STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 19, 2007
v	No. 268026 Macomb Circuit Court
ERIC JOHN SCHORLING, Defendant-Appellant.	LC No. 2004-003778-FC

Before: White, P.J., and Zahra and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of assault with intent to murder. MCL 750.83. We affirm.

Defendant first argues that the trial court denied him the right to present a defense. Specifically, he claims that the trial court improperly refused to admit expert-witness testimony that defendant did not have fully developed frontal brain lobes, and thus lacked the mental capacity to form the requisite specific intent. We disagree. A trial court's decision whether to admit evidence is reviewed for an abuse of discretion. *People v McRae*, 469 Mich 704, 720-721; 678 NW2d 425 (2004). However, to the extent the trial court's decision involves a question of constitutional law, we review the issue de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999); *People v Slocum* (On Remand), 219 Mich App 695, 697; 558 NW2d 4 (1996).

"Although the right to present a defense is a fundamental element of due process, it is not an absolute right. The accused must still comply with 'established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.'" *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984), quoting *Chambers v Mississippi*, 410 US 284, 302; 93 S Ct 1038; 35 L Ed 2d 297 (1973).

MCL 768.21a provides that:

> (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 330.1400a, or MCL 330.1500], 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 being mentally retarded 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.

Defendant argues that testimony is not barred by MCL 768.21a because his undeveloped frontal lobes are not a type of "mental illness or mental retardation" under MCL 768.21a(1), but rather a lack of physical capacity.

In *People v Carpenter*, 464 Mich 223, 627 NW2d 276 (2001), the defendant sought to reduce his criminal culpability by showing that he suffered from organic brain damage. *Id*. at 228. The defendant argued that "although [he was] not legally insane, he lacked the mental capacity to form the [requisite] specific intent[.]" *Id*. at 225. The *Carpenter* court ruled this evidence inadmissible under MCL 768.21a, *Id.* at 237, holding that:

> The Legislature has enacted a comprehensive statutory scheme setting forth the requirements for and the effects of asserting a defense based on either mental illness or mental retardation. We conclude that, in so doing, the Legislature has signified its intent not to allow evidence of a defendant's lack of mental capacity short of legal insanity to avoid or reduce criminal responsibility by negating specific intent. Rather, the insanity defense as established by the Legislature is the sole standard for determining criminal responsibility as it relates to mental illness or retardation. Consequently, we affirm the decision of the Court of Appeals on this alternative basis.

Here, defendant first attempts to distinguish *Carpenter* by asserting that his defense is "based upon a physical disability to form the specific intent, not mental illness or retardation." Defendant then claims that his was not a diminished capacity defense because defendant "did not have the capacity in the first place to form the specific intent because of his lack of frontal lobe development."

In *Carpenter*, our Supreme Court specifically found that the Legislature,

> conclusively determined when mental incapacity can serve as a basis for relieving one from criminal responsibility. We conclude that, through this framework, the Legislature has created an all or nothing insanity defense. Central to our holding is the fact that the Legislature has already contemplated and addressed situations involving persons who are mentally ill or retarded yet not legally insane. As noted above, such a person may be found "guilty but mentally ill" and must be sentenced in the same manner as any other defendant committing the same

> offense and subject to psychiatric evaluation and treatment. MCL 768.36(3). Through this statutory provision, the Legislature has demonstrated its policy choice that evidence of mental incapacity short of insanity cannot be used to avoid or reduce criminal responsibility by negating specific intent. [*Carpenter, supra* at 237.]

Here, although defendant maintains that his lack of development is a physical disability, we conclude that the trial court properly concluded that defendant attempted to introduce "evidence of mental incapacity short of insanity." We note that, in *Carpenter*, the defendant suffered from organic brain damage, which, similarly to defendant's condition, could also be characterized as a physical disability. Thus, we reject defendant's characterization of his condition as physical. Further, *Carpenter* does not suggest that the diminished capacity defense is unavailable only if the defendant possessed and lost his ability to form specific intent. Indeed, case law indicates that the diminished capacity defense has been abolished even in cases of developmental, mental, and emotional impairments. See *People v Abraham*, 256 Mich App 265, 270, n 2; 662 NW2d 836 (2003).

Defendant next argues that another expert should have been allowed to testify that bullied teenagers feel helpless and "the feeling of helplessness . . . leads to the drastic option of striking back" because the bullied teen believes that the bullying will not stop unless he or she reacts violently. Defendant also argues that a counselor should have been allowed to testify that defendant attempted to avoid the victim by changing schools. However, defendant's argument that he reacted violently because he felt helpless is irrelevant because an inability to control one's passions not amounting to legal insanity is simply not a defense. See *People v Durfee*, 62 Mich 487, 494; 29 NW 109 (1886) (holding that "the law requires of a man that he will curb his passions, and restrain himself, and, if he does not do it, holds him accountable, *unless it is by reason of disease*, which renders him unable to do it") (emphasis added).[1] Regardless of how defendant terms the alleged helplessness, it is an irresistible-impulse defense because defendant alleges he could not control himself. We are not aware of any binding authority establishing that Michigan has ever recognized an irresistible-impulse defense outside the context of the insanity defense as announced in *Durfee* and superceded by MCL 768.21a, nor has defendant cited any such authority. Thus, defendant's argument that the evidence is admissible because it is not expressly barred by MCL 768.21a must fail because, outside the scope of the insanity defense, the evidence is irrelevant. See MRE 402 ("Evidence which is not relevant is not admissible.") Also, defendant's argument that he "acted from a perception that unless he did something, the bullying would not stop" is not relevant to negating specific intent but suggests that defendant acted intentionally. Further, the evidence is inadmissible for reasons already considered because by enacting a comprehensive statutory scheme concerning the insanity defense, "the Legislature has signified its intent not to allow evidence of a defendant's lack of mental capacity *short of legal insanity* to avoid or reduce criminal responsibility by negating specific intent." *Carpenter*, *supra* at 241 (Emphasis added). Again, although defendant argues that the evidence is

[1] Although MCL 768.21a superceded *Durfee*, it cannot be reasonably argued that our Legislature enacted a statutory insanity defense to indirectly allow an irresistible-impulse defense when the alleged irresistible impulse is not a result of mental illness or mental retardation.

admissible because it is not part of an insanity defense, for reasons already considered, the fact that defendant did not raise an insanity defense is precisely why the evidence is not admissible; it is no defense that defendant lacked the capacity to form intent or could not control his actions unless the lack of capacity or control is caused by a mental illness, *Durfee, supra* at 494, or by mental retardation, MCL 768.21a.

Defendant also cites *People v Wilson*, 194 Mich App 599, 602-604; 487 NW2d 822 (1992), which addressed battered-spouse syndrome and argues, "Teenage bullying [sic] is similar to the battered spouse syndrome because it seeks to explain the inexplicable – why someone would do such a violent act." However, the syndrome evidence in *Wilson* pertained to a self-defense claim, and the analysis of the issue in *Wilson, supra*, at 600, 602-603, is inapplicable to defendant's attempt to use teenage-bullying evidence to negate specific intent.

Defendant next argues that barring expert testimony regarding defendant's lack of mental capacity or that he felt helpless as a bullied-teen denied him his due-process right to present a defense. However, we have already expressly held that barring evidence of a defendant's mental state to negate specific intent pursuant to *Carpenter* does not deny a defendant his constitutional right to present a defense when the trial court leaves open to the defendant the right to present lay testimony that he did not have the requisite intent to commit the charged crimes. *People v Tierney*, 266 Mich App 687, 712-714; 703 NW2d 204 (2005).

Affirmed.

/s/ Helene N. White
/s/ Brian K. Zahra
/s/ Karen M. Fort Hood