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STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
[Redford, P.J., Beckering, and Markey, JJ.]

PEOPLE OF THE STATE OF MICHIGAN,	Supreme Court No. 163968
Plaintiff-Appellee,	Court of Appeals No. 358537
v	Van Buren County Circuit Court No. 76-002701-FC
EDWIN LAMAR LANGSTON,	
Defendant-Appellant. /	

RESPONSE TO THE CRIMINAL DEFENSE ATTORNEYS OF MICHIGAN'S AMICUS BRIEF BY THE PEOPLE OF THE STATE OF MICHIGAN

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INTRODUCTION

In their amicus brief, the Criminal Defense Attorneys of Michigan (CDAM) presents three arguments that merit a response here with regard to the challenge to the validity of both Edwin Langston's conviction and his sentence.

First, consistent with Langston's argument, CDAM insists that the doctrine of stare decisis should not apply and that the reliance interests do not weigh against revisiting this Court's decision to give *People v Aaron,* 409 Mich 672 (1980), only prospective application. But this argument misses the gravity of the People's reliance here. For a substantial number of the pre-*Aaron* offenders, the People would have been able to prove felony-murder under the new test announced in *Aaron* – its new definition of malice – if those offenders had obtained relief *in 1980*. But any ruling to make *Aaron* retroactive more than 45 years later would effectively defeat this possibility.

Second, like Langston, CDAM argues that because *Aaron* made a substantive change to the law of felony murder that it has to be applied retroactively. But this argument is predicated on the misunderstanding that *Aaron* defined what the common law "has always been." Not so. The decision was unambiguously a change to the common law. And given that this decision was a part of this Court's authority in developing the common law that was not constitutionally required, the Court did not have to make the decision retroactive. Case law confirms the point.

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Third, with regard to the sentencing questions, CDAM argues that the People's proposed solution – reviewing the record for determinations whether the evidence of malice as defined by *Aaron* was clear – is "unworkable," because the cases are 45 years old. But this Court has found to the contrary in a very similar setting in sending back hundreds of cases – some more than 45 years old – for resentencings based on a finding of unconstitutionality of automatic life-without-parole sentences for those who committed first-degree murder between the ages of 18 through 20 years old. The People cannot discern the practical difference here, which also will require a review of the record evidence of the crime. In particular, the People argue that where the defendant fails to show that the evidence of malice – as newly defined by *Aaron* – was not clear, he will not be entitled to resentencing, which will just leave the life-without-parole sentence in place.

ARGUMENT

I. The People have a strong reliance interest here on *Aaron*'s original decision to make the change to the common law prospective, as any decision to make *Aaron* retroactive now would make it virtually impossible to re-prosecute these offenders.

In challenging the People's analysis on stare decisis, CDAM argues that the hardship to the People is not "undue" even if these are old convictions. (CDAM, p 10.) Similarly, in its analysis based on the state law retroactivity test under *People v Hampton*, 384 Mich 669 (1971), CDAM argues that the reliance interests weigh in favor of retroactive application. (CDAM, p 14.) But these arguments do not seriously grapple with how their position offends justice and finality.

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To begin, CDAM does not evaluate the full significance of a decision that would have made *Aaron* "retroactive on collateral review" to implicate virtually every first-degree felony murder conviction that had reached finality at the time of its decision in 1980. See *Schafer v Kent County*, 2024 WL 3573500, at *10 (2024). In 1980, such an application would have ensnared thousands of cases, reaching back to convictions from the 1920s. Today, there are still approximately 100 such offenders in prison on felony-murder convictions, only some of whom, like Langston, were pending on direct review at the time of *Aaron*.

But even limiting the universe to those offenders like Langston (and Ronald Wilson) whose cases were pending on direct review, the reliance interests of the prosecutors here remain at their zenith. If this Court somehow now gives *Aaron* "full retroactivity" as defined by *Schafer*, i.e., applied to cases that were pending on direct review, *id.* at *11–12, the loss for the People here is palpable. Some of the defendants in this cohort of pre-*Aaron* offenders committed crimes of unspeakable brutality for which the evidence of malice as newly defined by *Aaron* was unmistakable. (See People's Corrected Brief, pp 49) (describing gang rape, torture, and murder of 86-year-old woman; a quadruple homicide; and other cases). If this Court granted relief to offenders in 1980 whose cases were pending on direct review then, the prosecutors would have been able to re-prosecute these grievous crimes immediately, rather than decades later, and these offenders would have been convicted again of felony murder. This Court has not categorically excluded LWOP sentences, and there are many here who unquestionably merit that sentence. This Court should not grant this unprecedented relief 45 years later.

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II. While the *Aaron* decision was a substantive one insofar as it developed the common law, it was not constitutionally required, and nothing in the federal or state rules required that it apply retroactively.

While *Aaron* was a substantive decision, nothing in the law required that change – which was not constitutionally required – apply retroactively. Like a legislative change to the substantive law of felony murder, this Court acted within its prerogative in applying that ruling only prospectively. (See People's Corrected Br, pp 25–31.)

In arguing to the contrary, CDAM both misunderstands *Aaron* (making the same mistake as Langston), and misunderstands the People's argument.

A. The decision in *Aaron* was not a statement about what the common law has always meant, and thus its ruling was not one that was constitutionally required.

Like Langston, CDAM misconstrues *Aaron,* arguing that it "stated what the law has always been." (CDAM, p 12.) But this is a misreading of *Aaron*. The People addressed this point at some length already. (People's Corrected Br, pp 20–25.)

Related to this mistake, CDAM's brief also misunderstands the People's position here. CDAM characterizes the People's argument as follows: "because the *Aaron* rule was not based on the constitution, it was not substantive." (CDAM, p 12.) But this is not the People's position. The ruling in *Aaron* was clearly substantive. But it does not have to apply retroactively *because it was not constitutionally required*. There was no violation of substantive law, only a change to it. Thus, CDAM's reliance on *People v Poole* is inapposite here (p 12), because the substantive change was not based on a "constitutional guarantee[]." See 2025 WL 978646 (2025), at *5. Rather, as a development of the common law, this Court could elect whether to apply it retroactively or not.

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This point is further confirmed by CDAM's reliance on *Welch v United States,* 578 US 120, 128 (2016). (CDAM, p 12, arguing that "Substantive rules apply retroactively.") *Welch* was quoting from *Schriro v Summerlin*, which noted that substantive rules include decisions that "narrow the scope of a criminal statute by interpreting its terms" and "constitutional determinations that place particular conduct or persons covered by the statute beyond the State's power to punish." 542 US 348, 351–352 (2004) (citations omitted). Like *Poole,* the U.S. Supreme Court held that such rules apply retroactively because they "necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him." *Schriro,* 542 US at 351–352 (cleaned up). But none of these apply here because *Aaron changed* the common law and did not hold that its new definition of malice was an interpretation of the law's original meaning. In other words, there was no constitutional infirmity in Langston's conviction, as he was convicted under the law properly instructed as it existed at that time.

B. The law is clear that a decision to develop the common law, when not required constitutionally, may apply prospectively.

When not required by the Constitution, this Court may elect to apply its substantive development of the common law prospectively. The seminal case for this general proposition comes from Justice Cardozo in *Great Northern R Co v Sunburst Oil & Refining Co*:

> This is a case where a court has refused to make its ruling retroactive, and the novel stand is taken that the Constitution of the United States is infringed by the refusal.

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> We think the Federal Constitution has no voice upon the subject. *A state in defining the limits of adherence to precedent may make a choice for itself between the principle of forward operation and that of relation backward.* [287 US 358, 364 (1932) (emphasis added). See People's Corrected Br, p 36.]

The state rules of retroactivity are taken from *Linkletter v Walker,* which reflected the basic same point. *Linkletter v Walker*, 381 US 618, 629 (1965) ("[W]e believe that the Constitution neither prohibits nor requires retrospective effect."), citing *Sunburst Oil,* 287 US at 364. See also *People v Sexton*, 458 Mich 43, 55–58 (1998) ("this Court is free to prescribe the parameters of retroactivity"), citing *Sunburst Oil,* 287 US at 364; *Mackey v United States*, 401 US 667, 698 (1971) (Harlan, J., concurring) ("[*Sunburst Oil*] . . . holds that the Federal Constitution imposes no barrier to a state court's decision to apply a new state common-law rule prospectively only.")

Such a standard, of course, accords with the basis on which this Court has identified its authority to develop the common law, namely changes to "society's mores." *People v Woolfolk*, 497 Mich 23, 26 (2014) (memorandum opinion). This description of the duty to "alter" or update the common law then reflects changes in culture that may not be reflected in the standards of the past. *Id.* at 26 (referencing "prevailing customs and practices of the people" in this State in making changes).

The point is a straightforward one that it would substantially limit the ability of this Court to develop the common law in any significant way if it was bound to apply that development retroactively in criminal cases that were final on direct review. The law is clear that this Court does not have to make substantive changes to the common law – where not required by the Constitution – retroactive.

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III. The People's sentencing proposal is workable by limiting any relief to the cases in which the defendant shows entitlement to relief from the record in which the evidence of malice as defined by *Aaron* was not clear.

In their merits brief, the People ask this Court to reaffirm *People v Hall,* 396 Mich 350 (1976). (People's Corrected Br, pp 43–45.) But because this Court's three final questions are predicated on a revisiting of that decision, should that occur here, the People ask this Court to require a defendant to show entitlement to relief by showing (1) he received a pre-*Aaron* instruction on the definition of malice; and (2) that the record did not establish clear evidence of malice as defined by *Aaron*. (*Id.* at 55–58.) And if he is able to establish these elements, the defendant would be entitled to resentencing of life *with* the opportunity of parole. (*Id.* at 59–60.)

The CDAM amicus argues that this standard is "unworkable" because the trial was "over 45 years ago." (CDAM, p 15.) But CDAM is wrong.

The fact that the trial and sentencing occurred almost 50 years ago presents no obstacle to workability. This Court's decisions in *Poole* and *People v Taylor,* 2025 WL 1085247 (2025), bely this claim as those decisions govern cases that extend to this same time period. For those resentencings, the sentencing courts will have to review the record as this Court's opinion in *Parks* makes clear where the prosecutor seeks an LWOP sentence. See *People v Parks*, 510 Mich 225, 267 (2022) ("the sentencing court provide these defendants with a *Miller* hearing," which includes an evaluation of "the circumstances of the offense").

CDAM also argues that any relief on sentencing must be "categorical," (p 16), the Court should presume error (p 18), and that the offender should be resentenced for the underlying felony if that presumption is not rebutted (p 20). CDAM is wrong on all fronts.

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A. The trial court should review the record to determine the adequacy of evidence of malice as defined by *Aaron*.

CDAM's assertion that the relief must be "categorical" is based on its argument that there was no finding of malice for Langston. (CDAM, p 16.) But this argument is predicated on the same error as above. The jury in Langston's case was properly instructed on the definition of malice as it existed in Michigan law before *Aaron*. See *Aaron,* 409 Mich at 715 n103. There was no instructional error here. The Court in *Aaron* "abrogat[ed]" the former common law felony-murder rule. *Id.* at 733.

And insofar as CDAM relies on arguments about categorical prohibitions from U.S. Supreme Court precedent (CDAM, p 15, citing *Graham v Florida,* 560 US 48 (2010)), CDAM draws the wrong lesson.

In particular, CDAM argues that *Graham* prohibits the kind of solution the People propose here, i.e., one that requires review of the record before determining whether the defendant has established entitlement to relief. (See People's Corrected Br, pp 50–52.) CDAM cites *Graham*, which noted the categorical prohibition on the death penalty for non-homicide offenses. 560 US at 60–61.

But *Graham* identified two subsets of categorical rules for death penalty cases, one related to the nature of the offender, and the latter related to the "nature of the offense," *id.* at 61, 69, specifically citing the cases on which the People have relied, *Enmund v Florida*, 458 US 782, 801 (1982) and *Tison v Arizona*, 481 US 137, 158 (1987). The U.S. Supreme Court in *Graham* then explained that certain offenders are "categorically less deserving" of the "most serious forms of punishment" and cited both *Enmund* and *Tison* related to the criminal intent:

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> The Court has recognized that defendants *who do not kill, intend to kill, or foresee that life will be taken* are categorically less deserving of the most serious forms of punishment than are murderers. . . . *Enmund,* 458 U.S. 782 []; *Tison v. Arizona,* 481 U.S. 137[.]
>
> [*Graham*, 560 US at 69 (emphasis added).]

Notably, this analysis focused on the proof of the requisite criminal intent, not the status of the offender. And *Enmund* made clear that the court would review "the record" to determine whether the requisite culpability was evident for the crime to justify the death penalty:

> Enmund himself did not kill or attempt to kill; *and, **as construed by the Florida Supreme Court, the record before us** does not warrant a finding that Enmund had any intention of participating in or facilitating a murder*.
>
> [*Enmund*, 458 US at 798 (emphasis added).]

Likewise in *Tison,* the U.S. Supreme Court remanded to the Arizona Supreme Court for its specific determination. 481 US at 158 ("we simply hold that major participation in the felony committed, combined with reckless indifference to human life, is sufficient to satisfy the *Enmund* culpability requirement. The Arizona courts have clearly found that the former exists; we now vacate the judgments below and remand for determination of the latter").

In short, nothing in *Graham* called into question the analysis in *Enmund* and *Tison* on reviewing the record to determine the "nature of the offense" at issue. As argued by the People (pp 50–52), this is the proper process, i.e., one in which the court would review the record for evidence of the defendant's culpability in its review of whether the sentence is valid.

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B. The defendant must show two things: (1) that he did not receive an instruction of malice as newly defined by *Aaron*; and (2) that the evidence of malice under *Aaron* from the record was not clear.

As noted, the defendant would carry the burden of proof of establishing entitlement to relief, consistent with the court rules under MCR 6.508(D). This process also accords with this Court's analysis for the resentencings in the juvenile arena and for 18-to-20 years old, where the burden is on the People as they are the "moving party." See *People v Taylor,* 510 Mich 112, 132 (2022) ("[I]f the prosecution seeks to change the status quo by filing a motion to impose LWOP, it becomes the moving party that must bear the burden.").

On the issue of the standard for determining whether "sufficient evidence of malice [under *Aaron*] was presented" (the Court's fifth question), CDAM does not really advocate for a standard. Rather, it argues that the People carry the "burden" "to prove that the jury was properly instructed." (CDAM, p 18.) This is a remarkable claim. This argument suggests that this Court should presume error for every felony-murder conviction obtained before *Aaron* without any showing of error by the defendant. There is no precedent or legal basis for such a process. It is without merit.

CDAM also asserts that the jury instructions here were "defective." (CDAM, p 18.) As before, this argument is based on the misunderstanding that *Aaron* ruled that the common law "always" required proof of one of the three intents it adopted going forward for felony murder cases. But the opinion was clear that it was "abrogat[ing]" – changing – the common law. *Aaron,* 409 Mich at 733. In that way, Langston's jury was properly instructed on the law of felony-murder as it existed at the time of his trial.

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C. The correct remedy for defendants who carry their burden is life with the opportunity for parole.

The proper remedy for any defendants who carry their burden is life with the opportunity for parole. (People's Corrected Br, pp 59–60, citing *People v Bullock*, 440 Mich 15 (1992), among other cases.) CDAM disagrees, arguing the defendant should be resentenced for the "underlying felony." (CDAM, p 20.) But this misunderstands the Court's question about "what remedy is required if any defendants' sentences of mandatory life imprisonment without parole are found invalid." (See this Court's March 28, 2025 order, sixth question.)

As noted above, the conviction here for felony-murder was properly obtained against Langston based on the law as it existed at the time of his crime and trial. There is nothing invalid about his conviction. If life without parole is found to be an unduly harsh sentence because the defendant has shown that the evidence of malice (as newly defined in *Aaron*) at trial was not clear, then that defendant should be sentenced to life with the opportunity for parole (and become parole eligible).

CDAM also asks this Court to require prosecutors "60 days to institute proceedings in the trial court if they would like to seek life without parole for a pre-*Aaron* felony murder conviction." (CDAM, p 19.) But this is another proposal without legal basis. By law, before this Court can grant relief, there must be a showing of error, which here is a claim the sentence is too harsh. The fact alone of a sentence that arises before *Aaron* does not by itself show a jury was given instructions under the old common law, nor that the evidence of malice under *Aaron* was not clear. And there is no statutory time framework on which to fashion a timeline as CDAM proposes.

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CONCLUSION AND RELIEF REQUESTED

This Court should affirm Edwin Langston's conviction and sentence.

Respectfully submitted,

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This document complies with the type-volume limitation of Michigan Court Rules 7.312(A)(2)) because, excluding the part of the document exempted, this **brief responding to an amicus** contains no more than 3,200 words. This document contains 3,200 words.

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