STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 29, 2009
v JAMES EUGENE GRISSOM, Defendant-Appellant.	No. 274148 St. Clair Circuit Court LC No. 03-000881-FH

Before: Borrello, P.J., and Davis and Gleicher, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's denial of his motion for relief from judgment on the basis of newly discovered evidence. We review for an abuse of discretion the trial court's denial of defendant's motion for relief from judgment, and we review for clear error the trial court's underlying factual findings. *People v Clark*, 274 Mich App 248, 251; 732 NW2d 605 (2007). We find no error and no abuse of discretion, therefore we affirm.

I. Overview

In 2003, defendant was convicted by a jury of two counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(f), for a brutal rape that had been committed in a shopping center parking lot on a Saturday afternoon in May 2001. Defendant was sentenced to two concurrent sentences of 15 to 35 years in prison. This Court upheld defendant's conviction on appeal. *People v Grissom*, unpublished opinion per curiam of the Court of Appeals, issued November 18, 2004 (Docket No. 251427) (*Grissom I*).

In 2005, the prosecutor forwarded a packet of documents to defendant's trial and appellate counsel. The packet contained several police reports and three anonymous emails, all generally containing assertions to the effect that the victim in this case was a liar and had made false accusations of rape in California, some time after the rape in the instant case but before defendant's trial. Based on the discovery of evidence that the victim may have made false allegations of sexual assault, defendant filed a motion with the trial court for relief from judgment. The trial court denied that motion, and we denied leave to appeal.[1] Defendant then

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[1] *People v Grissom*, unpublished order of the Court of Appeals, entered July 2, 2007 (Docket No.
(continued…)

sought leave to appeal from the Michigan Supreme Court, which remanded this matter to this Court "to consider whether defendant has a reasonably likely chance of acquittal in light of the newly discovered evidence and in light of the evidence presented against defendant that did not involve the complainant's credibility." *People v Grissom*, 480 Mich 1140; 746 NW2d 99 (2008).

A new trial may be granted on the basis of newly discovered evidence. *People v Davis*, 199 Mich App 502, 515; 503 NW2d 457 (1993). The defendant must show: (1) that the evidence itself, and not just its materiality, is newly discovered; (2) the newly discovered evidence is not merely cumulative; (3) the new evidence would probably cause a different result on retrial; and (4) the defendant could not, with reasonable diligence, have discovered and produced the new evidence at trial. *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003). In other words, defendant must demonstrate both good cause *and* actual prejudice. See *People v Kimble*, 470 Mich 305, 313-314; 684 NW2d 669 (2004). Here, the prosecutor conceded all of the *Cress* elements pertaining to good cause, but disputed actual prejudice. At issue is whether the newly discovered evidence would probably result in an acquittal on retrial.

We note that some of the documents contained in the packet would clearly be inadmissible – the three anonymous emails, for example, were never traced, and the unknown author apparently did not respond to a request to come forward.[2] Of the remaining portion of the newly discovered evidence, none of it could be used for any purpose other than impeachment, which is not grounds for a new trial. See *People v Duncan*, 414 Mich 877, 877-878; 322 NW2d 714 (1982), reversing the Court of Appeals, which had granted a new trial on the basis of newly discovered evidence, "for the reasons stated in" Judge Burns's dissent, which held that the newly discovered evidence in that case "[did] not relate to the defendants' guilt or innocence but rather attack[ed] the character and credibility of the prosecution's main witness;" see also *People v Barbara*, 400 Mich 352, 362-363; 255 NW2d 171 (1977), and *Davis*, *supra* at 516. Additionally, it appears that *none* of the newly discovered evidence may be substantively admissible, because it only pertains to proving "[s]pecific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility." MRE 608(b).

We would conclude that none of the newly discovered evidence would justify a new trial, given that even if it would be ruled admissible, it would only be admissible for the limited purpose of impeachment of the complainant. However, pursuant to our Supreme Court's remand order, we nevertheless consider the possible effect it might have in the event of a retrial.

II. Timeline Of Events

The victim testified that on May 12, 2001, she pulled into the parking lot of the Fort Gratiot Meijer store sometime between 12:00 p.m. and 12:30 p.m. She testified that she stepped out of her vehicle and turned to retrieve her purse from between the front seats. When she turned

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274148).

[2] At a *minimum*, they constitute hearsay not within any exception. Given their obvious inadmissibility, we will not further consider them in this opinion.

around, a man with long dirty hair and a scraggly beard was standing in front of the open door. The man was wearing a hat. The man grabbed the victim's arm and ordered her to get into her vehicle. According to the victim, she resisted her attacker and he struck her, causing her to fall back into the vehicle. The victim continued to resist, but the man struck her again and she briefly lost consciousness. According to the victim, when she came to, her head was between the front seats, one of her legs was pinned by the man, and her other leg was pinned by the steering wheel. She testified that she tried to sit up as the man unbuttoned her pants and pulled them and her underwear down around her knees. He then unzipped his own pants and she saw his erect penis. She managed to raise herself partway up, and the man struck her several times in the chest, knocking her back down. According to the victim's testimony, the man stated: "This will shut you up," and slid a "gold nugget" ring with several stones on it down one of his fingers to his knuckle. She testified that he then forced the finger with the ring into her vagina.

The victim stated that she attempted to scream but was having difficulty breathing from the blows the man had inflicted. She was able to call her attacker a bastard and he responded by pulling his hand away from her body and backhanding her. She fell back again and could taste blood from a cut on her face. According to the victim, the man then inserted his penis in her vagina, while gripping and striking her thighs when she continued to resist. At some point, she lost consciousness again, and when she regained consciousness, the man was gone. She testified that she made her way home, but was she unable to recall the details of how she got there. Upon entering her home, she immediately proceeded to her bedroom because she did not want her children to see what had happened.

The victim's husband testified that when she returned home that afternoon, he knew immediately that something was wrong. He reported that she looked panicked and had a cut on her mouth. The victim's husband questioned her about what had happened, and the victim told him in a somewhat incoherent and rambling manner that she been physically attacked. However she did not tell her husband at that time that she had been sexually assaulted. She testified that she did not tell him about the sexual assault because "I wasn't ready to face myself" and she "didn't know how to break his heart." The victim's husband testified that he noticed large bruises developing on the victim's legs and arms over the next few days after the attack.

The victim testified that, two days later, on May 14, 2001, she reported to the police that she had been assaulted. She did not reveal the sexual assault, so the police treated the matter as an attempted carjacking. The officer who took the complaint did, however, note a large scratch on the victim's face and that the victim was complaining of extensive bruising.[3] The victim testified that she did not reveal the full extent of the attack because she had not yet fully disclosed the details of the attack to her husband and she was not ready to face the fact that she had been sexually assaulted. The same day, she received medical treatment for some of her injuries from Paul Jerry, M.D., of Port Huron Hospital. Dr. Jerry testified that he observed that the victim's arm was swollen and bruised and that she reported tenderness in her neck. The victim was diagnosed with a sprain and/or hematoma, given a sling, and discharged. She did not report the sexual assault to Dr. Jerry because she was uncomfortable talking to him in an area

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[3] It was not clear from the testimony of the officer who took this complaint whether the victim mentioned the ring at this time.

with six other beds and because she did not think reporting it would be helpful because she had already taken a shower.

The next day, May 15, 2001, the victim confided to a friend that she had been sexually assaulted. The friend described the victim's demeanor as traumatized and stated that she walked and talked slowly. The friend advised the victim to disclose the full incident to her husband. Later that day, the victim told her husband that the man who had assaulted her had digitally penetrated her; however, she did not disclose further details because of his reaction.

The next day, on May 16, 2001, the victim contacted her OB-GYN, Dr. Deborah Russell, to whom she reported the full details of the attack, including the fact that her attacker penetrated her with his penis. She explained that because her attacker had not worn a condom, she was beginning to worry about possible health-related repercussions. Dr. Russell directed the victim to return to the emergency room because the doctors there would be better able to handle treatment for sexual assault. On the basis of Dr. Russell's advice, the victim returned to the Port Huron Hospital that same day, along with her husband. She was treated by Dr. Thabit Bahhur. Because her husband was present, and she had not yet told him the full extent of the assault, she only told Dr. Bahhur about the digital penetration. Dr. Bahhur conducted a physical examination and observed abrasions on the outside and inside the victim's vagina as well as on her cervix, which Dr. Bahhur described as being "deep inside the vagina." He testified that the victim's injuries were consistent with forceful digital or penile penetration, but he could not rule out other reasons for the injuries. He did not collect any "rape kit" evidence because of the time since the attack, the fact that the victim had changed clothes, and the fact that the victim only reported digital penetration.[4]

Thus, within only a few days of the assault, the victim had revealed most of what had occurred to two doctors, a friend, and her husband; she revealed at least the fact of the attack to the police and another doctor.[5] Moreover, there was substantial objective evidence to support what she had disclosed. On May 23, 2001, the victim returned to Dr. Russell for a follow-up examination, which revealed "pretty obvious" bruises on the victim's arm and inner legs, and abrasions and scratches along her inner labia. Dr. Russell testified that the victim's vaginal area was normal at that time, but the "vaginal area heals very quickly," so any abrasions more than a few days old would be expected to have healed by then.[6] The victim told her husband the remaining details of the assault a "few more months" later.

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[4] As discussed *infra*, also on May 16, 2001, defendant pawned a men's gold nugget-style ring with diamond chips on its face; defendant never redeemed it. Defendant would, during the 2003 investigation, later deny to the police owning such a ring or any jewelry.

[5] Dr. Jerry, the first emergency room doctor to see the victim, testified that the emergency room is not an "ideal" environment for rape victims, but that for the most part no alternatives existed; he also explained that rape victims do not always come to the emergency room immediately.

[6] Dr. Russell conceded that it would be impossible to determine whether any abrasions made eleven days previously had healed or had never existed in the first place. However, she lacked any knowledge of the examination conducted by Dr. Bahhur only four days after the assault.

The victim would not report the full details of the Fort Gratiot assault to the police until approximately a year after. In June of 2002, the victim was driving near the Fort Gratiot Meijer when she saw a black Jeep pull out of a driveway behind her. When she stopped at a traffic light, she recognized in her rear-view mirror the person she thought to have been her attacker. She stated that the person in the Jeep behind her had semi-long, scraggly hair, a beard, and a ring on his hand. She thought it was the same person who had raped her, although it is undisputed that the ring she had described her attacker using had been pawned by then. She testified that the face of the man behind her frightened her. She contacted the police again because she did not want to live in fear any longer and believed she might be able to "get the person off the street who hurt me." It was at this time that she first related to the police that her assault had involved being raped.

In October of 2002, the victim reviewed approximately 6,800 photographs in "loose-leaf" books and another 1,000 digital photographs[7] over a five-day period at the Port Huron Police Department. The assisting officer noticed that the victim became visibly upset after viewing "approximately one thousand" of the digital photographs and had to leave the room to regain her composure. When she returned, the victim informed the officer that she had viewed a picture of the man who had assaulted her. The person in the photograph was defendant. The officer passed information concerning defendant to the St. Clair Sheriff's Department, which had jurisdiction in the matter, but did so outside of the victim's presence. At some point thereafter,[8] a sheriff's deputy briefly interviewed defendant, at which time defendant denied owning a ring of the sort described by the victim. Defendant later admitted that he had owned such a ring after being asked about pawning it.

On November 7, 2002, a live lineup was arranged. The deputy advised defendant in person at his home that morning that defendant should be at the sheriff's department at a certain time. Defendant specifically asked whether he needed an attorney and whether there would be a police lineup. That morning, defendant looked unkempt, with "long hair, [and] the long goatee-type, scraggly-looking beard." But by the time of the lineup, defendant had shaved his head and face, "completely chang[ing]" his appearance to the extent that neither the deputy nor the other police officer assigned to the case recognized defendant. The victim hesitated and then picked a different person out of the lineup. A few months before trial, the victim recalled that her attacker had had a skull tattoo on his upper arm, although she did not recall any details thereof. Defendant did, in fact, have a skull tattoo on his upper arm. There was testimony that defendant worked at the Fort Gratiot Meijer on the day of the rape.

The jury convicted defendant of two counts of first-degree CSC. The court sentenced him to concurrent sentences of 15 to 35 years.

III. The Newly Discovered Evidence

[7] The police officer who assisted the victim testified that the photographs did not reveal to the viewer any identifying information like name or date of birth.

[8] The date was not stated in the lower court record.

The "newly discovered evidence" in this case concerns events that transpired in California between September 28, 2001, and October 1, 2001, which was after the Fort Gratiot sexual assault at issue in this case, but before the trial. More specifically, it consists of a packet that contains: (a) several police reports from Bakersfield and Fresno, California, dated from September 28, 2001 through October 1, 2001;[9] (b) a police report from St. Clair, Michigan, from 2005; and (c) three anonymous emails that were apparently generated by newspaper coverage of the 2003 trial in this case.

The first report from California was generated in Bakersfield as a missing persons case when the victim walked out of a restaurant where she was eating with her mother and a friend, and did not return. The victim's mother informed the police that it was "out of character" for the victim to "just take off," and also noted that the victim had been raped four months previously in Michigan, and "has not been herself." The victim's mother believed the victim may have been talking on her cell phone to a friend from Fresno named "Catina" at the time. The second report indicated that the victim's father had received a telephone call from the victim on her cell phone stating that she had been kidnapped, which the father did not believe because his "'daughter likes to have a lot of attention.'" The victim's husband confirmed the call and added that

> his wife had been sexually assaulted approximately four months ago in Michigan and she initially reported to him she was just robbed; however, she later told him she had been raped by a man in the parking lot when she had gone to the grocery store. [The victim's husband] said the initial assault was reported to the police; however, the rape was never reported to the police.

The victim's father and husband both noted that the victim had been molested between the ages of 10 and 12 by a member of their church, that the matter had been handled internally, and that the victim never received any counseling.

It turned out that the victim's friend in Fresno was Katina Mamigonian, who was engaged to a Fresno police technician, who in turn reported on September 29 to the Bakersfield officer that the victim was with him and safe. He reported further that the victim had "been raped several times and 'her husband was in on it.'" He further explained that the victim had been "hiding out in Colorado earlier this week, where she was assaulted by her brother." He concluded that the victim alleged that her brother had raped her. The victim herself called the Bakersfield police to say that it was true that she had been abducted at knifepoint, taken to a windowless room, given pills, and robbed; however, she then "recanted this version of the incident, stating it never occurred, and that Mamigonian and [the police technician] had picked

[9] We will presume, for the sake of argument, that the police reports themselves can be verified as genuine and are at least theoretically admissible as evidence. See *People v Jambor* (*On Remand*), 273 Mich App 477, 481-486; 729 NW2d 569 (2007). The police reports consist in significant part of secondary and even tertiary hearsay, but statements from the reports could be admissible for purposes other than proving the truth of the contents thereof. MRE 801(c). However, as discussed *supra*, if their only purpose would be proving "[s]pecific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility," they may nevertheless be inadmissible pursuant to MRE 608(b).

her up" from the restaurant in Bakersfield. A Fresno Sheriff's Deputy was dispatched to Mamigonian's residence, where the Deputy found the victim safe, but also bearing "some injuries consistent with a sexual assault."

The victim then told the Bakersfield police that she *had* in fact been assaulted, but she had been assaulted by a man who accosted her at knifepoint outside the restaurant and raped her between two cars parked in the parking lot. She stated that she made up her prior story because she was confused and uncertain whether she would be believed. She stated that she did not tell her friend what had really happened "because she did not want to go through a traumatic incident again because she had just been through one with her prior rape and did not 'want to deal with it.'" She declined to file a report because she did not want to deal with it. She also reported, and then recanted, another assault in a motel in Colorado by a friend of her brother who "had tracked her down" there. She explained that "she made up the story because she believed if she had said the assault had occurred a few days prior, nothing would be done about it," and she also stated that she did not want to "go through the trauma of a sexual assault investigation." The deputy who had been dispatched to Mamigonian's residence reported that the victim had "some bruising and was spotting (bleeding) from her vaginal area." The victim wanted to go to a hospital to have her injuries checked but did not want "a sexual assault kit to be accomplished." The victim's friend stated that the victim had not reported to her any assault or kidnapping.

The next report from Bakersfield consisted of an interview with the victim at the hospital. The victim there repeated that she had been accosted at knifepoint outside the restaurant after talking to Mamigonian on her cell phone. She provided a detailed description of being raped by a suspect wearing a mask. She stated that she then went back into the restaurant and acted like nothing had happened, partly because she was in shock, and partly because "this had happened once before," relating that "approximately six months ago, while in Michigan, she had been raped in the parking lot of a grocery store while getting out of her vehicle." She explained that she had made previous arrangements for Mamigonian to pick her up without telling her family, because her husband did not approve of the victim's friendship with Mamigonian; she did not think about how her family would react because "she just wanted to get away." She told her husband about the rape but she did not disclose all of the details. She confessed that she invented the story about being kidnapped because "she needed some time alone and away from her family to think," and even though she "knew it was stupid," she "did not know what else to do." The victim stated that she belonged to several internet support groups and met Mamigonian through a rape support group that she had joined eight months previously because of sexual assaults she experienced as a child. The victim's husband told the reporting officer that he "had a difficult time" believing the truth of the victim's story.

The final California police report was from Fresno. It consisted solely of a narrative by Mamigonian's fiancé. In relevant part, he related his opinion that the victim "is possibly mentally unstable and may try to file false allegations against him if [the victim] was willing to lie to his [fiancée] and the police." He therefore "wanted this incident documented in case she does try to do something like that." The Fresno report contains a "conclusion" that the victim lied and "is possibly mentally unstable," that "conclusion" appears to be based solely on the narrative of the fiancé. Although the Fresno report includes the victim's story about being kidnapped, and her recantation of that story, it does not indicate that the victim told the fiancé about being raped in Bakersfield.

The police report from St. Clair, Michigan, was generated because in 2004, the victim re-contacted one of the officers who had been involved in the investigation in the instant case. During that investigation, the victim had mentioned having been sexually assaulted as a child by her father and brother, and she now wished to pursue that with law enforcement. The St. Clair Sheriff's Department referred the matter to the Huron County Sheriff's Department on venue grounds. The Huron County Sheriff's Department notified the St. Clair Sheriff's Department that the victim had reported being the victim of a rape in California, and the Huron County Sheriff's Department had obtained the police reports described above. The St. Clair Sheriff's Department additionally took note of a number of emails generated by newspaper coverage of the trial in this matter: a newspaper employee set up an account to receive email for the victim, and the newspaper "received many, many responses however there were three that appeared to all be from the same email address that were indicating that basically [the victim] was a sick individual and was lying." The St. Clair Sheriff's Department asked the newspaper to request that the person who sent those three emails come forward and make a statement, but although the newspaper agreed to do so, no one did step forward.

The St. Clair Sheriff's Department took no action on the victim's complaint regarding her childhood sexual assault by her father and brother, citing venue, the officer's "belief that the statute of limitations would be expired on that matter," and the officer's "belief that any details of that particular incident would be protected under the Michigan Rape Shield Law." The St. Clair Sheriff's Department then forwarded the emails, the California police reports, and its own report to the prosecutor.

IV. Analysis

Defendant contends that the evidence presented at trial that did not rely on complainant's credibility was insufficient to support his conviction.[10] In reviewing a sufficiency of the evidence claim, this Court applies a de novo standard. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). Due process requirements prohibit a criminal conviction unless the prosecution establishes guilt of the essential elements of a criminal charge beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). We examine the evidence in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond reasonable doubt. *Hawkins*, *supra* at 457.

The prosecution was required to establish beyond a reasonable doubt that: (1) defendant engaged in an act of sexual penetration with complainant, (2) complainant suffered personal injury, and (3) the defendant used force or coercion to commit the sexual act. MCL 750.520b(f). Because defendant was charged with two counts of CSC I, the prosecution was required to show two distinct acts of sexual penetration.

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[10] We previously rejected defendant's assertion of insufficient evidence in his appeal of right. *Grissom I*, *supra* at p 2.

There was considerable objective evidence corroborating defendant's conviction, meaning that, contrary to the dissent's contention, this case was not merely a "battlefield of witness credibility." *People v Lemmon*, 456 Mich 625, 642 n 22; 576 NW2d 129 (1998). First, defendant was present at the scene of the crime on the date and at the time it allegedly occurred. There was medical evidence from several doctors that the victim had physical injuries consistent with assault and rape within days of the event. The victim told a number of people within a short period of time that she had been raped, and the core of her story did not change – to the extent it did, trial counsel was well aware of it and had the opportunity to cross-examine the victim regarding those changes. We note further that the victim's rape in Michigan was repeated in the above police reports not only by the victim, but also by her family members in her absence. Defendant's skull tattoo as described by the victim,[11] his denial of owning the ring,[12] and his radical appearance change just before his lineup,[13] are further independent indicia of his guilt.

To the extent the California police reports show that the victim made a false allegation of being kidnapped, she herself admitted that was a lie. There was evidence consistent with physical trauma and perhaps sexual assault observed by the deputy at Mamigonian's residence. That officer took the victim to a local hospital for examination, where she apparently agreed to undergo a sexual assault examination, but the results are unknown and there is no further information.

The California police reports contain numerous statements by different individuals. Some of these statements indicated that the victim had been kidnapped or sexually assaulted on other occasions and were arguably inadmissible based on relevance or hearsay grounds or based on Michigan's rape-shield law.[14] MRE 402; MRE 802; MCL 750.520j. In addition, some of the

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[11] The victim did not recall the fact that her assailant had a skull tattoo on his upper arm – as did defendant – until only a few months before trial. However, because there is no indication that this was a false memory induced by actually observing defendant's tattoo, her recollection of this detail nevertheless constitutes an objective verification of defendant's role in the crime.

[12] The dissent makes much of the fact that the victim could not have seen defendant wearing the ring after it had been pawned, but this is irrelevant given that there was no evidence that the person driving behind her actually was anyone in particular. The facts are that at some point, the victim remembered the ring, was able to describe it with sufficient detail to permit the police to track it down to the pawn shop, and – most significantly – defendant denied ever having owned it until confronted with evidence to the contrary. The timing of his pawning thereof is also significant.

[13] The dissent states that "[t]he victim identified a different man at the lineup," but fails to include with that observation that defendant had radically altered his appearance mere hours before appearing in the lineup, so much so that the very police officer who had told defendant to appear *earlier that same day* no longer recognized defendant. Defendant had actually resembled the description given by the victim prior when the officer told defendant to appear. The dissent also fails to include the fact that the victim did identify a photograph of defendant out of a lineup of approximately a thousand.

[14] We observe that the rape-shield statute does not preclude the introduction of evidence to show that a victim has made prior false accusations of rape. *People v Williams*, 191 Mich App 269, 272; 477 NW2d 877 (1991).

statements, including statements made by the victim's father, statements made by the victim's husband, statements made by Mamigonian's fiancé, and even statements made by the victim herself, bore on the victim's credibility. Significantly, the newly discovered police reports contain no substantive evidence bearing on the offense for which defendant was convicted. There is simply no substantive evidence in the police reports that is relevant to whether defendant committed the offense in the present case.

Therefore, the only purpose to introduce the newly discovered police reports would be to use statements in those reports tending to show that the victim may have lied about being kidnapped and sexually assaulted on other occasions, subsequent to the crimes charged here, to impeach the victim's credibility. False accusations of rape are relevant in a subsequent prosecution "because the fact that the victim has made prior false accusations of rape directly bears on the victim's credibility and the credibility of the victim's accusations in the subsequent case . . . ." *Williams*, *supra* at 272. Because the newly discovered evidence in this case would be used merely for impeachment purposes, it is not grounds for a new trial.[15] *Duncan*, *supra* at 877-878; *Davis*, *supra* at 516.

Supposing the police reports were admitted for their only allowable purpose, impeachment of the victim's testimony, they contain no reliable evidence that the victim lied about having been sexually assaulted, although they do indicate that the victim lied about the surrounding circumstances and details to the extent of her subsequent admissions in that regard. As to the events in Michigan, however, defendant *was* able to impeach the victim's testimony at trial, by pointing out that she did not immediately report the nature of the attack and further, that her descriptions of the attack, while not wholly inconsistent, were incremental in the manner that she released the information to her husband and to the authorities. The police reports of events that took place *after* the victim told several people that she had been raped and *after* objective evidence thereof[16] had been obtained does not cast much doubt on events that took place several months earlier in Michigan. Furthermore, unlike the fictitious story the victim told in California, the victim has never recanted her version of the events complained of in this case.

The dissent asserts that "a blanket prohibition of the use of the police reports for cross-examination would violate defendant's Sixth Amendment right to effectively confront the victim." We are unable to perceive anything in our opinion suggesting any such blanket

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[15] The dissent's contention that "application of this rule makes no sense in the instant case" ignores the fact that this Court is bound by precedent set by our Supreme Court, and even if no Supreme Court precedent existed on point, this Court is still bound by decisions made by prior panels after November 1, 1990. MCR 7.215(J)(1).

[16] As discussed, the significant objective evidence – defendant's presence in the vicinity of the crime, the victim's description of defendant's tattoo and ring, defendant's denial that he owned the ring, defendant's pawning of the ring only four days after the attack, the victim's identification of defendant's picture, defendant's radical change in appearance during the short time between being told to attend a lineup and his appearance therein, and medical evidence of injuries consistent with a sexual assault – did not involve the victim's credibility and were legally sufficient to support defendant's convictions. Moreover, none of it is affected in any way by the California police reports.

prohibition on the use of police reports for cross-examination. The Confrontation Clause[17] only guarantees effective cross-examination, not unlimited cross-examination. *People v Bushard*, 444 Mich 384, 391; 508 NW2d 745 (1993). And in any event, the question before this Court is only tangentially whether the police reports would be admissible *per se*, but rather whether they could be used for anything other than impeaching the victim's credibility or whether they otherwise are so demonstrative of actual prejudice that we are compelled to find that the trial court abused its discretion.[18] As discussed, (1) the evidence against defendant was significant even without any evidence that depended on the victim's credibility; (2) the contents of the police reports have no bearing on defendant's actual guilt or innocence; (3) to the extent the reports contain the opinions of laypersons that the victim had mental problems, those are not expert opinions and it would hardly be surprising that a rape victim might experience some psychological upset shortly thereafter; and (4) the police reports contain as much corroboration of the Michigan rape at issue in this case as they do evidence that the victim lied about a rape in California.

V. Conclusions and Holding

We conclude that, even if the newly discovered evidence at issue in this appeal was admissible on retrial, there is no reasonable chance of an acquittal in light of it. The only possible purpose for its admission would be to impeach the victim's credibility. Defendant's conviction was corroborated by substantial objective evidence that was, and is, independent of and unaffected by the victim's credibility. That objective evidence was legally sufficient to support defendant's convictions. The newly discovered evidence paints an unflattering picture of the victim's mental state four months after suffering a violent sexual assault, but it does not tend to undermine confidence in defendant's conviction. We do not find that it "makes a different result probable on retrial." *Cress*, *supra* at 692.

Affirmed.

/s/ Stephen L. Borrello
/s/ Alton T. Davis

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[17] "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ." US Const, Am VI.

[18] The dissent relies on *White v Coplan*, 399 F3d 18 (CA 1, 2005) to support her contention that prohibiting cross-examination of a complaining witness's prior sexual allegations violated the defendant's Sixth Amendment right to confrontation. But as discussed, this case is not a pure credibility contest of the sort that *White* was, and the victim's false accusation here was neither repeated nor so strikingly similar to the instant factual scenario as were the false accusations made by the witnesses in *White*. The facts in this case are too distinguishable for us to find *White* persuasive.