectively.

[15] *Lockridge* is not an outlier. This Court regularly addresses substantive merits even when denying relief. See, e.g., *People v Smith*, 438 Mich 715 (1991) (overruling prior caselaw interpreting the 180-day rule in MCL 780.313 even though defendant waived the issue by pleading guilty), overruled on other grounds by *People v Williams*, 438 Mich 715 (2006). Doing so does not render the decision obiter dictum. See *Detroit v Mich Pub Utilities Comm*, 288 Mich 267, 299 (1939) ("When a court of last resort intentionally takes up, discusses, and decides a question germane to, though not necessarily decisive of, the controversy, such decision is not a dictum but is a judicial act of the court which it will thereafter recognize as a binding decision.") (quotation marks, citation, and italics omitted).

I would overrule *Carpenter* and remand to the Court of Appeals to consider whether an exception to the preservation requirement should be recognized in this instance and whether, if not, defendant can satisfy plain-error review. These questions were not discussed or analyzed by the Court of Appeals because the panel was bound to apply *Carpenter*. Because the Court disregards the opportunity to course-correct the erroneous path set by *Carpenter*, I respectfully dissent. That being said, I urge future practitioners to file motions in the trial courts seeking to admit diminished-capacity evidence. Although these motions will be invariably denied, they will satisfy preservation requirements and provide this Court an opportunity to review this issue without the complications of a heightened standard of review. In the meantime, mentally ill defendants who do not possess the requisite specific intent for their crimes will likely continue to be convicted of crimes of which they are legally innocent. Therefore, I respectfully dissent.

WELCH and BOLDEN, JJ., join the statement of CAVANAGH, J.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 14, 2023

Clerk

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