

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CRAIG SCOTT BAKER,

Defendant-Appellant.

UNPUBLISHED

November 23, 2004

No. 251238

Gratiot Circuit Court

LC No. 01-004181-FC

Before: Cooper, P.J., and Fitzgerald and Hoekstra, JJ.

COOPER, P.J. (*dissenting*).

I must respectfully dissent from the majority opinion of my colleagues. I would find that we must reverse and remand for resentencing.

In order to enhance a sentence, there must be substantial and compelling reasons for departure that are objective and verifiable.¹ If the trial court had relied on objective and verifiable factors in determining defendant's sentence, I would agree with my colleagues and vote to affirm. Instead, the trial court relied on the inadmissible, self-serving statements of the co-defendants in enhancing defendant's sentence. The majority correctly asserts that these statements would have been objective and verifiable under prior Michigan case law. However, the statements are testimonial hearsay and are inadmissible pursuant to the recent United States Supreme Court decision in *Crawford v Washington*,² which we are bound to follow.³ Accordingly, the co-defendants' statements are not verifiable evidence and, therefore, are improper grounds to form a substantial and compelling reason for departure from the minimum sentencing guidelines range. As the sentencing court improperly supported its reasons for departure, I would reverse and remand for resentencing.

/s/ Jessica R. Cooper

¹ *People v Babcock*, 469 Mich 247, 255-258; 666 NW2d 231 (2003).

² *Crawford v Washington*, ___ US ___, 124 S Ct 1354; 158 L Ed 2d 177 (2004).

³ *Abela v General Motors Corp*, 469 Mich 603, 606-607; 677 NW2d 325 (2004) (decisions of the United States Supreme Court are binding on this state's courts).