

# Order

Michigan Supreme Court  
Lansing, Michigan

June 21, 2017

Stephen J. Markman,  
Chief Justice

154857

Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Joan L. Larsen  
Kurtis T. Wilder,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 154857  
COA: 332700  
Ingham CC: 15-000175-FH

BRIAN MICHAEL ALEXANDER,  
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the October 6, 2016 judgment of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE that part of the Court of Appeals judgment that reversed the Ingham Circuit Court's November 20, 2015 order granting the defendant's motion for a new trial. Although the Court of Appeals correctly concluded that the trial court applied an improper standard in granting a new trial based on newly discovered evidence, it erred in further determining that the new evidence would not justify the grant of a new trial. The evidence – the discovery of the complainant's cell phone records – was newly discovered, was not cumulative, and could not have been discovered with reasonable diligence and produced at trial. Whether this evidence "makes a different result probable on retrial," *People v Cress*, 468 Mich 678, 692 (2003), should first be determined by the trial court. We REMAND this case to the Ingham Circuit Court to determine, applying the *Cress* standard, whether the newly discovered evidence justifies a new trial.

We do not retain jurisdiction.



a0614

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 21, 2017

  
Clerk