



STATE OF MICHIGAN

31st JUDICIAL CIRCUIT COURT

CYNTHIA A. LANE
CIRCUIT JUDGE

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September 25, 2012

Clerk of Court
Michigan Supreme Court
Michigan Hall of Justice
P.O. Box 30052
Lansing, MI 48909

Re: People of the State of Michigan v. James Eugene Grissom
Supreme Court No.: 140147
Court of Appeals No.: 274148
Lower Court No.: 03-881-FH

Dear Clerk:

Enclosed please find Opinion and Order Granting Defendant-Appellant's Motion for New Trial in the above matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Cynthia A. Lane".

Cynthia A. Lane
31st Circuit Court Judge

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EUGENE GRISSOM,

Supreme Court No. 140147
Court of Appeals No. 274148
Lower Ct. No. 03-000881-FH

Defendant-Appellant.

**OPINION AND ORDER GRANTING DEFENDANT-
APPELLANT'S MOTION FOR NEW TRIAL**

At a session of the Circuit Court, held in
the City of Port Huron, County of St. Clair,
State of Michigan, on September 25, 2012.

Procedural History

Defendant-Appellant ("defendant") was charged with two counts of criminal sexual conduct in the first degree, MCL 750.502b, on which he went to trial and was found guilty on August 27, 2003. The trial court, the Honorable Peter E. Deegan of the 31st Circuit Court of St. Clair County (this judge's predecessor) sentenced him on September 22, 2003 to two terms of 15 to 35 years in prison, to run concurrently. Defendant filed a timely appeal as of right and the Court of Appeals affirmed his conviction in an unpublished opinion dated November 18, 2004.

On March 22, 2006, the Defendant filed a Motion for Relief from Judgment with the trial court based on newly discovered evidence, to which the People responded. Judge Deegan denied that Motion and the Court of Appeals denied Defendant's application for leave to appeal. The Supreme Court, however, remanded the case to the Court of Appeals to consider whether Defendant had a reasonably likely chance of acquittal in light of both the newly discovered evidence and the evidence presented

against him at trial that did not involve the complainant's credibility. The Court of Appeals affirmed the trial court's decision. The Supreme Court granted Defendant's application for leave to appeal and, in an Opinion and dated July 31, 2012 remanded the case to this Court to evaluate Defendant's Motion for a New Trial in light of the factors set forth in *People v Cress*, 468 Mich 678; 664 NW2d 174 (2003). More specifically, this Court must determine whether certain newly discovered evidence satisfies the factors set forth in *Cress, supra*. This Court's review is limited to that newly discovered evidence and the facts contained in the record.

Law

Newly discovered impeachment evidence generally is insufficient to warrant a new trial. *Spray v Ayotte*, 161 Mich 593, 595; 126 NW 530 (1910). It may, however, be grounds for a new trial if it satisfies the four part test set forth in *People v Cress, supra*.

Granting a new trial on the basis of newly discovered evidence requires a defendant to show that (1) the evidence itself, not merely its materiality, is newly discovered; (2) the newly discovered evidence is not cumulative; (3) using reasonable diligence, the party could not have discovered and produced the evidence at trial; and (4) the new evidence makes a different result probable on retrial. *People v Cress, supra* at 692.

Here, the newly discovered evidence has met the first three of those criteria. Newly discovered impeachment evidence will satisfy the fourth element of *Cress* if there is an exculpatory connection to testimony concerning a material matter, and a different result is probable upon retrial. It is not necessary, however, that the newly discovered evidence contradict specific testimony presented at trial.

Evidence Presented at Trial

After a three day trial, a jury convicted the Defendant of brutally raping the complainant, Sara Ylen, on May 12, 2001, a Saturday afternoon, in a busy parking lot at a Meijer store in Fort Gratiot Township, Michigan. The complainant first reported the events that day to her husband when she returned home to Crosswell after shopping at Meijer. She told him that a man hit her several times, but that she escaped. According to her husband, she was "incoherent" and "rambling" and had a cut near her mouth. She did not tell him she had been sexually assaulted.

That evening, the complainant and her husband attended a wedding rehearsal dinner in Sandusky (a neighboring town) and returned to Sandusky the next day to attend the wedding. On the way home from the wedding, they stopped at the State Police post in Sandusky, where the complainant's husband attempted to report the assault the complainant had reported to him. The State Police advised him to contact the local police authorities.

On Monday, May 14, 2001, two days after the assault occurred, the complainant met with St. Clair County Sheriff Detective Timothy O'Boyle and reported an "attempted car-jacking" in the Meijer parking lot, but did not mention anything about a sexual assault. She also presented to a hospital emergency room the same day and told the examining doctor that a man "pulled and punched me about my left arm," but mentioned nothing about a sexual assault. The doctor noted bruising and swelling on her arm and neck. Two days later, on May 16, 2001, the complainant called her gynecologist, Dr. Deborah Russell, and reported she had been sexually assaulted. Dr. Russell testified at trial that the complainant was "not terribly specific" about the details of the assault and advised her to seek an examination in a hospital emergency room. Following Dr. Russell's advice, the complainant returned to the hospital on May 16, 2001 and reported to the examining doctor that a man had penetrated her vagina with his finger. She denied penile penetration when the doctor asked her whether it had occurred. In his trial testimony, the doctor mentioned nothing about penetration with a ring. He testified that the complainant had abrasions on the right side of her vagina and her cervix that appeared to be the result of a type of forceful penetration, but for which there could also have been other explanations. About a week and a half later, when the complainant reported to Dr. Russell's office for a routine examination for a different condition, that doctor performed abdominal and pelvic examinations and noted bruises on the complainant's inner legs and the presence of abrasions and scratches along both sides of her inner labia, which she would not have expected to see had they had occurred 11 days before. Dr. Russell's internal examination of the complainant's vaginal area was normal.

The complainant first reported a sexual assault to police authorities in June of 2002, 13 months after the initial assault allegedly occurred. Detective O'Boyle testified that, during that month, the complainant made "several calls" and left voicemail messages with his office stating she was attempting to meet with him and "had also seen what she believed would be the suspect." When interviewed, she told Detective O'Boyle she saw the suspect driving behind her in a black jeep-like vehicle and recognized his face, straggly hair, straggly beard, and a ring he had been wearing at the time of the attack. During this interview, the complainant also told Detective O'Boyle, for the first time, that her attacker had sexually

assaulted her. In October of 2002, she selected Defendant's photograph from about 7800 police photographs shown to her. During a November line-up, she failed to identify the defendant and instead selected another man. At the line-up, the participants were instructed to say "stupid bitch," words her assailant had used toward her. On the morning of the day the line up was to occur, Detective O'Boyle went to defendant's home and instructed him to report to the sheriff's department later that day. When the defendant appeared at the sheriff's department for the line up, he no longer appeared unkempt, as he had that morning when the detective woke him, but had shaved his beard, his moustache, and his hair. According to Detective Sandra Jacobson, who was also involved in the investigation, the defendant had gained weight.

The complainant testified at trial that on May 12, 2001, at about 12:30 PM, she stopped at Meijer to do some shopping and noticed the parking lot "was very busy." She parked her minivan between two vehicles and leaned over to get her purse and shopping list from between the vehicle's front seats. As she attempted to get out of the minivan, a man grabbed her arm, pushed her back into the vehicle and, when she resisted, hit her in the face with his fist. She continued to resist, grabbed for the man's sunglasses, and the man hit her again, causing her to fall backward and hit her head on the edge of the passenger seat. The complainant testified that she momentarily lost consciousness and then woke up to and found her head "down between the seats" of the vehicle. She then attempted to sit up and the man unbuttoned her pants and pulled them down, along with her underwear. She then saw the man unzip his pants and expose his erect penis. She further testified that, as she tried to sit, the man hit her several times in the chest, knocking her back, while calling her a "stupid bitch." He then said "this will shut you up" and she watched him slide a "nugget" ring to the knuckle of the middle finger of his left hand and "force that ring and finger up inside of me." She called him a "bastard" and he backhanded her, cutting her face. She "became aware that his penis was inside of me" before again losing consciousness. She then regained consciousness, sat up, and her attacker was gone. The complainant then started her minivan, closed the driver's side door (which had remained open during the attack) and drove home to Croswell. She did not report the assault to anyone at Meijer. There were no eye witnesses. Neither the complainant nor the defendant appears in a surveillance tape of the Meijer parking lot that was admitted into evidence. Although the complainant knew that her clothes had evidentiary value, she threw them away within a week of the attack. She admitted at trial that she did not tell police about the sexual nature of the assault until 13 months after the assault occurred and that she did not tell her husband the full details of the assault for several months.

At trial, the complainant described her alleged attacker as a white

male of about 30 years old, who had scraggly, dirty hair sticking out from under a red baseball cap (the color of which she remembered about a year and a half after the attack) and a dirty, scraggly beard. He wore dark wire-rimmed sunglasses that were never removed during the attack, a dirty white t-shirt, a dirty blue jean vest, blue jeans and a "gold nugget" ring on his middle finger. The complainant testified that she saw the lower portion of a "dark" skull tattoo on his right upper arm, although she "didn't see the whole thing." She first reported the skull tattoo to the police in March of 2003, approximately 5 months before trial. The trial record indicates the defendant had a skull tattoo on his arm and that skulls of various configurations are popular and common tattoo designs.

Evidence presented at trial also established that, in May of 2001, the defendant was employed at the Meijer store where the complainant claimed she was attacked; that he did in fact work at that store on May 12, 2001 from about 2:00 PM until about 9:00 PM; that he lived 5.1 miles from the location where the attack occurred; that, while on the job, he was required to wear a red or turquoise golf shirt and either black or khaki pants; that he would not have been allowed to punch in for work wearing the clothing described by the complainant (t-shirt and blue jeans); that Meijer has no locker rooms where employees can change their clothes in privacy; and that, although possible, it would be unusual for a Meijer employee to report for work in unacceptable pants and then change pants once he got there.

Several days after the claimed attack, the defendant pawned a ten-carat man's "cluster ring" with diamond chips on it. The pawnshop later sold the ring and it was not available at trial. Detective Jacobsen testified that, when interviewed, the defendant said he did not own a ring but later told her that he had "hocked" a ring several months before. The police never established any connection between the defendant and the black jeep-like vehicle the complainant said she saw him driving.

The Newly Discovered Evidence

In October of 2004, after defendant's trial and conviction, the complainant contacted law enforcement to discuss pressing charges against her father and her brother for a sexual assault that allegedly occurred when she was a child. She was referred to Huron County, where she was living when the assault was alleged to have taken place. During that investigation, Huron County Sheriff deputies learned of police reports generated in Bakersfield and Fresno, California in September of 2001. Those reports were eventually sent to the St. Clair County Prosecuting Attorney, who turned them over to the defendant's trial counsel and

appellate counsel.

In the first of those reports, dated September 28, 2001, the complainant's mother reported to Bakersfield police that the complainant was missing. Her mother reported that, while complainant was having lunch at a restaurant with her and other family members, complainant's cell phone rang and that she left the restaurant and never returned. The complainant's mother looked for her outside of the restaurant and could not find her. She informed police that it was out of character for the complainant to "just take off." She believed the complainant had got on a bus, because the vehicle in which she and the complainant had arrived was still in the parking lot.

In a **second** Bakersfield report, made one day later, police reported having spoken to the complainant's father, Dale Hill, who told them the complainant called him that day on a cellular phone at about 10:45 AM, stating "she had been kidnapped and he needed to call the police" and that she did not know where she was but was in a room without windows. She said she was very afraid and that she had to hang up the phone because "they were coming back." When the police interviewed Hill at his home and asked if he believed his daughter, he said "No. I'm afraid it's just a smoke screen. My daughter likes to have a lot of attention." The complainant's husband confirmed his father-in-law had received such a call and told officers the complainant had been sexually assaulted four months before in Michigan that she initially reported it as a robbery, but that she later told him she was raped by a man in a grocery store parking lot. He also told them the initial assault was reported to the police but the sexual assault was not. The complainant's husband then told police the complainant had removed a good deal of her clothing and that her toothbrush was also missing. The complainant's father also explained that the complainant "had been sexually assaulted between the ages of 10 and 12 years" by a member of their church congregation, but that the police were never contacted, no report was made, and the complainant never received any counseling for the alleged incident, which was handled within "the church."

Officer Lerman of the Bakersfield police department determined that the complainant had not been kidnapped, but was staying with a friend, Katina, whom she had met through an on-line rape support group, and that friend's fiancé, R.P. Burrow, who was employed as a technician by the Fresno police department. When contacted by Officer Lerman, Burrow told him the complainant had been raped several times and that "her husband was in on it." He explained the complainant had been "hiding out in Colorado" earlier in the week, where her brother had raped her. Shortly after Officer Lerman spoke to Katina and Burrow, the complainant telephoned him and told him she was at Katina's house in

Fresno. She said she told her father she had been kidnapped "because it's true." She then told Officer Lerman she had been abducted by a man at knifepoint and taken to a "concrete block room where there were no lights or windows" and forced to swallow six large white pills, also at knifepoint. She described her abductor as a "white male adult, late 20's, 5'9", 200 pounds, with black, curly, medium length hair, light complexion, mustache, wearing black pants and a white and blue striped shirt." The described suspect then demanded she "cooperate" with him and robbed her of her jewelry. The complainant then recanted this version of the incident, stated it never occurred, and told Officer Lerman that her friend Katina and her fiancé had picked her up at the restaurant where she, her mother, and other family members had been having lunch. Bakersfield police officers next contacted Fresno police authorities, who dispatched an officer (Deputy Gomez), who confirmed the complainant's presence at Katina's home and also confirmed the complainant was safe.

After further investigation, Deputy Gomez reported that a possible sexual assault had taken place against the complainant, as she had "some injuries consistent with a sexual assault." Officer Lerman re-interviewed the complainant, who told him that, on the day before, she was waiting outside of the restaurant for about 15 minutes and did not enter the restaurant with her family. During that time, she was approached by a "white male adult, with short, black hair, wearing a green and gray mask that covered his mouth, chin and nose; dirty jeans; and a short-sleeve shirt with the sleeves rolled up" who grabbed her, put a knife to her back, and then raped her on the south side of the restaurant between two cars parked cars in the restaurant parking lot. The complainant admitted to Officer Lerman that she fabricated her previous story about being kidnapped. She told the officer she had not told Katina and her fiancé about this assault because she had been through a traumatic incident with a prior rape and didn't want to go through that again. She declined to file a report with the Bakersfield police for the same reason.

During her conversation with Officer Lerman, the complainant also told him she had been sexually assaulted at an unknown Colorado motel while en route to Colorado with her husband. She said the assault had been committed by her brother's friend, who tracked her down at the unknown Colorado motel but would give no further details and was "very uncooperative." During the same conversation, the complainant recanted this story and denied it ever occurred. Officer Lerman telephoned the complainant's friend Katina, who confirmed she had picked up the complainant at the restaurant about 3:00 PM the day before. She also told Officer Lerman that the complainant made no mention of a sexual assault. When Officer Lerman related the complainant's story about having been kidnapped and forced to take pills, Katina denied that ever happened, stating "That is so untrue." Officer Lerman also spoke with the

complainant's mother, who told him the complainant had never waited alone in the restaurant parking lot the day before, but went into the restaurant at the same time as the other family members who were having lunch together. She also said that, when they were having lunch, the complainant appeared to be fine.

Officer Lerman reported the results of his investigation to Deputy Gomez, who informed him the complainant had injuries that appeared to be consistent with a sexual assault and wished to go to a hospital, as she had some bruising and was bleeding from her vaginal area. However, the complainant only wanted to have her injuries checked and refused to have a sexual assault examination performed. She said she would have someone take her to a hospital in Fresno and did not want to wait for her husband to pick her up and take her there.

A **third** Bakersfield report, dated October 1, 2001, reported the complainant went to a hospital emergency room and informed medical personnel she had been raped. Officer A. Gavin reported to the hospital and the complainant informed him that, on September 28, 2001, she and her mother went to a restaurant to meet her aunts for lunch. As she, her mother, and one of her aunts walked into the restaurant, she told them she needed to make a quick call on her cell phone. She then made a call to her friend Katina and spoke to her for about two minutes, walking back and forth on the sidewalk in front of the restaurant as they spoke. Then, as she hung up the phone, the complainant felt something brush up against her from behind and she turned around and saw a man who grabbed her left arm, turned her around and told her to "walk forward," as he pushed her toward the south end of the restaurant. As the man pushed her, the complainant could feel a blunt object in the small of her back, which she assumed was knife. When they reached the south parking lot of the restaurant, the suspect pushed her between two vans. He then raped her, first with a small hand-held flashlight, then with his finger, with her underwear on. She began screaming and he yelled at her to stop. He then undid his pants, exposed his erect penis, and inserted his penis into her vagina. The complainant then began hitting him and he put his hands on her thigh and tried to keep her from squirming. She screamed again and the suspect fled. He did not ejaculate inside of her. The complainant reported she had showered once after the incident, but was wearing the same clothing she wore at the time the assault occurred.

The complainant described the man as "a Hispanic male, late 20's to early 30's, 5'6", 180 pounds, medium build, with black curly hair, short in front and long in the back ...wearing a green plastic surgical type mask over his face, a light blue work shirt with no emblem on it, with the sleeves rolled up, dirty in appearance, dirty blue jeans and dirty tennis shoes." She did not think she could identify him, as he was wearing a

mask, the type a gardener or doctor might wear. After the man fled, she picked up her purse from the sidewalk in front of the restaurant (where she had dropped it when he confronted her), went back inside of the restaurant, ordered a cup of tea, sat silently with the others, and did not eat, which she said was typical behavior for her. She told her family nothing about the incident because she was "in shock" and because she was afraid no one would believe her, because "this had happened once before." After a while, her friend Katina arrived at the restaurant and she left with her. The complainant admitted she went to Katina's residence and that, by design, she did not tell her family where she was going because her husband did not approve of their friendship and also because she "just wanted to get away." The complainant said she told Katina about the parking lot assault the morning after it had occurred. She also admitted calling her parents and making up a story about being kidnapped because she wanted to "buy me some time" to think about what had happened in the restaurant parking lot.

The complainant also told Officer Gavin she had met her friend Katina about eight months before in an on-line e-mail rape support group, which she joined before her recent rape in Michigan because she had been "raped when she was six years old" and that she had "been in and out of support groups and therapy for years." When Officer Gavin asked her if she belonged to any other internet-based support groups, the complainant told him she also belonged to a child abuse survivors group and that she spends "a few hours day, every day" on-line. At the end of this exchange with Officer Gavin, the complainant agreed to submit to a sexual assault examination. Although a supplemental report by another Fresno officer (Deputy Gomez) states that a report from the sexual assault examination was seized, it was not provided. At the conclusion of his interview of the complainant, Officer Gavin called her husband, who had a difficult time believing the complainant was telling the truth.

In the meantime, on September 29, 2001, R.P. Burrow (the fiancé of the complainant's friend Katina) contacted the Fresno police department concerning the complainant's allegations, expressing concern that the complainant might file false allegations against him. He informed Fresno police that his fiancé runs an on line rape support group, that she met the complainant through that group, and that his fiancé had been talking to the complainant on-line and on the telephone since that initial contact. He reported the complainant told Katina that her brother and his friends had gang-raped her about 18 months earlier, that she reported the crime, and that the suspects were arrested and convicted. The complainant also said her brother had been released from jail the week before and had found her in Colorado, where she was staying with her husband to hide from her brother. The complainant further said that her brother raped her again while she was in Colorado and she felt her husband was involved because

her brother was not supposed to know where she and her husband were staying. The complainant then rented a car in Colorado and drove to Bakersfield, where her husband was waiting for her. The complainant said she feared for her safety because she felt her husband was conspiring with her brother. As a result of all of this, Burrows's fiancé picked complainant up at a restaurant in Bakersfield and took her to Fresno to help her hide. Burrows and his fiancé later learned the complainant had claimed they had kidnapped her, but later admitted she was staying his fiancé's home by choice. The officer who prepared this report concluded the complainant had lied to her friends, family, and law enforcement and theorized the complainant was "possibly mentally unstable."

Applying Cress

There is no dispute that the evidence described above is newly discovered and non-cumulative and that the defendant could not have discovered it before trial using reasonable diligence. The sole issue is whether there is an exculpatory connection between the newly discovered evidence and the heart of the complainant's testimony at trial that would make a different result probable upon retrial.

To potentially cause a different result upon retrial, newly discovered evidence must be admissible. Although police reports may not be admissible as substantive evidence, they provide a basis for impeaching the complainant's credibility. Specific instances of conduct may be inquired into on cross-examination if probative of truthfulness or untruthfulness. MRE 608(b). Here, if the complainant were to deny ever having made a false report of rape, the fact that she did make at least one false report in 2001 would likely be admissible. If the complainant were to admit she made a false report of rape, such an admission would significantly impeach her credibility.

This newly discovered evidence is also relevant. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." MRE 401. Here, the newly discovered police reports contain evidence that bear upon whether the complainant's testimony about the attack in the Meijer parking lot should be believed. Because this new evidence tends to make the complainant's trial testimony less believable, it makes a fact of consequence to the action – i.e., that the defendant sexually assaulted the complainant – less probable.

I. Exculpatory Connection

For newly discovered impeachment evidence to satisfy *Cress*, there must be an exculpatory connection between the evidence and the offense. In evaluating this issue, a court must identify a factual link between the heart of a key witness's testimony at trial and the newly discovered evidence. Here, a significant exculpatory connection exists between the newly discovered evidence and the heart of the complainant's trial testimony for the simple reason that the new evidence calls into question whether the crime about which the complainant testified *ever* occurred. In addition to casting doubt on the complainant's credibility generally, this newly discovered evidence casts considerable doubt on the complainant's testimony that she was brutally assaulted by the defendant in a busy commercial parking lot in the middle of the day, the most crucial evidence presented at trial.

Simply put, the newly discovered evidence places in serious doubt whether the complainant was sexually assaulted at all. In this regard, the Court is struck by the eerie similarities between the sexual assault the complainant reported here and the final (and third) version of the sexual assault she reported to Fresno police on October 1, 2001. Both alleged incidents involved allegations of rape that occurred in a parking lot, between two vehicles, in the middle of the day, to which there were no eye witnesses; in neither instance was definitive physical evidence obtained because the complainant did not seek immediate medical treatment; and in both instances the complainant stated her attacker penetrated her with a foreign object, his finger, and ultimately his penis. This evidence, as well as the other newly discovered evidence, is exculpatory because it tends to make the complainant's testimony about the Meijer assault unbelievable – and thus tends to prove the defendant's innocence.

The Bakersfield and Fresno police reports reveal the complainant made numerous false accusations of sexual assault (as few as one and as many as nine) and even suggest that she may suffer psychological problems possibly related to childhood events. Both the complainant's previous involvement in rape support groups and her father's statement that she "likes to have a lot of attention" also suggest a motive to lie.

II. A different result is probable on retrial

This Court believes a different result is probable on retrial. The physical evidence directly linking defendant to the crime was thin. It consisted of a ring the prosecution could not produce at trial, that had been pawned nearly a year before the complainant reported having seen defendant wearing it (as she viewed him in the rear view mirror of her

vehicle driving 55 miles per hour) and a skull tattoo on defendant's arm, which the complainant claims she remembered for the first time shortly before trial began and that she had not mentioned to police prior to the line up at which she failed to identify the defendant.

Defendant's conviction rests primarily on the complainant's testimony that he sexually assaulted her. Although Dr. Bahhur identified the presence of "some abrasions on the right side of the vagina as well as on the cervical area," that were consistent with a sexual assault, he also acknowledged there were other explanations for his findings. When Dr. Russell, complainant's gynecologist, subsequently examined the complainant, her vaginal area was normal. This medical testimony failed to conclusively establish that a sexual assault occurred, making the complainant's testimony about the incident highly critical.

Very little objective evidence corroborated the defendant's conviction. There were no eye witnesses to the crime, even though it allegedly occurred in a "very busy" public parking lot in the middle of the day with the driver's side door of the complainant's vehicle open. No rape kit was obtained, as the complainant did not immediately report a sexual assault. When the complainant did report a sexual assault, she reported only digital penetration and expressly denied penile penetration. The complainant also disposed of her clothing, even though she knew it could have evidentiary value. Because the prosecution lacked physical evidence, the complainant's credibility became the cornerstone of its case. Had the jury not believed the complainant, the prosecution would have had little evidence to support the defendant's guilt.

Although the complainant picked defendant's photograph out of "thousands" she examined, the Court is not persuaded this is an unusually strong piece of evidence, especially when one considers the complainant's testimony that she was "in and out" of consciousness during the alleged assault and that her attacker wore dark glasses and a baseball cap the entire time. Moreover, the believability of complainant's identification of defendant was highly dependent on *her* believability, without which the prosecution would not have had a case. The Court is aware of and is not ignoring evidence that the defendant altered his appearance before a line up, that the defendant at first denied owning a "nugget" or "cluster" ring, and that he had a skull tattoo on his upper arm. However, when it considers this evidence in light of the absence of conclusive physical evidence that a sexual assault occurred, the lack of definitive physical evidence linking the defendant to the alleged assault, and the fact that the most critical piece of evidence at trial was the complainant's own testimony, this Court believes the prospect of a jury acquitting the defendant, once presented with the newly discovered evidence, is likely.

At trial, the prosecution capitalized on the complainant's apparent truthfulness by portraying her as a courageous wife and mother who struggled to overcome unthinkable shock and embarrassment resulting from a sexual assault that occurred in broad daylight in the parking lot at Meijer. The person portrayed by the prosecution is a much different person than the one depicted in the California police reports: a woman with a traumatic childhood who actively participated in an on-line rape support group before she was raped; who concocted incredible stories of abduction and gang rape in apparent attempts to gain attention; and who made anywhere between one and nine prior false accusations of rape. In the Court's estimation, cross examination directed at exposing the complainant as a troubled young woman preoccupied with fabricating tales of sexual assault would place a markedly different complexion on this case and likely cause a different result at retrial.

For the above reasons, Defendant-Appellant's Motion for a New Trial is GRANTED.

IT IS SO ORDERED.



HON. CYNTHIA A. LANE
Circuit Court Judge