

MICHIGAN SUPREME COURT



Office of Public Information

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HISTORIC LAPEER COURTHOUSE TO BE SETTING FOR ORAL ARGUMENT BEFORE MICHIGAN SUPREME COURT

Whether “excited utterance” hearsay exception applies at issue in case of alleged assault

LANSING, MI, Sept. 10, 2007 – The 161-year-old Lapeer County courthouse, one of the 10 oldest in the United States, will be the setting for an oral argument before the Michigan Supreme Court on Sept. 14.

While the Court normally hears oral argument at the Michigan Hall of Justice in Lansing, the Court agreed to hold an oral argument in Lapeer to mark the completion of the historic courthouse’s renovation effort, explained Chief Justice Clifford W. Taylor.

“This is a tremendous occasion in the life of the Lapeer community, and my colleagues and I are honored to be part of it,” said Taylor. “The Lapeer courthouse has been beautifully restored. Everyone involved in that effort is to be congratulated.”

The courthouse, said to be the oldest in continuous use in Michigan, took nearly two decades to renovate and was supported in part by an annual fundraising gala and auction. Other fundraising efforts included “Pennies for the Past,” in which local first, second, and third graders donated pennies for the restoration.

The Supreme Court’s involvement also includes a pilot educational program, “Court Community Connections,” aimed at high school students. Seven students, who applied for the program through an essay contest, will hear oral argument after discussing the case with local attorneys. After the argument, the students will meet with attorneys in the case for a debriefing.

The case is *People v Barrett*, in which the prosecutor seeks leave to appeal to the Supreme Court. In *Barrett*, a woman told a neighbor, a 911 dispatcher, and a police officer that her boyfriend had pursued her with an ax and had tried to kill her. But she later refused to testify against him after he was charged with domestic assault (second offense) and felonious assault. The prosecutor sought to introduce into evidence her statements to others about the alleged assault, arguing that those statements should be admissible under the “excited utterance” hearsay exception. But the district court dismissed the case, finding that there was no independent proof of the event that gave rise to the excited utterance. On appeal, the circuit court and Michigan Court of Appeals agreed and upheld the dismissal. Now the Supreme Court will hear oral argument before deciding whether to grant the prosecutor’s request to appeal. (See case summary below.)

Court will be held on **Sept. 14** in the Lapeer County Courthouse, located at 255 Clay Street, Lapeer. The oral argument will begin at **4 p.m.** While seating in the courtroom is limited, a tent

with a video monitor will be provided for overflow seating.

(Please note: The summary that follows is a brief account of the case and may not reflect the way in which some or all of the Court's seven Justices view the case. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of the case. Briefs are available on the Supreme Court's web site at http://courts.michigan.gov/supremecourt/Clerk/msc_orals.htm. For further details about the case, please contact the attorneys.)

PEOPLE v BARRETT (case no. 133128)

Prosecuting attorney: William J. Vaillencourt, Jr./ (517) 546-1850

Attorney for defendant David Carl Barrett: Patrick K. Ehlmann/ (517) 324-9577

Attorney for amicus curiae Prosecuting Attorneys Association of Michigan: Timothy A. Baughman/ (313) 224-5792

Trial court: 53rd District Court (Livingston County)

Link to briefs:

<http://www.courts.michigan.gov/supremecourt/Clerk/09-07/133128/133128-Index.htm>

At issue: A woman made statements to her neighbor, a 911 dispatcher, and a police officer indicating that her boyfriend was trying to kill her and had threatened her with an ax. But later, the woman refused to testify against him. Can her statements come into evidence under the “excited utterance” exception to the hearsay rule? Should the Michigan Supreme Court overrule a 1989 court decision that held that, in order to admit an excited utterance into evidence, there must also be independent evidence of the startling event related to the utterance?

Background: On May 17, 2004, Suzanne Bartel went to a neighbor's home to call 911. The neighbor later testified that Bartel was hysterical as she pounded on the neighbor's door. Bartel told the neighbor that she needed to call the police on her boyfriend (defendant David Barrett), who was chasing her with an ax and trying to kill her. Bartel continued to be extremely upset as she spoke with the 911 dispatcher. When a police officer arrived on the scene, he observed that Bartel was hysterical and unable to sit down, and that she had been crying. Bartel told the officer that she had had an argument with Barrett and locked herself in the bedroom. According to Bartel, Barrett punched a hole in the door, got into the room, and began beating her. Shortly thereafter, he picked up a hatchet, grabbed her around the neck, raised the hatchet, and told her he was going to kill her. Barrett then went into the back bedroom, and Bartel escaped to get help, she told the officer.

Police searched Bartel's residence, which she shared with Barrett, but did not find him. They did find a hatchet and observed a 12-inch circumference hole in one of the doors, around the doorknob. Police also observed some marks on Bartel's shoulders and one arm, and a cut on the side of her mouth.

Barrett was later arrested and charged with felonious assault and domestic assault (second offense). A preliminary examination took place in district court. Bartel was present in court but refused to testify. The prosecutor sought to introduce her out-of-court statements to her neighbor, the 911 dispatcher, and the police officer. But Barrett's attorney objected, arguing in part that the statements were hearsay and therefore should not be admitted into evidence. The prosecutor responded that the statements were admissible as “excited utterances” under Michigan Rule of Evidence 803(2). The district judge ruled that the statements could not come into evidence, citing the Michigan Supreme Court's opinion in *People v Burton*, 433 Mich 268 (1989). The *Burton* decision requires that, in order for an excited utterance to be admitted into evidence, there must

be independent proof of the event that gave rise to the excited utterance, the district judge said. Because there was no such independent evidence in Barrett's case, the out-of-court statements were inadmissible, the judge ruled. Without the statements, there was insufficient evidence to bind Barrett over for trial, the judge concluded, and dismissed the case. Both the circuit court and Court of Appeals affirmed the dismissal. The prosecutor now seeks leave to appeal to the Supreme Court. The prosecutor argues that the plain language of MRE 803(2) does not require independent proof of the startling event as a condition of admitting an excited utterance into evidence. Accordingly, the Supreme Court should overrule *People v Burton*, the prosecutor contends.

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