

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

JACQUELYNE FAYE TYSON,

Defendant-Appellant.

Supreme Court No. 162968

COA No. 350932

Genesee CC No. 18-042597-FC

**BRIEF AMICI CURIAE OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION;
THE MICHIGAN PSYCHOLOGICAL ASSOCIATION; AND THE NATIONAL
ASSOCIATION OF SOCIAL WORKERS, INCLUDING ITS MICHIGAN CHAPTER**

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INTERESTS OF AMICI CURIAE¹

The American Psychological Association (APA) is the leading association of psychologists in the United States. A non-profit scientific and professional organization, it has approximately 135,000 members and affiliates. Among APA's major purposes are to increase and disseminate knowledge regarding human behavior, and to foster the application of psychological learning to important human concerns.

APA has filed more than 180 amicus briefs in state and federal courts around the country. APA's briefs have been cited frequently by courts over the years, including the U.S. Supreme Court. *See, e.g., Graham v. Florida*, 560 U.S. 48, 68 (2010); *Panetti v. Quarterman*, 551 U.S. 930, 962 (2007); *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002); *Commonwealth v. Wright*, 14 A.3d 798, 816 n.16 (Pa. 2011); *Florida Department of Children & Families v. Adoption of X.X.G. & N.R.G.*, 45 So.3d 79, 87 n.10 (Fla. Dist. Ct. App. 2010); *In re Marriage Cases*, 183 P.3d 384, 441 n.59 (Cal. 2008).

APA has a rigorous approval process for amicus briefs, the touchstone of which is an assessment of whether there is sufficient scientific research, data, and literature on a question in a particular case that APA can usefully contribute to the court's understanding and resolution of that question. APA regards this as one of those cases: The issues here include the scientifically established links between certain symptoms associated with mental illness and the capacity to form the specific intent that is an element of many criminal offenses.

The Michigan Psychological Association (MPA) is the professional association for psychologists in the state of Michigan. MPA's mission is to improve the health of people in Michigan by advancing the science, education, and practice of psychology.

The National Association of Social Workers (NASW) is the largest association of professional social workers in the world, with approximately 110,000 members, and chapters throughout the United States. The NASW Michigan Chapter has more than 5,000 members. Since 1955, NASW has worked to develop high standards of social work practice while unifying the social work profession. NASW develops policy statements on issues of importance to the

¹ No counsel for a party authored this brief in whole or in part, nor did any person other than amici, their members, and their counsel make a monetary contribution intended to fund the preparation or submission of the brief.

social work profession, promulgates professional policies, conducts research, publishes professional studies and books, provides continuing education, and promotes and administers the NASW Code of Ethics. NASW, including its Michigan Chapter, emphasizes the importance of courts in criminal cases fully considering issues of trauma, mental illness, and other mitigating evidence relative to the defendant. *See* National Association of Social Workers, *Social Work Speaks: National Association of Social Workers Policy Statements 2018–2020*, at 29, 32 (11th ed. 2018). NASW believes that fair consideration of such issues is fundamental to a legal system that upholds social justice.²

QUESTIONS PRESENTED

- I. Was the holding of *People v. Carpenter*, 464 Mich. 223 (2001), that the diminished-capacity defense is incompatible with the Michigan Legislature’s scheme of criminal responsibility, wrong?
 - Defendant Jacquelyne Tyson answers: Yes.
 - The People answer: No.
 - The court of appeals did not answer.
 - Amici do not take a position on this question.
- II. If so, should *Carpenter* nonetheless be retained under principles of *stare decisis*?
 - Ms. Tyson answers: No.
 - The People answer: Yes.
 - The court of appeals did not answer.
 - Amici do not take a position on this question.
- III. If *Carpenter* is overruled, what relief, if any, is the defendant entitled to, given that she did not seek to admit evidence of diminished capacity at trial?
 - Ms. Tyson answers: A new trial or a judicial determination of whether the diminished-capacity defense was shown.
 - The People answer: No relief.
 - The court of appeals did not answer.

² Amici gratefully acknowledge the assistance of the following psychologists in the preparation of this brief: Joel Dvoskin, Ph.D., ABPP; Craig Haney, Ph.D., J.D.; Raina Lamade, Ph.D.; Ira Packer, Ph.D., ABPP; and Andre D. Mansion, Ph.D., J.D.

- Amici do not take a position on this question.

INTRODUCTION AND SUMMARY OF ARGUMENT

In *People v. Carpenter*, 464 Mich. 223 (2001), this Court held that a criminal defendant may not present evidence of mental illness to negate any specific-intent element of a charged crime, *id.* at 226. In so ruling, this Court claimed it “need not join” the debate over the relevance of the psychological understanding of mental illness. *Id.* at 237. But by ruling as it did, the Court *did* in effect take sides in that debate, barring scientific evidence even though it can be relevant—and sometimes even dispositive. The Court took this step, moreover, without fully considering the weight and validity of the available scientific evidence.

This Court should now correct *Carpenter*’s error. In particular, in considering whether to overrule *Carpenter*, this Court should take into account the broad scientific consensus—summarized in this brief—that certain symptoms of mental illness, such as information-processing deficits, perceptual disturbances, impulsivity, and disorganization, can impair the ability to premeditate, deliberate, accurately perceive reality, or form the will to execute a plan. That science establishes that evidence of mental illness can be highly probative of specific intent. A categorical ban on such evidence disregards the legislature’s purpose in including a specific-intent element.

STATEMENT OF FACTS AND PROCEEDINGS

Amici adopt the statement in Ms. Tyson’s brief.

ARGUMENT

CARPENTER BARS PROBATIVE EVIDENCE THAT A DEFENDANT’S MENTAL ILLNESS PRECLUDED THE FORMATION OF THE SPECIFIC-INTENT ELEMENT OF A CHARGED OFFENSE

A. *Carpenter* Adopted An All-Or-Nothing Insanity Rule Prohibiting Defendants From Pursuing A Diminished-Capacity Defense Even If Supported By Probative Scientific Evidence

Before 2001, courts in Michigan recognized a “diminished capacity” defense. *Carpenter*, 464 Mich. at 235. The defense was established by the court of appeals in *People v. Lynch*, 47 Mich. App. 8, 21 (1973). As the court there explained, “mental operations ... are matters of [f]act,” and “[t]he capacity of an individual to premeditate, to deliberate, or to will to execute a homicidal design, or any deficiency in that capacity, may bear upon the question whether he [i]n fact did so act.” *Id.* at 19-20. Accordingly, the court of appeals held that evidence of

psychological traits that bore on the defendant's ability to form specific intent was admissible. *Id.* at 20.

Almost thirty years later, this Court reached a different conclusion in *Carpenter*, holding that criminal defendants in Michigan may not introduce evidence of mental illness to negate the specific intent required to commit a crime. 464 Mich. at 226. The Court thus abolished the diminished-capacity defense. In *Carpenter* itself, this meant that the trial court was not permitted to consider evidence related to the defendant's mental illness in assessing whether he broke into a home with the specific intent to commit an assault or felony, or whether he assaulted his victims with the intent to commit murder. *See id.* at 227-229 (citing MCL §§ 750.110a(2), 750.83). *Carpenter* reasoned that the Michigan legislature, by enacting "a comprehensive statutory scheme concerning defenses ... based on ... mental illness," had expressed its intent "to preclude the use of *any* evidence of a defendant's lack of mental capacity short of legal insanity to avoid or reduce criminal responsibility by negating specific intent." *Id.* at 236.

On the strength of *Carpenter*, Michigan courts have routinely prohibited defendants from offering evidence of their mental illness to negate the specific intent that is an element of certain crimes in Michigan. For example, in *People v. Marzejka*, 2021 WL 4238697 (Mich. App. Sept. 16, 2021), the defendant was charged with first-degree premeditated murder, *id.* at *1, *5 (citing MCL § 750.316(1)(a)). The defendant argued that his counsel had been ineffective for declining to present testimony that the defendant's mental illness and failure to take medications "to treat sudden episodes of mania and to decrease hallucinations" precluded his ability to act with premeditation. *Id.* at *5. The court held that counsel had not been ineffective because "the element of premeditation renders first-degree murder a specific-intent crime," and therefore *Carpenter* ruled out reliance on "evidence of mental illness ... for the purpose of negating premeditation." *Id.* at *7. Similarly, in *People v. Casteel*, 2015 WL 5440195 (Mich. App. Sept. 15, 2015) (per curiam), the court—based on *Carpenter*—excluded evidence of the defendant's mental illness, which appeared to manifest as a series of paranoid delusions, to negate the specific intent to commit terrorism—an element of the charged offense, *see id.* at *1-4 (citing MCL § 750.543f). Likewise, in this case, Ms. Tyson was unable to rely on evidence in the record that, taken together, may show she could not have formed the specific intent required to commit premeditated murder. At the time, Ms. Tyson was beset by powerful delusions that toxins were seeping through air vents in her apartment, and she wore a gas mask

prophylactically, even outside. Appellant Supp. Br. 2-3. On the day of the homicides, she had gone to the airport at 3:21 a.m. in an abortive effort to take a trip linked to her delusions, stayed at the airport until morning, and then “traveled around Flint ... looking for a place to sleep because she was tired.” Appellant Appl. for Lv. To Appeal 6. Moreover, due to other delusions about a former work supervisor, Ms. Tyson “always carried a gun for protection”—including when, later that day, she went to her apartment complex management office to address the “toxins.” *Id.* In speaking with an employee, she saw what “looked like dust” emanating as the employee “put her arms up” and was “rolling toward” Ms. Tyson in her chair. *Id.* That is when Ms. Tyson took out her gun and pulled the trigger. *Id.* Ms. Tyson, the defense argues, was operating in that period “on ‘automatic pilot’ with a delusional system” and was entitled to present evidence of her mental disorders as part of a diminished-capacity defense. Appellant Supp. Br. 1.

Carpenter’s “all or nothing” rule limiting evidence of mental illness to that which supports an insanity defense stands in considerable tension with scientific understandings of mental illness. In rejecting “the admissibility of evidence of mental illness short of insanity,” *Carpenter* raised what it called a “common criticism”: that “the subtle gradations of mental illness recognized in the psychiatric field are of little utility in determining criminal responsibility.” 464 Mich. at 236. 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. *See Dalglish et al., Transdiagnostic Approaches to Mental Health Problems: Current Status and Future Directions*, 88 J. Consult. & Clin. Psych. 179, 181 (2020). Scientists also recognize that a symptom may bear on some legal competencies but not others. *See generally* Grisso et al., *Evaluating Competencies: Forensic Assessments and Instruments* (2d ed. 2002).

These insights, and the supporting research described throughout this brief, show that there is strong scientific evidence supporting the introduction of probative evidence related to mental illness short of the extremely high threshold of legal insanity. As this Court observed just

last term, “[a]ppellate courts, including [this] Court, often use science to determine evidentiary issues in criminal cases.” *People v. Parks*, 510 Mich. 225, 248-249 (2022). Evidence of diminished capacity, i.e., of psychological phenomena that can affect formation of specific intent, is no different. As relevant and material evidence, it should not be kept from the trier of fact.³

B. *Carpenter’s* Rule Contravenes The Scientific Consensus That Some Symptoms of Mental Illness Can Impair An Individual’s Ability To Form The Specific Intent That Is An Element Of Certain Crimes

Carpenter’s categorical bar on scientific evidence of mental illness to support a diminished-capacity defense ignores an empirical reality well established in the relevant scientific community: that symptoms of mental illness can affect the ability to think and plan in ways that may be probative of specific intent, even in individuals who would not be considered legally insane. Individuals rely on a range of psychological processes to function in everyday life, including processes for responding to threats, for perception of the external world, and for the formation and pursuit of goals. See National Institute of Mental Health, Research Domain Criteria Initiative, *Definitions of the RDoC Domains and Constructs*, <https://www.nimh.nih.gov/research/research-funded-by-nimh/rdoc/definitions-of-the-rdoc-domains-and-constructs> (visited Apr. 21, 2023). And a variety of mental-health disorders can trigger symptoms impairing the proper functioning of those processes. For example, impulsivity—“taking action without forethought and failing to plan ahead”—has been recognized as “cut[ting] across traditional diagnostic boundaries” of disorders, including ADHD and oppositional defiant disorder.

³ “Diminished capacity” can have two meanings in the context of criminal culpability. Evidence of a mental-health disorder may show that an individual truly lacked the capacity to form specific intent, whether on the occasion of the alleged crime or otherwise. But it can also establish that an individual did not, *in fact*, form the requisite specific intent to commit the crime charged, whether or not the individual had the “capacity” to do so. In describing the “diminished capacity” defense, this Court has at times used both formulations, stating that the defense requires evidence that a defendant “lacked *the mental capacity* to form a specific intent,” *Carpenter*, 464 Mich. at 240 (emphasis added), and that it requires a showing that the defendant has “mental abnormalities” that “negat[e] specific intent,” *id.* at 226; *cf. People v. Nelson*, 376 P.3d 1178, 1203 (Cal. 2016) (describing California’s “diminished actuality” standard as admitting evidence “of whether or not the accused actually formed a required specific intent” (citing Cal. Penal Code § 28(a))).

Beauchaine & McNulty, *Comorbidities and Continuities as Ontogenic Processes: Toward a Developmental Spectrum Model of Externalizing Psychopathology*, 25 *Dev. Psychopathol.* 1505, 1509 (2013). Delusions, which are classified as “errors of sensory perception and interpretation,” likewise may be experienced by individuals with a range of disorders, from bipolar disorder to dementia. Bebbington & Freeman, *Transdiagnostic Extension of Delusions: Schizophrenia and Beyond*, 43 *Schizophrenia Bulletin* 273, 273-278 (2017). As explained below, when these symptoms (and others like them) affect the psychological processes that determine how people think, plan, and perceive the world around them, they can bear on a person’s ability to form specific intent.

First, a mental-health disorder may severely hinder an individual’s capacity to process information, and therefore to plan and perform a given task. In particular, symptoms of schizophrenia are known to cause deep difficulty with attention, working memory, inhibition, and context processing. Cáceda et al., *Toward an Understanding of Decision Making in Severe Mental Illness*, 26 *J. Neuropsychiatry & Clin. Neurosci.* 196, 207 (2014). Schizophrenia, in other words, is associated with “profound cognitive deficits” relating to memory and executive functioning. Starc et al., *Schizophrenia Is Associated with a Pattern of Spatial Working Memory Deficits Consistent with Cortical Disinhibition*, 181 *Schizophrenia Research* 107, 107 (2017). Studies have also shown that individuals with schizophrenia tend to demonstrate poor planning abilities, including identifying obstacles and making safe and informed decisions. *See, e.g.*, Aubin et al., *Daily Functioning and Information-Processing Skills Among Persons with Schizophrenia*, 60 *Psychiatric Servs.* 817, 819 (2009). These deficits have an obvious effect on the individual’s ability to form specific intent—difficulties planning necessarily translate into difficulties premeditating.

Second, certain mental-health disorders are characterized by difficulty distinguishing what is real from what is not. *See* Seabury et al., *Confident Memory Errors and Disrupted Reality Testing in Early Psychosis*, 238 *Schizophrenia Research* 170, 170 (2021). These “reality testing” deficits may manifest as delusions or hallucinations. *Id.*; Mintz & Alpert, *Imagery Vividness, Reality Testing, and Schizophrenic Hallucinations*, 79 *J. Abnormal Psych.* 310, 314 (1972). As noted above, delusions can occur not only in individuals with schizophrenia but also in individuals suffering from bipolar disorder, borderline personality disorder, and other diagnoses. *See* Bebbington & Freeman, *supra*, at 276. Delusions can lead an individual to

believe that other people threaten harm, that she is commanded to act by God, or that she must act to avoid psychological torment. *See, e.g.,* Black & Andreasen, *Introductory Textbook of Psychiatry* 136-137 (6th ed. 2014); Kunst, *Understanding the Religious Ideation of Forensically Committed Patients*, 36 *Psychotherapy* 287, 291-292 (1999); Scott & Resnick, *Evaluating Psychotic Patients' Risk of Violence: A Practical Guide*, 12 *Current Psychiatry* 29, 31 (May 2013).

To illustrate, a person gripped by a delusion that aliens have taken possession of a police officer's body may shoot and kill what the individual genuinely believes to be an alien. In such a case, the person has *not* formed a specific intent to kill another human being and could not be guilty of premeditated murder. *Cf. Clark v. Arizona*, 548 U.S. 735, 745 (2006) (describing the testimony of a psychiatrist that the defendant "suffer[ed] from paranoid schizophrenia with delusions" about aliens and was "incapable of luring the [police] officer [whom he killed] or understanding right from wrong"); Morse, *Mental Disorder and Criminal Law*, 101 *J. Crim. L. & Criminol.* 885, 920-921 (2011) (discussing *Clark*). In short, individuals in the grip of intense delusions or hallucinations can, in some cases, act in ways incompatible with having the requisite specific intent for a given offense.

Third, impulsivity and impaired behavioral control are hallmark symptoms of several mental-health disorders, including bipolar disorder and oppositional-defiant disorder. *See* Nanda et al., *Impulsivity Across the Psychosis Spectrum: Correlates of Cortical Volume, Suicidal History, and Social and Global Function*, 170 *Schizophrenia Research* 80, 83 (2016); Reddy et al., *Impulsivity and Risk Taking in Bipolar Disorder and Schizophrenia*, 39 *Neuropsychopharmacology* 456, 456 (2014); Beauchaine & McNulty, *supra*, at 1509. Impulsivity "involves rapid *unplanned* action that occurs *before* the opportunity to consciously weigh the consequences of an act." Moeller et al. *Psychiatric Aspects of Impulsivity*, 158 *Am J. Psychiatry* 1783, 1784 (2001) (emphasis altered). Thus, diminished impulse control due to mental illness may raise meaningful doubts about whether a defendant acted with premeditation—doubts that are grounded in empirical data. According to one study, among incarcerated individuals, those with "premeditated aggression ... exhibited different patterns of brain activity than incarcerated individuals with impulsive aggression." *Id.* While the presence of impulsivity does not, by itself, mean that a person can never act in premeditated fashion,

evidence of impulsivity can be one basis for a trier of fact to conclude that reasonable doubt exists as to whether a defendant premeditated.

Fourth, mental illness may inhibit an individual’s ability to form specific intent due to “disorganization,” a term that refers to a cluster of symptoms associated with psychotic disorders, including bizarre behavior, incoherent or illogical speech, and unusual thoughts. *See Hardy-Baylé et al., The Cognitive Basis of Disorganization Symptomatology in Schizophrenia and Its Clinical Correlates: Toward a Pathogenic Approach to Disorganization*, 29 *Schizophrenia Bulletin* 459, 460 (2003). Disorganization can impair behavior related to the achievement of goals and objectives, such as the ability to plan and to translate intentions into action. *See Zalla, Impairment in Event Sequencing in Disorganised and Non-Disorganised Patients with Schizophrenia*, 68 *Brain Research* 195, 196 (2006); Torres et al., *Symptoms and Interference from Memory in Schizophrenia: Evaluation of Frith’s Model of Willed Action*, 69 *Schizophrenia Research* 35, 36, 40 (2004). Individuals with symptoms of disorganization may also have difficulty monitoring their own actions and may misunderstand the intentions of others. *See Rinaldi & Lefebvre, Goal-Directed Behaviors in Patients with Schizophrenia: Concept Relevance and Updated Model*, 70 *Psychiatry & Clin. Neurosci.* 394, 400 (2016). Given all this, evidence of disorganization may assist a trier of fact in assessing whether a defendant’s actions resulted from deliberation or otherwise exhibited relevant specific intent. To offer but one illustration, a “severely disordered” person who is “confused,” “disorganized,” and unable to find his way home on a cold night may break into a building “simply to keep warm,” and would thus lack the specific intent to steal, which is an element of the crime of burglary. Morse, *supra*, at 921.

In sum, scientific evidence about the nature and consequences of mental-health symptoms—and specifically their detrimental effects on cognition, perception, and behavior—can be highly probative of specific intent. *Carpenter’s* categorical ban on such evidence thus improperly precludes defendants in Michigan from being able to fully answer the prosecution’s claim that no reasonable doubt exists as to a defendant’s mens rea.

C. *Carpenter’s* Rule Fails To Honor Legislative Judgments

The elements of a criminal offense are defined by the legislature. *See People v. Eason*, 435 Mich. 228, 233 (1990). And for certain crimes—including the first-degree premeditated murder charged in Ms. Tyson’s case under MCL § 750.316(1)(a)—the Michigan legislature has

determined that specific intent is an element. *See People v. Garcia*, 398 Mich. 250, 259 (1976). A conviction for these crimes thus cannot be sustained unless the prosecution has proven that the defendant acted “with an intent to bring about the particular result the statute seeks to prohibit.” *See People v. Beaudin*, 417 Mich. 570, 574 (1983) (per curiam). In other words, the State has “the burden of proving beyond a reasonable doubt every element of the crime with which the defendant was charged.” *People v. Allen*, 466 Mich. 86, 92 (2002) (per curiam).

Prohibiting a criminal defendant from advancing a diminished-capacity defense (and thereby forcing a defendant to fight the charges with one hand tied behind her back) is not faithful to these legislative choices. Under *Carpenter*’s rule, Michigan courts must exclude probative scientific evidence that bears directly on the existence or non-existence of specific intent even when the legislature has determined that specific intent is an element of the relevant offense. This limitation fails to honor the foundational principle that “the weight of evidence” must be “left to the trier of fact.” *See People v. Newby*, 66 Mich. App. 400, 405 (1976). Put differently, by barring the introduction of probative scientific evidence of whether a defendant formed the specific intent that is an element of a charged offense, *Carpenter* prevents the trier of fact from weighing evidence that may be “sufficient to establish a reasonable doubt of [the] defendant’s guilt.” *Id.*

CONCLUSION AND PRAYER

In deciding whether to overrule *Carpenter*, this Court should consider the science summarized above surrounding mental illness and specific intent.

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief contains 3,724 countable words.

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CERTIFICATE OF SERVICE

On April 21, 2023, the foregoing was served via electronic filing on the counsel of record for all parties in this case.

/s/ Amy Lishinski
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