STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

-v-

EDWIN LAMAR LANGSTON,
Defendant-Appellant.

Mich. Supreme Court No. 163968
Court of Appeals No. 358537
Trial Court No. FC 76-2701-FC

_____/

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DEFENDANT-APPELLANT'S REPLY BRIEF

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I. This Court owes little deference to an unlitigated, unreasoned, and unexplained sentence in the *Aaron* opinion, which decided the case in front of the Court and did not engage in any form of retroactivity analysis.

Appellee argues that asking this Court to apply *Aaron* retroactively is contrary to stare decisis, because the *Aaron* Court stated, without explanation, "This decision shall apply to all trials in progress and those occurring after the date of this opinion." *People v Aaron*, 409 Mich 672, 734; 299 NW2d 304 (1980). Appellee's contention is incorrect. Stare decisis is "a 'principle of policy' rather than 'an inexorable command,' and [] the Court is not constrained to follow precedent when governing decisions are unworkable or are badly reasoned." *Robinson v City of Detroit*, 462 Mich. 439, 464; 613 NW2d 307 (2000).

The *Aaron* Court's single sentence about the applicability of its ruling was not merely badly reasoned; it was without reason. The Court included no explanation or analysis beyond the bald statement as to whom the decision would apply, nor cited any relevant authority. *Aaron, supra* at 734; *see* Const 1963, art 6 §6 (requiring that decisions "contain a concise statement of the facts and reasons for each decision"). Nor does the denial of leave in *People v Lonchar*, 411 Mich 923 (1981) bolster the authority of the *Aaron* Court's statement about the application of its holding. The *Lonchar* order only stated in boilerplate language that "the Court is not persuaded that the questions presented should be reviewed by this Court." *Id*. at 923.

By contrast, in his *Lonchar* dissent, Justice Levin provided the reasoning and analysis lacking from the majority opinions in *Lonchar* and *Aaron* on this point. *Lonchar, supra* at 928 (Levin, J. dissenting). In *Aaron*, the Court left retroactivity analysis "for another day," and in *Lonchar*, declined to apply *Aaron* retroactively in that case, again "without briefing, argument [or] a reasoned decision." *Id*. at 925-26.

In essence, the Court did not decide retroactivity in *Aaron* at all, and in *Lonchar*, declined to consider the question. In neither case was retroactivity briefed or argued, nor was it reasoned, analyzed or explained by the Court. In these circumstances, deference on "stare decisis grounds is at its nadir." *Ramos v Louisiana*, 590 US 83, 113; 140 S Ct 1390 (2020) (Sotomayor, J. concurring) (quoting *Alleyne v United States*, 570 U.S. 99, 116 n.5; 133 S Ct 2151 (2013)). *See Janus v AFSCME*, 585 US 878, 917; 138 S Ct 2448 (2018) ("An important factor in determining whether a precedent should be overruled is the quality of its reasoning").

Merely because subsequent cases assumed the negative – that because the *Aaron* Court applied its decision to cases with ongoing trials and future cases, the decision *did not* apply to cases on direct appeal or collateral review – does not dictate the outcome here. This Court has held that when a question is necessarily decided by a previous case but never fully considered by the court, the answer arrived at is not binding precedent. *Bostrom v Jennings*, 326 Mich 146, 156-157; 40 NW2d 97 (1949) (discussing *Frisorger v Shepse*, 251 Mich 121; 230 NW 926 (1930)) (finding that a question of legal interpretation assumed but never fully considered by the court or discussed in a prior opinion was not binding precedent). *See also Atwood v Mayor, etc. of Sault Ste. Marie*, 141 Mich 295, 296-297; 104 NW 649 (1905) (finding that an issue "brought to the attention of the court, and [] not considered by it" but merely assumed is not binding precedent).

Aaron's retroactivity was not briefed or fully considered by the Court. *Aaron*, *supra* at 734. Under this Court's instruction in *Atwood*, issues that have not been "taken or inquired into at all" are proportionately weakened in precedential value. *Atwood*, *supra* at 297.

Appellee might argue that because Langston's own case was reversed by the Michigan Supreme Court that, in his particular case, that decision is owed deference. However, the Court's

decision in Mr. Langston's case was issued in similarly summary terms with no reasoned consideration of *Aaron*'s retroactivity, and thus for the reasons stated above, is owed little deference. *People v Langston*, 413 Mich. 911, 320 NW2d 53 (1982) (Levin, J. dissenting with Kavanagh, J. concurring in the dissent; Ryan, J. dissenting on similar grounds).

Appellee is likewise incorrect as to at least three of the four *Robinson* grounds. First, *Aaron* was wrongly decided on the issue of retroactivity for the reasons set forth in Mr. Langston's supplemental brief and elsewhere in this reply brief. Second, as to the reliance interests, were Mr. Langston to be released at 73 years old after 50 years in prison, there would be no "significant dislocations." *Robinson*, *supra* at 466. Finally, there have been important changes in the federal and state law of retroactivity, which calls into question an unexplained and assumed application only to trials in progress, instead of people on direct appeal, like Langston, or collateral review.

II. First-degree felony murder in Michigan has been a statutory offense since prior to statehood, the *Aaron* Court's analysis of the common law to give meaning and definition to the term "murder" in the statute does not change the fact that the Court was engaged in statutory interpretation.

All defendants, including Mr. Langston—before and after *Aaron*—who are charged with felony murder are charged under Michigan's first-degree murder statute, MCL 750.316(1)(b). In Michigan, first-degree murder is a statutory offense that provides for two aggravated forms of homicide – premeditated and felony murder. MCL 750.316. The *Aaron* Court addressed whether and to what extent that statute had meaning imputed to it by the common law. Because Michigan has had a first-degree murder statute since its existence as a territory, there has never been a "common law" offense of felony murder. That is, no defendant can be "charged" with common law felony murder; a defendant is charged under either MCL 750.316 (first-degree) or MCL 750.317 (second-degree).

At the time of Langston's case, Michigan courts were trying to give meaning to the word "murder" in the statute and to determine what meaning, if any, to derive from the common law. See *Aaron*, *supra* at 715 ("Under the common law, which we refer to in defining murder in this state…."). The *Aaron* Court framed the question in two parts. *Id*. at 717.

First, as to whether Michigan has a "statutory felony murder doctrine"—meaning that anything that qualified as felony murder at common law would qualify as felony murder under MCL 750.316—the Court answered no. Instead, the statute serves to gradate into first degree and second degree an offense which is already "murder." *Aaron*, *supra* at 721. In other words, our statute requires that a murder occur *and* that the murder have malice proven distinct from the "malice" that at common law was implied by the presence of a felony. Only after a murder is proven may it be elevated to a first-degree murder, on account of the underlying felony.

This portion of the Court's opinion—and its holding about what "murder" means for purposes of MCL 750.316—is an interpretation of the statute, plain and simple.

Second, the *Aaron* Court separately looked at whether the term "murder" within this statute has meaning derived from the common law, even if the entire provision of MCL 750.316 does not have a meaning imported directly from the common law. In this "common law" section, the Court addressed the prosecution argument that, when proceeding under MCL 750.316(1)(b), the term "murder" is defined by the "common law definition of murder" which "included a homicide in the course of a felony." *Aaron*, *supra* at 721-722. In other words, the government argued that "murder" in the statute had all of the common law meanings of that word, including that a homicide in the course of a felony is equal to "murder," without a separate finding of malice.

The Court stated that this issue—whether the meaning of "murder" in the statute includes all common law understandings—was a legal question that had not yet been answered by this

Court.[1] *Id*. at 722. The Court considered the constitutional provision, which appears to post-date the first-degree murder statute,[2] that the "common law and the statute laws now in force … shall remain in force until they expire by their own limitations, or are changed, amended or repealed." Const 1963, art 3, Sec 7. *Id*. at 722. The Court read this provision to mean that the term "murder" in the first-degree murder statute still has a common law meaning, as no case had yet decided otherwise. *Aaron*, *supra* at 723.

The Court then examined previous Michigan court decisions, which, while not addressing specifically whether the term "murder" has a common law meaning, suggest or assume that it did. *Id*. at 723. The Court's discussion makes plain that previous Court decisions had interpreted the term "murder" in ways that changed, interpreted, and limited importation of a possible "common law" meaning of "murder." *Id*. at 723-727. The Court then took the "logical extension" of these cases to read out any common law meaning from the word "murder" in MCL 750.316. *Id*. at 727.

In sum, *Aaron* looked to the common law to understand the meaning of terms in the first-degree murder statute. "Where a statute employs the general terms of the common law to describe an offense, courts will construe the statutory crime by looking to common-law definitions." *People v Riddle*, 467 Mich 116, 125; 649 NW2d 30 (2002). Subsequent courts also describe *Aaron* as a decision about the meaning of the statute. *See, e.g., People v Reichard*, 505 Mich 81, 87; 949 NW2d 64, 68 n10 (2020) (stating that *Aaron* "h[eld] that under the Michigan

[1] *Aaron*, *supra* at 722 ("…no Michigan cases … have expressly considered whether Michigan has or should continue to have a common-law felony-murder doctrine… 'It is a well-settled principle that a point assumed without consideration is of course not decided.'").
[2] This provision was substantially the same in the 1908 Constitution and seems to have first appeared in the 1850 Constitution. See 1850 Schedule, Sec 1.

felony-murder statute, the mental element of murder is not satisfied by proof of the intention to commit the underlying felony, but instead must be separately shown").

Appellee and its Amici, in their pleadings, twist themselves into different knots to avoid this straightforward application. Appellee asserts that the development of the common law is different from statutory interpretation and not subject to the same rules. Appellee Br. at 16. If that argument is every true, it would be for offenses or defenses not based in statutes passed by our legislature. For example, this Court has recognized a possible common law offense of obstruction of justice, *People v Thomas*, 438 Mich 448; 475 NW2d 288 (1991), and a common law defense of duress, *see, e.g., People v Gafken*, 510 Mich 503; 990 NW2d 826 (2022), which are unrelated to any provision of law promulgated by our legislature.[3]

Unlike Appellee, Amici PAAM views Michigan's first-degree murder provision, and the task in *Aaron*, as a question of statutory interpretation. PAAM at 11 ("Murder has always been a statutory crime..."); PAAM at 12 ("It is, then, a statutory crime, the definition of which is left to the common law, but this hardly makes murder a common-law crime."). Amici then argue that because there was a change in the law, PAAM at 13-14, the *Aaron* Court's interpretation should not be understood as saying what the statute always meant. But the *Aaron* Court itself did not make, nor describe, a 180 degree turn in the law. The *Aaron* Court stated that it had "not been faced previously" with the question in the case, *supra* at 723, which is instead a new interpretation of a statute.

III. The constitutional Due Process challenge to the presumption of the element of malice was raised by all three defendants before the *Aaron* Court.

[3] To the extent Michigan might have a "common law murder" offense and the ability to interpret that offense might permit this Court to act on its own authority, that offense would be second-degree murder, not first-degree murder. *See, e. g., Gafken*, 510 Mich at 541 (Zahra, J., dissenting) ("Michigan has never recognized a common-law 'felony murder.'").

Appellee suggests that the *Aaron* Court was not presented with a Due Process challenge to the presumption of the element of malice. It was. The Due Process violation in this case was in the questions presented and litigated to the Court in all three defendants' briefs. For example, in Wright's case, the second question presented was:

> Whether an instruction on first degree murder which omits the essential element of malice by informing the jury that the crime may be established by proof of a killing during the commission or attempted commission of a felony conclusively presumes an essential element of the offense and denies Defendant Due Process of law as guaranteed by the United States and Michigan Constitutions?

See Ex A, Appellee Brief in *People v Jesse L. Wright*, No. 61194, Mich 1979 pp i.-viii.; Ex B, Appellee Brief in *People v Robert G. Thompson*, No. 61140, pp i.-1 (stating one of questions presented was "Did the trial court's instruction which imputed malice to the intent to commit a robbery violate the Defendant's Constitutional rights to Due Process of law and to a trial by jury?); Ex C, Appellant Brief in *People v Stephen Aaron Jr*., No. 57376, Mich 1978, pp i-iii (stating the Question Involved was whether defendant can be convicted of second-degree murder as a lesser-included offense of his felony murder, as failure to prove malice implicated his "due process right to have the prosecution prove every fact necessary to constitute the crime of which he is convicted beyond a reasonable doubt").

IV. Mr. Langston is entitled to the application of the *Aaron* rule, in the first instance, because his case was on direct review at the time of the *Aaron* decision but he is also so entitled even if his case were analyzed under standards used for collateral review cases.

If this Court undertakes a retroactivity analysis, Mr. Langston is entitled to relief because 1) his case was on direct review at the time *Aaron* was decided; and 2) the *Aaron* rule is a new substantive rule that must be applied retroactively.

Mr. Langston agrees that *Schafer v Kent County*, cited in Appellee's brief, is relevant here. Appellee Br. at 30. However, Appellee does not make the relevance of the case sufficiently clear,

especially its application to individuals who are on direct review at the time of a given decision. In *Schafer*, this unanimous Court noted that under the civil and criminal retroactivity rules, "the 'usual' retroactive application" – where the new law applies to the litigant, is applied to "(1) the case before the court, (2) all cases that could have and did raise the issue that are pending at the time of the decision, ….. " *Schafer v Kent County*, __ NW3d__; 2024 WL 2573500 at *11 (July 29, 2024). Where, as here, Mr. Langston did raise the issue and his case was pending at the time of the *Aaron* decision, the new rule applies to him. *Id.* The *Schafer* decision noted the confusion produced by Michigan's retroactivity test drawn from *Linkletter* in the criminal context, but made clear that new decisions apply to "cases arising from facts that occurred prior to the decision," not just cases filed after the decision. *Id*.

The *Aaron* decision was a substantive rule that must be applied retroactively. Separately, in arguing under the standard for collateral review cases, Appellee suggests that the new rule in *Aaron* cannot be substantive subject to the rules of retroactivity, because it focused on "developing the common law." Appellee Br. at 34. To the extent that retroactivity is inapplicable, it is only, as argued in Mr. Langston's Supplemental Brief, that it is unnecessary given the application of the interpretation of the first-degree murder provision in *Aaron*. For example, in *Linkletter*, the decision from which Michigan's retroactivity jurisprudence is drawn, the U.S. Supreme Court explicitly noted that retroactive application was the default rule for substantive statutory changes and decisions "overturning long established common-law rules." *See Linkletter v Walker*, 381 US 618, 628; 85 S Ct 1731 (1965); *see also Schriro v Summerlin*, 542 US 348, 351; 124 S Ct 2519; 159 LEd2d 442 (2004) (Scalia, J.) (stating that substantive rules include "decisions that narrow the scope of a criminal statute by interpreting its terms").

V. The sentence of mandatory life without parole is cruel or unusual for Mr. Langston for whom there has been no jury finding of mens rea.

No jury ever found that Mr. Langston acted with any mens rea with respect to the death in this case, but upon conviction for felony murder, a mandatory life without parole sentence was required. In the absence of a jury finding of mens rea, a sentence of life without parole is cruel or unusual under our constitution. Sentencing Langston to this "harshest punishment" is disproportionate compared to his personal or moral responsibility for the offense, *People v Lymon*, __ NW 3d__, 2024 Mich LEXIS 1439 (July 29, 2024); it is disproportionate compared to the sentences given to individuals in Michigan convicted of second-degree murder, which requires a jury finding of malice; it is disproportionate compared to the sentences given in other states to individuals who did not kill or intend to kill anyone; and it does not advance the penological goal of rehabilitation, which Appellee concedes. *See, e.g., People v Stovall,* 510 Mich 301, 313-314; 987 NW2d 85 (2022).

Appellee says that while "the evidence was not overwhelming," a jury could hypothetically find there was some evidence of mens rea under a modern felony murder rule. Appellee Supp. Br. at 45-47. The question is not, however, whether one could, in theory, find some evidence in the record from which a jury might plausibly infer malice. *Cf. Langston,* 86 Mich App at 661 ("Although the record contains facts from which an inference of malice might have been drawn, … the issue must be retried and put before the jury.") The question is whether, in the absence of a jury finding of any mens rea, a mandatory life without parole sentence is constitutional. *See* Supp. Br. at 37-41. It is not. If a court, upon resentencing from this unconstitutional sentence, wants to examine relative proportional culpability, she of course may in imposing a new individualized sentence.

Mr. Langston is asking this Court to narrow *Hall*, not to overturn it entirely. *See* Supp Br. at 43-46. Applying the *Robinson* and *Janus/Ramos* principles of stare decisis, *Hall* is wrongly

decided with respect to cases where there is no jury finding of mens rea; owed little deference because it did not explicitly consider or provide reasoning on the question presented here; has an assessment of rehabilitation – that it is available through commutation – undermined by subsequent case law, *Graham v Fla.*, 560 US 48, 69-70; 130 S Ct 2011 (2010); and most significantly, is no longer justified due to significant changes in federal and state law with regard to cruel and/or unusual punishment since *Hall* was decided.

Respectfully submitted,

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Date: December 13, 2024

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

-v-

EDWIN LAMAR LANGSTON,
Defendant-Appellant.

_____/

Mich. Supreme Court No. 163968
Court of Appeals No. 358537
Trial Court No. FC 76-2701-FC

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CERTIFICATE OF WORD COUNT

As required by MCR 7.212(G), I certify that the document contains 3,197 words.

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December 13, 2024

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

-v-

EDWIN LAMAR LANGSTON,
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Mich. Supreme Court No. 163968
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EXHIBITS

Ex. A *People v Wright* Appellee Brief

Ex. B *People v Thompson* Appellee Brief

Ex. C *People v Aaron* Appellant Brief

Ex. A
***People v Wright* Appellee Brief**

STATE OF MICHIGAN

IN THE SUPREME COURT

ON APPEAL FROM THE COURT OF APPEALS

(Court of Appeals No. 28298 — Circuit Court No. 75-10032-FY)

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

vs.

JESSE L. WRIGHT,

Defendant-Appellee.

Supreme Court No. 61194

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STATEMENT OF QUESTIONS PRESENTED

I. WHETHER THE COURT OF APPEALS ERRED IN FINDING THAT MALICE IS AN ESSENTIAL ELEMENT OF FIRST DEGREE MURDER AND THAT MALICE MUST BE INSTRUCTED UPON WHEN THE OFFENSE CHARGED IS MURDER COMMITTED IN THE COMMISSION OF AN ENUMERATED FELONY?

II. WHETHER AN INSTRUCTION ON FIRST DEGREE MURDER WHICH OMITS THE ESSENTIAL ELEMENT OF MALICE BY INFORMING THE JURY THAT THE CRIME MAY BE ESTABLISHED BY PROOF OF A KILLING DURING THE COMMISSION OR ATTEMPTED COMMISSION OF A FELONY CONCLUSIVELY PRESUMES AN ESSENTIAL ELEMENT OF THE OFFENSE AND DENIES DEFENDANT DUE PROCESS OF LAW AS GUARANTEED BY THE UNITED STATES AND MICHIGAN CONSTITUTIONS?

COUNTER-STATEMENT OF FACTS

Defendant-Appellee, JESSE WRIGHT, has no basic argument with the Statement of Facts prepared by the Appellant. Defendant-Appellee, would point out however, tht during the course of the trial, a taped conversation was introduced by the Prosecution as People's Exhibit 6 (45a). That tape was not made part of the transcribed record and therefore cannot be placed in an appendix for reference purposes (46a). The taped conversation is, however, part of the record in the case. It was recorded on October 3, 1975 at 9:30 a.m. (63a), approximately six hours after the fire started (49a) and five hours after the time JESSE WRIGHT walked into the Ypsilanti Police Station and admitted setting the fire (38a).

As MR. WRIGHT did not testify at trial, the tape is the only record of MR. WRIGHT's reason for and purpose in setting the fire. The tape also reflects MR. WRIGHT's demeanor upon discovery that the victims had died. Defendant-Appellee thus urges the Court to obtain this tape and listen to it as part of this record.

Ex. B
***People v Thompson* Appellee Brief**

SUPREME COURT

MARCH 1979

TERM

STATE OF MICHIGAN

IN THE SUPREME COURT

ON APPEAL FROM THE COURT OF APPEALS

Judges: M.F. Cavanagh, P.J., S.J. Bronson
and M.J. Kelley, JJ.

(Court of Appeals No. 26215; Lower Court No. 74-00598)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

VS.

Supreme Court
No. 61140

ROBERT G. THOMPSON,
Defendant-Appellee.

APPELLEE'S BRIEF ON APPEAL
*** * * ORAL ARGUMENT REQUESTED * * ***

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STATEMENT OF QUESTIONS PRESENTED

DID THE COURT OF APPEALS ERR IN REVERSING DEFENDANT'S FELONY MURDER CONVICTION WHERE INSTRUCTIONS TO THE JURY AFFIRMATIVELY EXCLUDED THE ESSENTIAL ELEMENT OF MALICE?

Defendant-Appellant answers "No"

I. HAS THE COMMON LAW IN ENGLAND AND MICHIGAN EVOLVED TO A RECOGNITION THAT MALICE SHOULD NOT BE IMPUTED TO THE INTENT TO COMMIT AN UNDERLYING FELONY?

Defendant-Appellant answers "Yes"

II. DID THE TRIAL COURT'S INSTRUCTION WHICH IMPUTED MALICE TO THE INTENT TO COMMIT A ROBBERY VIOLATE DEFENDANT'S CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW AND TO A TRIAL BY JURY?

Defendant-Appellant answers "Yes"

III. DO PRECEDENT AND SOUND JUDICIAL POLICY MILITATE AGAINST ADOPTION OF THE DOCTRINE OR IMPUTED MALICE IN FELONY MURDER CASES?

Defendant-Appellant answers "Yes"

COUNTERSTATEMENT OF FACTS

Defendant-Appellee, Robert G. Thompson, was charged with first degree felony murder (MCLA 750.316; MSA 28.548), was convicted by a jury on August 18, 1975 in Saginaw County Circuit Court, and was sentenced on September 17, 1975 to life imprisonment.

Ex. C
***People v Aaron* Appellant Brief**

Sorry - Didn't

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SUPREME COURT

MARCH 1979

TERM

STATE OF MICHIGAN

IN THE

SUPREME COURT

COLEMAN
KAVANAGH
WILLIAMS
LEVIN
FITZGERALD
RYAN
MOODY

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

STEPHEN AARON, JR.,

Defendant-Appellant

Supreme Court
No 57376

Michigan Court of Appeals
Nos 20464, 20712
Detroit Recorder's Court
Nos 73 09317, 73 09516

DEFENDANT-APPELLANT'S BRIEF AND APPENDIX ON APPEAL

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AUTHORITIES CITED

Cases:

Other:

STATEMENT OF QUESTION INVOLVED

Whether if proof of malice is unnecessary for a conviction of felony murder, defendant can properly be convicted of second degree murder as a lesser included offense of felony murder since malice is an element of second degree murder and must be proven beyond a reasonable doubt by the prosecution if the defendant is to be accorded his due process right to have the prosecution prove every fact necessary to constitute the crime of which he is convicted beyond a reasonable doubt.

Defendant-appellant would answer 'no.' p6

STATE OF MICHIGAN

IN THE

SUPREME COURT

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee v STEPHEN AARON, JR., Defendant-Appellant	Supreme Court No 57376
Michigan Court of Appeals Nos 20464, 20712 Detroit Recorder's Court Nos 73 09317, 73 09516	

DEFENDANT-APPELLANT'S BRIEF ON APPEAL

STATEMENT OF THE CASE

This is a criminal case.

Defendant Aaron and one Bernard Whitsett were charged in a one count information with the commission of murder in the first degree, the homicide being committed during the perpetration or attempted perpetration of a robbery armed, contrary to *MCLA 750.316* (T585)*.

* The 'T' in the parentheses refers to the Transcript of testimony adduced on trial; the 'a', to appellant's Appendix; the numbers, to the pages within.