

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DAVID CARL BARRETT,

Defendant-Appellee.

UNPUBLISHED

December 19, 2006

No. 261382

Livingston Circuit Court

LC No. 04-014530-AR

Before: Servitto, P.J., and Fitzgerald and Talbot, JJ.

MEMORANDUM.

The prosecutor appeals by leave granted the circuit court order affirming a district court ruling that certain evidence constituted inadmissible hearsay during a preliminary examination. Defendant was charged with felonious assault, MCL 750.82, and domestic assault, second offense, MCL 750.81(3), arising from an incident in which he allegedly physically assaulted his live-in girlfriend and threatened her with an axe.

During the preliminary examination, the prosecutor attempted to introduce three separate statements made by the alleged victim at the time of the incident. On appeal, the prosecutor does not assert abuse of discretion by the lower courts in ruling that the evidence was inadmissible as hearsay in accordance with MRE 803(2) and controlling precedent. Instead, the prosecutor asks this Court to urge the Michigan Supreme Court to overrule *People v Burton*, 433 Mich 268; 445 NW2d 133 (1989), and its progeny, asserting that *Burton* was wrongly decided. Specifically, the prosecutor argues that the *Burton* Court improperly held that an excited utterance was not admissible absent independent evidence to establish that a startling event occurred. *Id.* at 294. The prosecutor argues that the ruling in *Burton* is erroneous because the plain language of MRE 803(2) does not contain an independent verification requirement.

As conceded by the prosecutor, this Court does not have the authority to overrule binding precedent of our Supreme Court. *Boyd v W G Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993). “[I]t is the Supreme Court’s obligation to overrule or modify case law if it becomes obsolete, and until [that] Court takes such action, the Court of Appeals and all lower courts are

bound by that authority.” *Id.* Accordingly, this Court is precluded from considering the prosecutor’s request on appeal.

Affirmed.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot