



THIRD JUDICIAL CIRCUIT
OF MICHIGAN

VERA MASSEY JONES
CIRCUIT COURT JUDGE

FRANK MURPHY HALL OF JUSTICE
1441 ST. ANTOINE
DETROIT, MICHIGAN 48226-2384

(313) 224-2487

December 11, 2012

Clinton J. Hubbell
Dylan J. DuVall
HUBBELL DUVALL PLLC
25140 Lasher Road, Ste. 271
Southfield, MI 48033

RE: People v Cortez Davis
3rd CC: #94-2089

Dear Attorney Hubbell:

Enclosed you will find an opinion and order signed by Judge Vera Massey Jones.

Sincerely,

Marilyn Harvill
Secretary to Judge Vera Massey Jones

Enclosure

STATE OF MICHIGAN
THIRD CIRCUIT COURT CRIMINAL DIVISION
COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff.

CORTEZ DAVIS

Case No. _____
Hon. Vera Massey Jones

Defendant.

_____ /

OPINION AND ORDER

At a session of said Court held in the Frank Murphy Hall of
Justice-Criminal Division of the City of Detroit, State of Michigan,
County of Wayne on: **December 11, 2012**

PRESENT: Honorable Vera Massey Jones

Oral argument having been heard and the court being fully advised.

IT IS HEREBY ORDERED that defendant is **GRANTED** a resentencing hearing pursuant to Miller v Alabama 132 s. Ct. 2455.

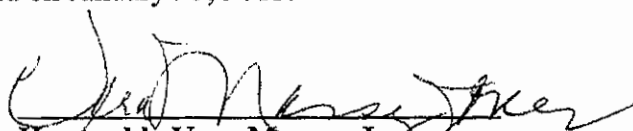
Defendant was convicted as a juvenile of First Degree Felony Murder in 1994. A sentencing hearing was held to determine whether to sentence defendant as a juvenile. The defendant was not the shooter, but an aider and abettor. This court found that although defendant could be rehabilitated, the time left under the juvenile sentencing option was not enough time to assure that defendant was rehabilitated. Further, this court held that to sentence this particular defendant to natural life in prison was cruel and unusual punishment. The Michigan Court of Appeals in 1994 ordered this court to sentence Mr. Davis pursuant to statute. Mr. Davis pursued every means of appeal in the Michigan Courts including several subsequent motions for relief from judgment. The United States Supreme Court in Miller v. Alabama, 132 S. Ct 2455, has finally held that to sentence juveniles to natural life in prison without the possibility of parole is

cruel and unusual punishment. This court uses the term "finally held" because Mr. Cortez Davis has been in prison for 18 years without a hearing before a parole board. This court is not aware if during these 18 years the defendant has had the opportunity for educational programs or any services that might prepare him to return to society. Thus, we have locked him behind bars for over 18 years as a juvenile who did not pull the trigger, who told the victim that he held at gunpoint that everything will be alright, and who had the potential to be rehabilitated. We, the People of the State of Michigan have treated this juvenile, now man, inhumanely.

The People of the State of Michigan contend that the defendant should not be granted a relief because a Michigan Court of Appeals case holds that his relief is barred because retroactivity does not apply to a case on collateral review. The Michigan Court of Appeals was wrong when it ordered this court to impose a sentence pursuant to statute, which was cruel and unusual. The Supreme Court of the State of Michigan was wrong when it affirmed this defendant's conviction and sentence. To now hold that defendant is barred from relief because his case is reviewable only under a motion from relief from justice would be wrong and injustice.

Based on the reasons stated above this court orders that defendant, Cortez Roland Davis, be **GRANTED** a resentencing hearing to be held on January 25, 2013.

December 11, 2012
DATED


Honorable Vera Massey Jones
Wayne County 3rd Circuit Court Judge

STATE OF MICHIGAN - WAYNE COUNTY
IN THE THIRD CIRCUIT COURT CRIMINAL DIVISION

12 DEC 17 AM 11:00
FHHJ
RECORDING
SERVICES

THE PEOPLE OF THE STATE OF MICHIGAN

VS

Cortez Davis

91-002089

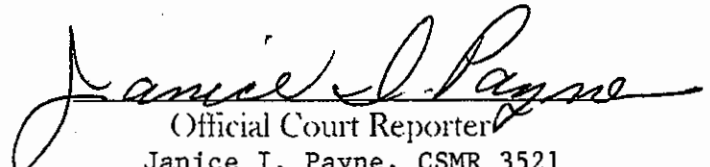
No: _____

Defendant

STENOGRAPHER'S CERTIFICATE

This is to certify that the transcript(s) of December 7, 2012 in the above record of the trial/hearing in the entitled cause has been ordered by the Wayne County Prosecutor's Office, Detroit, Michigan on 12/13/12 and will be furnished as soon as possible.

Post-Conviction 6.500 Motion


Official Court Reporter
Janice I. Payne, CSMR 3521

Date: December 17, 2012

- There is no record to be transcribed.
- Not the designated reporter.
- The transcript has been filed with the court and furnished as requested.

This certificate must be filed by the reporter within 3 calendar days of Request.

COPY

STATE OF MICHIGAN
COUNTY OF WAYNE
THIRD JUDICIAL CIRCUIT COURT - CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN,

vs.

Case No. 94-002089

CORTEZ ROLAND DAVIS,

Defendant.

POST-CONVICTION 6.500 MOTION

BEFORE THE HONORABLE VERA MASSEY JONES
CIRCUIT COURT JUDGE

Detroit, Michigan - Friday, December 7, 2012

APPEARANCES:

For the People: TIMOTHY BAUGHMAN (P24381)
Wayne County Prosecutor's Office
1441 St. Antoine, 12th Floor
Detroit, Michigan 48226-2302
(313) 224-5777

For the Defendant: CLINTON HUBBELL (P72321)

Court Reporter: JANICE I. PAYNE, CSMR 3521
(313) 224-2487

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WITNESSES:

PAGE

NONE

EXHIBITS:

MARKED . ADMITTED

NONE

1 Detroit, Michigan

2 Friday, December 7, 2012

3 At about 12:04 p.m.

4 (All parties present.)

5 THE CLERK: Case number 94-2089; People
6 versus Cortez Davis. This is before the Court for a
7 motion.

8 THE COURT: Your appearances?

9 MR. HUBBELL: Clinton Hubbell, your Honor,
10 72321, for Mr. Davis.

11 MR. BAUGHMAN: Tim Baughman, B-a-u-g-h-m-a-n,
12 for the People.

13 THE COURT: Okay. This is a 6.500 matter,
14 and I ordered the People of the State of Michigan to
15 answer, and you're now here for oral argument.

16 Counsel, because you have the burden of
17 proof, you want to -- well, it's on you to establish
18 that he is entitled to the... So, you may proceed.

19 MR. HUBBELL: Thank you, your Honor, and good
20 morning.

21 THE COURT: And I should say, I know Mr.
22 Davis didn't want to be ordered back. But very
23 frankly, I think that this matter is too important for
24 him not to be here, to hear what you have to say, what
25 the People have to say, and what my ruling might be.

1 MR. HUBBELL: That's understood, your Honor.

2 THE COURT: Okay.

3 MR. HUBBELL: And I think -- I think I can
4 speak for Mr. Davis. He understands that as well.

5 THE COURT: All right.

6 MR. HUBBELL: Okay. And certainly, Cortez is
7 one of many juvenile offenders who, in Michigan, more
8 than 350 of them, who continue to suffer permanent
9 incarceration under Michigan's now unconstitutional
10 mandatory sentencing scheme. Especially in light of an
11 inflexible parole statute, coupled with the "life means
12 life" policy used by the parole board.

13 As this Court is aware, our U.S. Supreme
14 Court has likened life without parole sentences, such
15 as the one being served by Mr. Davis, to death
16 sentences.

17 Also, as this Court properly noted, when
18 it was directed by the Court of Appeals to enter a
19 judgment of sentence mandatorily committing Mr. Davis
20 to life, it believed such a sentence to be cruel and
21 unusual.

22 This Court said so because it did not
23 believe Mr. Davis to be the shooter in this case. And
24 in spite of the course of his life, and all that that
25 has meant for him, this Court believed his culpability

1 to be diminished, and Cortez to be redeemable. Of
2 course, all of this was in the trial record prior to
3 sentencing while Mr. Davis' case was on direct review.

4 We're advancing seven arguments today,
5 your Honor, in favor of moving forward with
6 resentencing Mr. Davis. If the Court is not inclined
7 to grant that relief, we would just politely ask that
8 the Court issue a written decision, because this type
9 of case is almost certain to be taken up either
10 alongside Mr. Carp's case, or by itself.

11 My arguments are these. Number one:
12 Cortez's case is distinguishable from the underlying
13 facts of Mr. Carp's, and Mr. Davis here should not be
14 held to the same ruling as Mr. Carp.

15 Number two: Raymond Carp's
16 characteristics as an offender are different from
17 Cortez's, which highlights the need for individualized
18 sentencing for juvenile offenders.

19 Number three: The Carp case only
20 provides non-binding dicta on what is an appropriate
21 sentence.

22 Four: On the issue of retroactivity,
23 MCL 791.234(6)(a), the statute barring parole
24 consideration for youth given mandatory life is
25 unconstitutional. The Carp court actually said as

1 much, and Cortez is being held in continuing violation
2 of that statute -- of the unconstitutional statute.

3 Number five: Consistent with both
4 Miller and Carp, the parole board must give Cortez, and
5 this Court may order, a realistic and meaningful
6 opportunity for release. That is, of course, the final
7 sentence, the last -- in the last paragraph and the
8 last sentence of the Carp decision, the Court of
9 Appeals says as much.

10 Six: The Miller court, in spite of what
11 the Michigan Court of Appeals has said, provides a
12 substantive rule. And other jurisdictions in the last
13 ten days, your Honor, including the Illinois Court of
14 Appeals now, has said that Miller is the next watershed
15 rule of criminal procedure because juvenile offenders
16 are a cognizable class, and they all are impaired
17 insofar as they are more incorrigible, less able to
18 appreciate their actions, and all of the things listed
19 in Miller.

20 And finally, number seven: The law of
21 the case doctrine has an exception when an appellate
22 court binds equal and inferior courts to rigid and
23 unjust decisions.

24 And we certainly feel that is the case
25 if the Court would feel compelled to follow Carp in all

1 aspects.

2 So number one, Mr. Davis' case is
3 distinguishable from the underlying facts in Carp.
4 Carp only addressed a premeditated murder case, your
5 Honor. And Miller/Jackson itself from the United
6 States Supreme Court provided additional guidance for
7 offenses like those committed by Cortez; and namely,
8 when the juvenile was not a principal in a crime,
9 especially in a felony murder case, or when the
10 juvenile was not the shooter, as is the common
11 language.

12 The Miller/Jackson concurrence makes
13 very clear that continuing to impose a life without
14 parole sentence on a child that did not kill or intend
15 to, constitutes cruel and unusual punishment, as this
16 Court said in 1994.

17 But our Court of Appeals has determined,
18 however, that Miller is not applicable retroactively to
19 cases that have become final on direct review.

20 However, as I mentioned only ten days
21 ago, the Illinois Court of Appeals rejected the same
22 arguments made by the State in the Carp case, holding
23 that not only did Miller/Jackson announce a new rule of
24 law, but that it constitutes the -- new substantive
25 rule of law, but that it constitutes the first

1 watershed case since the Penry case. The citation
2 there is People against Williams, Illinois Court of
3 Appeals 94 CR 4431-04, Illinois App.; and that was
4 decided on November 27th of 2012.

5 Similar courts in other states are
6 filtering through this issue right now, as well, your
7 Honor. And until it is resolved ultimately by a higher
8 court, we believe these things are up for grabs.

9 We also believe that on information, I
10 suppose, that the Illinois Court of Appeals actually
11 considered our Michigan Court of Appeals decision in
12 Carp as part of its ruling in the Williams case, and as
13 well as similar cases from Florida and Iowa, and have
14 rejected outright the arguments advanced by the State
15 in those cases.

16 Second, Raymond Carp's characteristics
17 are much different than Cortez's, which highlights the
18 need for individualized sentencing for juveniles.
19 Raymond Carp is either 21 or 22 years old right now.
20 His case is a 2006 matter, I believe, and Cortez, you
21 know, has been in for a while. His case is a 1993 and
22 '94. He has had an opportunity for reform activities,
23 has taken all of them, and has even taken advantage of
24 reform activity programming that was not available to
25 juvenile lifers, somehow, but he has pushed forward in

1 trying to make himself better.

2 Number of tickets he has incurred in
3 prison were almost all front-loaded in the first four
4 to six years of his incarceration when he was still
5 under the age of 22 or 23. And I think that that in
6 and of itself highlights the need that each of these
7 individuals like Cortez or Mr. Carp, or, you know,
8 Miller or Contrell Jackson, or whoever else have an
9 individualized sentencing where the Court is permitted
10 to look into what went on in the lives of these
11 juveniles such that they committed these crimes. And
12 what was especially important, their level of
13 culpability.

14 That has been taken from this Court,
15 forcibly, by our legislature, and that is in the form
16 of this parole statute. Our Supreme Court or United
17 States Supreme Court has said that practice is not
18 permissible under the Eighth Amendment.

19 Third, the Carp case, again, another
20 reason to deviate from its particular holding and
21 distinguish it, provides only non-binding dicta on what
22 is an appropriate sentence. They spoke on what to do
23 with these juveniles if in fact, you know, the Court
24 was going to have one of these Miller/Jackson hearings.

25 But once the Carp court decided that

1 Miller did not require resentencing in the first degree
2 premeditated murder case of Mr. Carp, everything else
3 it said on what could be a sentence was unnecessary for
4 the decision in that Carp case, and therefore, is non-
5 binding dicta, which means that this Court may still
6 sentence Cortez to a term of years if it believes that
7 to be the appropriate proportional sentence.

8 Number four: On retroactivity, the Crap
9 wrote in its opinion, and it was conceded by the State
10 in that case, I believe, quote, "We find that MCL
11 791.234(6)(a) is unconstitutional as currently written
12 and applied to juvenile homicide offenders." That's
13 Carp on page 40.

14 But this isn't necessarily an issue of
15 retroactive application, but a question of whether the
16 State can continue to enforce an unconstitutional
17 statute against Cortez, going forward to deprive him of
18 an opportunity for release, especially in light of the
19 very last sentence of the Carp decision that says that
20 "these juvenile offenders are entitled to a meaningful
21 opportunity for release, or at least some type of
22 review that is not in alignment with the 'life means
23 life' policy of the parole board."

24 And that brings me to number five. This
25 Court may and should order the parole board to consider

1 Cortez for release. The Court should direct the State
2 to ensure that that consideration provides a meaningful
3 and realistic opportunity for release upon
4 demonstration of Mr. Davis' maturity and
5 rehabilitation. That position is consistent, we
6 believe, with both Carp and Miller.

7 Number six: Miller provides a
8 substantive rule, and other jurisdictions have said it
9 is the next watershed rule of criminal procedure.

10 We disagree with the Court of Appeals in
11 Carp insofar as that Miller, Jackson, Cortez and
12 similarly situated juveniles will not be the next
13 watershed case. We believe that because only twelve
14 days after the Carp case was issued, the Illinois Court
15 of Appeals said otherwise. And given that there is an
16 extremely wide split of opinion in the state Courts of
17 Appeals on this issue, I don't think that it is
18 credible for anyone to say with any certainty that
19 these things cannot be retroactively applied.

20 Moreover, we still believe this Court
21 may consider that the felony murder doctrine is a legal
22 fiction that does not constitute a homicide offense
23 under Graham, and therefore, hold Cortez's sentence
24 unconstitutionally cruel and unusual. If the Court
25 chooses this option, it should impose a proportional

1 term of years sentence.

2 As authority for this particular line,
3 the California Supreme Court has recently decided that
4 under Graham for the nonhomicide cases, an excessively
5 long term of years still violates Graham.

6 THE COURT: A nonhomicide case.

7 MR. HUBBELL: I'm sorry?

8 THE COURT: You said a nonhomicide case.

9 MR. HUBBELL: That's right. And what I'm
10 advancing, your Honor, we are still marching forward
11 with the argument that felony murder is a legal
12 fiction. It is not a homicide for the purpose of
13 sentencing. It may be a homicide by definition, but by
14 definition only.

15 THE COURT: I don't quite understand the
16 argument. Because I've got to go back, and I hope you
17 don't mind if I --

18 MR. HUBBELL: Of course.

19 THE COURT: -- because I really do want to
20 understand because I'm going to eventually have to
21 draft something, a written thing.

22 You say felony murder is a legal
23 fiction. Now, and I must say, I have accepted the
24 felony murder rule in the state of Michigan forever.

25 MR. HUBBELL: Oh, it's real, yeah.

1 THE COURT: No. I think that if -- it's not
2 a legal fiction. If you embark on a high-risk venture
3 where you know guns are going to be used, and most of
4 the time you even know the people who got the guns --
5 and you know that the people who have the guns are
6 dangerous and are likely to use them. If the person
7 that you have agreed to rob, or persons, don't
8 voluntarily say, "Oh, here, take my stuff," and so you
9 are just as guilty as the person who pulls the trigger
10 because you put this whole thing in operation, and
11 you're part of it.

12 So I don't quite understand felony
13 murder being termed a, quote, "legal fiction." I think
14 it's real. And I think people who live --

15 MR. HUBBELL: It's a real doctrine.

16 THE COURT: Let me finish.

17 MR. HUBBELL: Right.

18 THE COURT: People who live, particularly in
19 the city of Detroit, face that legal fiction every day
20 with kids out here with guns trying to take your car,
21 and the other guy on the other side who's going to jump
22 into the car with him knows that the guy who has the
23 gun has a short fuse, or is mentally to the point that
24 he's going to shoot you. So how did it get to be a
25 legal fiction?

1 MR. HUBBELL: I'm not suggesting it's not
2 real, your Honor. What I'm suggesting is that by
3 operation of law --

4 THE COURT: What does "fiction" mean?

5 MR. HUBBELL: What I'm saying is that what
6 felony murder does is that by operation of law, it
7 makes a nonshooter, like my client, principally liable
8 for the crime. Not because of the facts --

9 THE COURT: Now, why is that a fiction?

10 MR. HUBBELL: Well, because it's not factual.
11 My client pulled no triggers.

12 THE COURT: But, see, the whole point is you
13 don't need to.

14 MR. HUBBELL: And, exactly.

15 THE COURT: You see, if he hadn't been there,
16 if he hadn't added the muscle, the guy who pulls the
17 trigger might not have done it; might not have embarked
18 on this high-risk venture. And so I'm saying, in for a
19 penny, in for a pound.

20 Well, you go ahead. I don't get it.

21 MR. HUBBELL: Lots of people agree with you,
22 Judge.

23 THE COURT: Yeah, I think so.

24 MR. HUBBELL: Right.

25 THE COURT: I think most of the legal

1 community in the state of Michigan agrees with that.

2 MR. HUBBELL: I would say we're still
3 advancing the argument, though, that as a juvenile, if
4 you're involved in that high-risk venture, you are
5 still operating in that venture with diminished
6 culpability.

7 When you're 16 years old, and your
8 friend has come to you, or the guy you knew was
9 dangerous, and you knew who he got the guns and
10 everything else, if he comes into the venture as a 16-
11 year-old, God knows what pressure, what lies or threats
12 or stupidity led him into that crime as a venture.

13 THE COURT: I just suggest stop calling
14 felony murder a legal fiction.

15 MR. HUBBELL: I'll move on.

16 THE COURT: There's another way to get around
17 it and it has nothing to do with felony murder being a
18 legal fiction. It has to do with the individual
19 sentences that a juvenile ought to face, rather than a
20 mandatory -- and I think Miller has taken care of that.
21 It said you can't do a mandatory natural life in prison
22 on a juvenile. So we don't have to start arguing about
23 whether felony murder is a legal fiction.

24 And I'm telling you, the way that things
25 are happening out there in the community today, it's

1 real. It's not a fiction. But then the question
2 becomes whether or not you should hold everybody to the
3 same responsibility when they are a juvenile. So, I
4 suggest you get off of that because it's not working.

5 MR. HUBBELL: I'll move on, your Honor.
6 Clearly, I mean, a lot of this is preservation of
7 issues as well as the Court realizes.

8 So, finally, though, we have this issue
9 of how and if to follow the Carp case. And we have in
10 Michigan this doctrine called the law of the case, and
11 the Court's aware of it and knows what it is. But it's
12 not without its exceptions, one of which is found in
13 the case called People versus Herrera. The cite for
14 that is 204 Mich App 333. It's a 1994 Court of Appeals
15 case that says that the trial court still has authority
16 to prevent injustice.

17 And I think that's what's gone on here,
18 and the injustice, and I think that the Court agrees
19 with this position, is that it was not permitted to
20 exercise its discretion in evaluating the facts of this
21 case and the circumstances of Cortez when it imposed
22 sentence. I mean, that's pretty clear because the
23 Court of Appeals had to send it back. I mean, this
24 Court was convinced that a mandatory life sentence was
25 cruel and unusual, and said as much both from the bench

1 and in written orders.

2 So, I do think there is injustice in
3 this case, and that this Court has a singularly unique
4 opportunity now to start fixing it; and that is what we
5 are asking the Court to do.

6 I think the Court has options. You can
7 resentence Mr. Davis to a term of years. I think all
8 of this has to have an evidentiary hearing first to
9 comply with the Miller/Jackson case. The Court could
10 order the parole board to immediately review Cortez for
11 parole, directing a meaningful review. It could
12 declare 791.234(6)(a) unconstitutional and void as
13 applied to Cortez going forward so that he is not
14 continuing to serve a sentence under an
15 unconstitutional statute. So I think the Court has
16 some options here.

17 If the Court will give me leave, I will
18 reserve a rebuttal just because, you know, this is --

19 THE COURT: Well, you have the burden of
20 proof. You have the burden of proving that your client
21 is entitled to the relief requested; and therefore, I
22 will let you respond under that circumstance.

23 MR. HUBBELL: Thank you, your Honor.

24 THE COURT: Okay.

25 MR. BAUGHMAN: Good afternoon, your Honor,

1 Tim Baughman.

2 In the Raymond Carp opinion which the
3 Court -- I believe I supplied a copy, and you may have
4 other copies -- the Court said: "While Miller is
5 applicable to those cases currently pending on direct
6 review, we find in accordance with Teague and Michigan
7 law, that is not to be applied retroactively to cases
8 on collateral review."

9 Now, that, to me, is fairly clear. It
10 is not to be applied retroactively to cases on
11 collateral review, and that's what this is. This is a
12 case on collateral review, multiple collateral reviews.

13 The counselor is correct, other courts
14 from other states have gone both ways, so there's a
15 conflict in the country. These arguments are being
16 made to the wrong court. It should be made, not even
17 to the Court of Appeals, although you have to go there
18 first because Carp is binding on other panels. It's
19 the law in this state until the Michigan Supreme Court
20 decides otherwise.

21 So I think the appropriate thing to do
22 is to recognize that Carp controls in this case, and
23 let Mr. Cortez's case start up the pipeline so it's in
24 the pipeline as the Carp case goes forward. I think
25 it's fairly clear -- it's hard to predict these things,

1 but it's fairly clear the United States Supreme Court
2 is going to ultimately resolve this issue, and I think
3 probably sooner rather than later. Maybe as early as
4 next year.

5 THE COURT: Mr. Davis has waited how many
6 years? After I ruled that the thing was cruel and
7 unusual, how many years has Mr. Davis been in prison
8 waiting for the Supreme Court of the United States to
9 come to a rational decision in this case? How many
10 years has it been?

11 MR. HUBBELL: Eighteen, your Honor.

12 MR. BAUGHMAN: Eighteen.

13 THE COURT: Okay. Let's talk about speedy
14 now. Go ahead, Counsel, Mr. Baughman.

15 MR. BAUGHMAN: I believe that they will
16 resolve it fairly speedily, but all of that is by the
17 by. We have a Court of Appeals opinion. This is a
18 circuit court. The Court of Appeals opinion is
19 binding. And that, to me, is the end of the inquiry
20 here, and we move on to the next court, and ultimately
21 to the Michigan Supreme Court and the United States
22 Supreme Court. Because again, not only does Carp bind
23 circuit courts, it binds the Court of Appeals until a
24 higher court overturns it. And that is the sum and
25 substance of our argument. That is the law right now.

1 Thank you.

2 THE COURT: In regard to -- have you
3 finished?

4 MR. BAUGHMAN: Yes.

5 THE COURT: Okay. And you may be seated,
6 thank you.

7 MR. BAUGHMAN: Thank you.

8 THE COURT: Now, I'm going to tell you
9 something because your argument is about Carp, and Carp
10 says no retroactivity.

11 You know, I made the decision back in
12 1990 -- was it 3 or 4?

13 MR. HUBBELL: '94.

14 THE COURT: '94. I had a hearing. This
15 young man was a juvenile. We had a hearing to
16 determine whether to sentence him as a juvenile or an
17 adult. And very frankly, he had a bad juvenile record.
18 And I knew that the amount of time that I would send
19 him to the juvenile section was not going to be enough
20 to rehabilitate him.

21 But even at that time I believed, and I
22 still believe today, that he was salvageable. He could
23 have been rehabilitated, but we needed time to do it.
24 And therefore, not just him, but I saw that there might
25 be other persons like himself. This was cruel and

1 unusual punishment to say that I had to give him
2 natural life in prison.

3 Now we're going to talk about
4 retroactivity.

5 Mr. Baughman, were you here then when I
6 made that decision?

7 MR. BAUGHMAN: I was with our office, yes.

8 THE COURT: Okay. Well, I'm going to tell
9 you, the Prosecutor's Office was wrong then; they're
10 wrong now. I had already ruled.

11 Now, I know, I'm just a trial judge, and
12 people have always asked me, "Why didn't you go to the
13 Court of Appeals? Why didn't you go to the Supreme
14 Court?" And I was then a trial judge in the Recorder's
15 Court.

16 I did it for a reason. I stayed here,
17 and I'm still here for a reason. Soon I'm going to
18 walk away, though, because I think it's time for me to
19 have a little fun in sun. But I stayed here because I
20 wanted to see justice done to my people.

21 I followed my father around Recorder's
22 Court when I was a little kid, and I've seen the things
23 that happened. I had a great deal of respect for him
24 and for the other people who happened to be African-
25 American lawyers, and other lawyers who really fought

1 for people's rights.

2 And so, to me, doing the right thing was
3 more important than anything else. And doing the right
4 thing back then was not to sentence Mr. Cortez Davis to
5 natural life in prison.

6 And I wrote, and it has taken all these
7 years for some superior court -- the Court of Appeals
8 was wrong. The Supreme Court of the State of Michigan
9 was wrong. But that was always in the hopper on this
10 case. So it seems to me that retroactivity of the Carp
11 case does not apply.

12 It would be unfair to keep Mr. Cortez
13 Davis tethered by wrong decisions made by other courts
14 over the years. And so, Carp, in my opinion, does not
15 apply to this case.

16 And what I am going to do is, I am going
17 to order that we have a sentencing hearing. Some of
18 the things that I did not hear you talk about was the
19 sentencing range. As a matter of fact, as soon as
20 Miller came down, one of the Judges who has some
21 authority around here said, "Let's wait. Let's wait
22 and let other people decide."

23 Why, when somebody is sitting in prison.
24 I don't know what his record was in prison. I don't
25 know if he's been rehabilitated or not. But if it took

1 18 years, why should I take another 18? So, I am going
2 to order us to have a hearing on the sentencing.

3 You didn't speak about whether -- it is
4 my opinion that, very frankly, if felony murder on
5 juveniles is cruel and unusual, then the conviction
6 should be any term of years up to life in prison like a
7 second degree. I don't know.

8 And then the question is what sentencing
9 information report do we use? What do we do? So,
10 anyway, I'm going to order that.

11 And the other thing is is I think it
12 would be an injustice in this particular case to hold
13 that Carp binds this Court to keeping Mr. Cortez Davis
14 in prison until we've had a hearing to determine what
15 his sentence really ought to be. We don't know how
16 he's matured over the years. We have no idea. And we
17 don't know what his record has really been.

18 I heard counsel talk about the other
19 things. So, we're going to order them to prepare for a
20 sentencing hearing in this case. Okay?

21 Now, I know that Mr. Davis would like to
22 go back up to prison, and we're going to send him back
23 up because the holidays are coming, and it's going to
24 take everybody some time to get things -- he doesn't
25 want to be over in the Wayne County Jail. It's not the

1 nicest place to be.

2 When do you think we'll have all of the
3 paperwork ready for this, and are you going to call
4 people to testify or what?

5 MR. BAUGHMAN: Personally, your Honor, if
6 this hearing does happen, yes, of course, I will be
7 calling witnesses. I will be presenting documentary
8 evidence, specifically of all those things that Mr.
9 Davis has done.

10 THE COURT: Okay. How about somewhere around
11 January 25th, which is a Friday?

12 MR. BAUGHMAN: Okay.

13 THE COURT: Okay, for the hearing.

14 Marilyn, see if you can get him back up
15 to the prison system right away.

16 THE CLERK: All right.

17 THE COURT: Good luck to you, sir.

18 (At about 12:35 p.m., proceedings concluded.)
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