

AFFIDAVIT OF FACT IN THE CASE OF CHARLES LEWIS, BY MARY DIANE BUKOWSKI

I, Mary Diane Bukowski, do hereby attest and say:

This is my statement regarding Charles Lewis, currently MDOC #150709, pursuant to his ongoing juvenile lifer re-sentencing proceedings in front of Third Judicial Circuit Court Judge Qiana Lillard, pending a mitigation hearing set for October 11, 2019. Mr. Lewis has been incarcerated for over 43 years since the age of 17 for the murder of off-duty Detroit police officer Gerald Sypitkowski, a crime which he, his family and numerous eyewitnesses say he did not commit. He is now 60 years old.

I STRONGLY ADVOCATE FOR THE IMMEDIATE RELEASE OF CHARLES D. LEWIS INTO A WORLD WHERE HE CAN CONTRIBUTE HIS TALENTS, SKILLS, AND COMPASSION, A WORLD THAT WAS STOLEN FROM HIM BY AN EGREGIOUS MISCARRIAGE OF JUSTICE.,

I have known Mr. Lewis' mother Rosie Lewis and sister Wendy Lewis since the early 2000's. They are people of good standing in the community. We first met when I was a well-known professional chief investigative reporter for *The Michigan Citizen* newspaper, where I worked from 2000 to 2010;

In 2000, I broke the story of Detroit police officer Eugene Brown, who killed three men, Roosevelt Carrington, Jr., Lamar Grable, and Darren Miller in 1995, 1996 and 1999, and shot nine others. Arnetta Grable and Herman Vallery, the parents of Lamar Grable, co-founded the Detroit Coalition Against Police Brutality, which was joined by many other families of police victims including Rosie and Wendy Lewis. After the Eugene Brown story broke, the mainstream media exposed dozens of other killings, and the fact that Detroit had the highest number per capita of civilian killings by police in 1999. The U.S. Dept. of Justice put the DPD under federal oversight for ten years, at the urging first of Arnetta Grable. The Grable and Miller families each won multi-million dollar jury verdicts against Brown in later years.

During the early 2000's, I covered the Second Chance Coalition, Michigan families who were fighting to abolish juvenile life without parole in Michigan. I again interviewed Rosie and Wendy Lewis among many others, as they attended legislative hearings and rallies for that cause,

Since Aug. of 2010, I have been the editor of the on-line Voice of Detroit newspaper, incorporated as Voice of Detroit, LLC in 2011. VOD has given extensive coverage to the JLWOP issue. The U.S. Supreme Court in 2012 and again in 2016 finally outlawed mandatory juvenile life without parole on a retroactive basis, in *Miller v. Alabama* and *Montgomery v. Louisiana*. The State of Michigan began holding re-sentencing hearings for over 363 juvenile lifers including Charles Lewis. His mother Rosie asked me to cover his hearings, which I began doing in March, 2016.

I have now covered over **45 hearings** in Mr. Lewis' re-sentencing process. Many hearings were devoted to the suspicious loss of five boxes of Mr. Lewis' official court file, and the wipe-out of his Register of Actions from 1976 through 1999. Unlike any other case I have dealt with, there is not even an attached Detroit Recorder's Court PDF detailing events from the 1970's through 1999. Mr. Lewis has cited numerous precedents from the U.S. and Michigan Supreme Courts and others indicating that the loss of his file, should mean the **DISMISSAL OF HIS CASE**, and barring its reconstitution.

But Judge Lillard, on the motion of AP Thomas Dawson, authorized a "FACSIMILE" file, as she calls it. I recently twice reviewed the files in Judge Lillard's office on the Lewis case, **which are the only lower court files (none are kept in the Clerk's Office)**. I cannot identify which is the FACSIMILE File. There is a smaller file which one court employee told me Judge Lillard uses for each hearing, but that is incomplete. I asked to review six recently filed briefs indicated on his Register of Actions, but was told that Judge Lillard refused.. They are not in the files I have reviewed. Mr. Lewis has not seen them either. This is a violation of the public's right to access court files which have not been sealed. Judge Lillard also maintains for Mr. Lewis a larger, completely unorganized box of other files, including thick portions of OTHER PRISONERS' records.

I have used my recognized skills as a professional investigative reporter to research the background of Mr. Lewis' criminal conviction. Aside from Mr. Lewis himself, I probably have the most knowledge of the circumstances behind his conviction and continuing legal battles for justice since 1996.

I am not a reporter who naively accepts statements of innocence from incarcerated individuals, because I continue to cover their cases regardless due to other injustices involved. But I say truthfully that, after having done an extensive amount of research on Mr. Lewis' case, I believe the facts attest to his innocence. Well-respected and experienced Third Judicial Circuit Court Judge Deborah Thomas agreed with this conclusion in her revised opinion of Aug. 6, 2006 (attached). She stated she had thoroughly reviewed the transcript of Mr. Lewis' first trial, which is now missing almost entirely, and found that the version the juveniles who testified against Mr. Lewis gave was a "scientific impossibility." She noted that the majority of testimony came from Dennis Van Fleteren, the partner of Officer Sypitkowski, and other eyewitnesses who identified a different perpetrator in a white Lincoln Mark IV.

She also said that she found NOTHING in the transcript indicating that either the defense or the prosecution asked for a mistrial, or that Judge Maher had gone on record IN THE TRANSCRIPT, as opposed to the clerk's case notes cited by the prosecution, indicating his reason for dismissing the jury. **She said therefore that Charles should have been considered acquitted and subject to double jeopardy, that he should have been FREED at the age of 17.** Mr. Lewis' entire life has been stolen from him, including numerous opportunities he had to pursue his extraordinary musical skills as a lucrative career in the world. His family was devastated by his conviction. His mother and stepfather broke up, they lost their home, and much emotional damage was done to Charles' younger siblings, who had counted on their oldest brother to look after them when their working parents were not available.

I realize the issue of innocence is not usually accepted as a factor in juvenile lifer re-sentencings despite the fact that MCL 769.25 says issues raised at the trial may be brought into play, and despite the fact that *Miller* also allows such issues in. **But I certainly believe the strong evidence of Mr. Lewis' innocence should militate against any new sentence of Life without Parole.**

Additionally, the **UNCONSCIONABLE, admitted loss of his case file and the wipe-out of his Register of Actions** makes it impossible to validate other allegations made against Mr. Lewis in the prosecutor's brief (e.g. forgery of the Gershwin Drain order which has been claimed), and **should militate strongly against such a new sentence.** The Office of the General Counsel earlier advised Judge Lillard that due process required her to hold an evidentiary hearing on that matter but she ignored that recommendation. Instead, as reflected in the transcript, she held an illegal *ex parte* phone conversation with Judge Drain. Drain's daughter Shelley Drain worked in the Prosecutor's Office during the eight years that Qiana Lillard was there, also raising the specter of a conflict of interest.

I have become well-acquainted with Mr. Lewis during our many contacts. I learned he told himself at the age of 17 that if the law wrongly got him into a sentence declaring that he should die in prison, then he would have to study that same law to regain his freedom. That is what he has spent the last 43 years doing, not only to help himself but others in similar situations. He has developed a strength of character and compassion for others that very few others would be able to attain under his circumstances. In his J-Pays, he frequently speaks lovingly of the many other prisoners he has known across the state, most sent to die in prison, and is thankful that he at least now has a chance at a life in the world, after 43 years.

Regarding his disciplinary record as raised by the prosecution, I have attached a 2003 parole board review that lauds him, as well as his grievance related to the fact that many of the officers who heard his grievances on the disciplines were not licensed attorneys, as state law had previously decided.

Mr. Lewis has endured numerous setbacks, including the removal of his attorney Rosemary Robinson from representing him in a Pearson evidentiary hearing she won in the Court of Appeals. Judge Edward Thomas replaced her with an attorney who had no experience in the case. For 10 years, Mr. Lewis was not provided with transcripts of the Pearson hearing and had to file an appeal on his own, after his

replacement counsel abandoned. State LAW says he should have had his conviction dismissed if a Pearson hearing was not held within 30 days of the request. Judge Deborah Thomas also cites this as evidence of “ineffective assistance of counsel.”

Mr. Lewis later discovered the existence of an April 3, 2000 order signed by Judge Gershwin Drain dismissing his conviction and sentence, 10 YEARS AFTER THE FACT, SINCE IT HAD BEEN MISFILED. The prosecution says that he forged the order, with no proof whatsoever. Mr. Lewis earlier detailed the means by which he obtained that order in the attached motion. The prosecution and Judge Drain ignored his lengthy explanation, instead of holding an evidentiary hearing as the Office of the General Counsel recommended, and interviewing Lewis’ witnesses who are still alive.

On Sept. 29, 2018, AP Thomas Dawson three times told Judge Lillard that she had the option of re-sentencing Mr. Lewis to a term of years due to the loss of his court file. Mr. Lewis was then transferred by order of the Michigan Department of Corrections to its Re-Entry Unit at Macomb Correctional Facility. This led Mr. Lewis and his family to believe, joyously, that he was finally about to see freedom. He went through numerous re-entry classes and preparations involving contacts with social services, Medicaid and other entities to ensure a smooth transition to his new life.

But on Jan. 10, 2019, the hopes of Mr. Lewis and his family were CRUELLY DASHED when Judge Lillard certified Lewis “facsimile file,” and the prosecution proceeded on with its recommendation for a re-sentence of Life without Parole. Mr. Lewis mother Rose’s health was SERIOUSLY affected. She had already been in declining health after years of fighting to free her first-born child. But she now needs 24-hour care being provided by family. She has always been a proud, independent, fiercely determined woman who drove herself everywhere, and helped her son Marc, who is blind, do his grocery shopping, babysat for her grandkids, etc. She is the beloved matriarch of a family flourishing with grand and great-grandchildren, but she cannot enjoy them due to her first-born child’s continuing unjust incarceration..

*“Then the King will say to those on his right, ‘Come, you who are blessed by my Father, inherit the kingdom prepared for you from the foundation of the world. For I was hungry and you gave me food, I was thirsty and you gave me drink, I was a stranger and you welcomed me, I was naked and you clothed me, I was sick and you visited me, **I was in prison and you came to me.**’ Then the righteous will answer him, saying, ‘Lord, when did we see you hungry and feed you, or thirsty and give you drink? And when did we see you a stranger and welcome you, or naked and clothe you? And when did we see you sick or in prison and visit you?’ And the King will answer them, **‘Truly, I say to you, as you did it to one of the least of these the least of my brothers, you did it to me.’**” Matthew 25:31–46*

All stories from The Voice Of Detroit On Mr. Lewis’ Case are included in the following link: <http://voiceofdetroit.net/2019/05/22/charles-k-k-lewis-judge-orders-final-jlwop-hearings-despite-lost-court-file-innocence-claim//> Also see related story at <http://voiceofdetroit.net/2019/07/18/msc-grants-harold-walker-new-trial-cites-judge-lillards-jury-coercion-clown-name-calling/>.

Signed,



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