STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED January 12, 2026 11:14 AM
v	No. 375953 Ionia Circuit Court
TAYLOR LEE-DEAN MILSTEAD, Defendant-Appellee.	LC No. 2023-018765-FC

Before: CAMERON, P.J., and KOROBKIN and BAZZI, JJ.

PER CURIAM.

In March 2024, the jury convicted defendant, Taylor Lee-Dean Milstead, of seven counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(a) (sexual penetration of person under 13 years of age). Milstead was sentenced to 25 to 45 years' incarceration for each CSC-I conviction, to be served concurrently. In May 2025, the trial court granted Milstead's motion for a new trial because of newly discovered evidence. Now, on appeal by leave granted,[1] the prosecution argues that the trial court erred by granting a new trial because the newly discovered evidence did not make a different outcome probable on retrial. We disagree and affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises out of Milstead's alleged sexual abuse of complainant, the minor daughter of Milstead's then-girlfriend. At trial, 12-year-old complainant testified that Milstead "forced [her] to have sex with him," and detailed two assaults that occurred in the home shared by Milstead and complainant's mother. According to complainant, the first incident transpired when she was eight years old at her mother's townhouse, during which Milstead played a pornographic video on the television in the bedroom belonging to Milstead and her mother; the video was of a naked "boy and girl" having sex. Milstead had closed and locked the bedroom door, and only Milstead and

[1] In its order granting the application for leave to appeal, this Court stayed the lower court proceedings pending resolution of this appeal or further order of this Court. *People v Milstead*, unpublished order of the Court of Appeals, entered July 3, 2025 (Docket No. 375953).

complainant were in the room at that time. Milstead instructed complainant to remove all her clothing except for her socks, to remove his clothing, and "do exactly what the video was doing." Milstead further instructed complainant to kneel and "put my mouth on his boy area and to suck it." Complainant did as instructed, even though she did not want to do it. Eventually, Milstead had complainant move to the bed, where Milstead "got on both knees and put his mouth to my girl part" and touched her with his tongue. Complainant further testified that Milstead, while lying on his back on the bed, had her get on top of him. Her "girl area" was "in his boy area." Milstead then "told [her] to go up and down." Complainant asserted that Milstead subsequently "told me to lay down on my back so that he could do it to me." Complainant did as instructed. Milstead "got fully on top of" complainant and "put his boy area into [her] butt area." During these acts, complainant saw Milstead's "boy part," which looked "like fat, and then like a sausage thing." Milstead was "sweaty" and "tired." At this point, complainant told Milstead to stop, and she did so "angrily" as she pushed him off of her body, got dressed, "ran" to her room, and shut and locked the door. Complainant indicated that both her mother and her half-sister were home at the time of the sexual assault. Complainant did not disclose the assault because she was scared.

Complainant further testified that Milstead sexually assaulted her a second time in the basement of the townhouse, but she could not recall her exact age—only that it was after the first sexual-abuse incident. At the time, complainant was playing with her half-sister when Milstead came into the basement with a laundry basket and told complainant's half-sister to go upstairs. As complainant was about to leave with her half-sister, Milstead instructed complainant to stay, which she did. Milstead pulled down complainant's pants, then pulled down his pants, and placed "his boy area into my girl area and went up and down." Milstead then told complainant to get up and "put [her] mouth to his boy part and to suck, like the last time," which complainant did because she "was scared, and [she] didn't know what to do." Milstead also "put his mouth to [complainant's] girl part and did the same thing," touching complainant with his tongue. Complainant subsequently asked Milstead to stop, and he complied. As complainant was leaving the basement, Milstead purportedly remarked, 'Don't tell anybody, or your mom is going to get taken away from you, and you're never going to see her again.'

Complainant testified that her testimony was "100 percent the truth." There were no eyewitnesses to the assaults, and inconclusive physical evidence was presented at trial. During cross-examination, defense counsel attempted to impeach complainant with prior inconsistent statements concerning such details as why she delayed reporting the sexual assaults, whether Milstead was naked when she first entered the bedroom, and whether Milstead ejaculated during any of the sex acts. Following the close of proofs and arguments, the jury convicted Milstead of seven counts of CSC-I, and he was sentenced as provided earlier.

In February 2025, Milstead moved for a new trial due to newly discovered evidence consisting of complainant's alleged recantation of her claims of sexual assault. More specifically, on October 4, 2024, Dr. Joel Sanchez, a psychiatrist from The Right Door, the community mental health provider for Ionia County, contacted Central Dispatch and reported that both complainant and her stepmother disclosed to him during an evaluation interview that in either June or July of 2024, complainant admitted that she lied about being sexually assaulted by Milstead to avoid having to go her mother's house. Dr. Sanchez later contacted defense counsel and shared this information on the advice of counsel. The trial court ordered production of complainant's medical

and mental health records from The Right Door for *in camera* review and released the pertinent documents to the parties before the hearing on Milstead's motion for a new trial.

At the hearing, the court heard testimony from complainant's mother, complainant's stepmother, and Dr. Sanchez. Complainant's mother testified that she did not initially believe complainant's accusations of sexual assault because she did not have the chance to talk to complainant about the allegations and because she did not want to believe that complainant had been sexually abused. Her mind changed after Milstead's trial and sentencing, however, when she found what she believed to be complainant's journal under the couch while cleaning during the summer of 2024. The notebook had complainant's name on it. Complainant's mother recognized the handwriting in the journal as complainant's handwriting. There were also "notes" from complainant's classmates in the journal. Complainant's mother turned over the journal to the police in January 2025, after some individuals, including Milstead's mother, had accused complainant of having lied about the sexual assaults. She did not go to the police sooner because "the case was closed." Complainant's mother indicated that the journal contained "a picture, that is drawn right there, that is a boy and a girl. The girl is naked, and the boy is laughing at her." The journal also contained the statement: "You are doing a crime that you cannot get people out of these crimes"; "the bullies die"; "I hope you die, loser. Fuck you, she said"; and "I said help. I said in a loud voice." At trial, complainant had denied keeping a diary detailing the assaults. Complainant's stepmother further discovered a second journal allegedly belonging to complainant after trial, with an entry dated August 6, 2024, stating, "Hey, I might go to jail now for lying about something very bad. Yeah, I know I should talk to God," and "I [might] get in trouble with Mom and Dad just for [saying] my big lie."[2]

Complainant's mother further testified that the last time complainant was in her home was in October 2023, and she had not sought to enforce her parenting time because she believed that complainant hated her because she sided with Milstead after complainant accused Milstead of sexual assault. Complainant's mother asserted that Milstead never admitted to her that he sexually abused complainant. Complainant's mother advanced that complainant was "a product of rape." As a result, complainant's mother understood what complainant was going through. Complainant's mother expressed that "there's been years that I've tried to pretend it didn't happen." She further stated that "there's flashbacks you see, and it reminds you of what happened. There's things you'll drive by, and you're like, 'Oh, this is where it happened,' and then you'll get another flashback. And you just want to forget, because it's always going to be there."

Complainant's stepmother testified that complainant received weekly counseling from a local child advocacy center from early 2023 until a few weeks before Milstead's trial started. Complainant's stepmother further shared that in August or September 2024, complainant visited the emergency walk-in department of Pine Rest, a psychiatric hospital and behavioral health provider in Grand Rapids, after she and complainant's father discovered "Goodbye" letters written by complainant to her siblings. Complainant's stepmother and complainant's father feared these

[2] The journal discovered by complainant's mother appears to have been written by complainant before trial as complainant had not visited her mother's house since October 2023, while the journal discovered by complainant's stepmother contains entries dated after the trial.

letters were evidence of complainant "wanting to harm herself." Pine Rest provided the family with a home safety plan and a referral to The Right Door. According to complainant's stepmother, The Right Door conducted an intake evaluation of complainant a few days later. On October 3, 2024, Dr. Sanchez performed a psychiatric evaluation of complainant, but complainant did not seek further services from The Right Door after their meeting, and she seemed "very withdrawn and reclused."

Complainant's stepmother advised the person performing complainant's intake at The Right Door that complainant had made claims after Milstead's trial that she had lied about being sexually assaulted. Particularly, complainant's stepmother informed the person about "what we had gone through, that we had gone through a jury trial for a CSC, and now [complainant] is simply stating that she was not assaulted, and that we have concerns." Complainant's stepmother elaborated:

> We were having issues at home. We were having issues with just little lies that we were noticing. After months of asking, "Why are we making these little lies?" she continued to state things like she doesn't want to see the truth. One day, after a day of a lot of behaviors and a lot of little lies, I asked her what this big truth was, and that's when she simply stated, "I was not assaulted."
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> Like I stated, I simply just found her in little lies. We were having behavioral issues that day. She said she was having big feelings, and when I asked, "What is this big truth?" that is what she had stated.

Complainant's stepmother clarified that complainant said that she not "assaulted," not that she was not "sexually" assaulted. Complainant's stepmother testified that this disclosure occurred in August or September 2024, and only she and complainant were present. Complainant's stepmother believed that complainant repeated the disclosure during counseling sessions "here and there," and she was unsure of whether complainant was lying or telling the truth when she stated that she was not assaulted. According to complainant's stepmother, when she and complainant's father questioned complainant about why she would lie about being sexually assaulted, "the answer was a little attention seeking in hoping that the biological mother would show up for her."

At the motion hearing, complainant's stepmother further expressed that she may have informed Dr. Sanchez that complainant had lied about being sexually assaulted by a male student in a restroom at the high school and that she had "orchestrated" sexual contact with another male student at the middle school. Regarding these incidents, the principals of the high school and middle school investigated complainant's claims regarding nonconsensual sexual conduct in a high school bathroom. Complainant eventually admitted that her allegations concerning the conduct occurring at the high school were untrue after security camera videos did not substantiate her claims. Complainant then admitted that the accusations concerning the act at the middle school was also made up; she had initiated the contact. Her middle school principal thereafter required complainant's visits to the restroom to be supervised. Complainant's stepmother additionally testified that complainant informed Dr. Sanchez in October 2024 that her father was "beating" her, but these contentions were untrue.

Dr. Sanchez testified that he met with complainant once, for less than an hour, on October 3, 2024. There is neither an audiorecording nor videorecording of the meeting. According to Dr. Sanchez, a statement he heard during that meeting prompted him to call 911 the next day to report the making of the statement. Dr. Sanchez spoke with a police officer on October 23, 2024, because of his call to Central Dispatch. Dr. Sanchez simply advised the officer that "there was ambiguity regarding the circumstances" and that his counsel had instructed him not to speak further on the matter. Dr. Sanchez did not have the consent of complainant or her family to divulge any statement made to him. On advice of counsel, Dr. Sanchez contacted Milstead's trial attorney about the matter. The Right Door medical and mental health records additionally provided that, "[Complainant] openly admits that, 'I lied' about [Milstead] abusing her [and] 'I don't' care,' when discussing that he is now in prison in relation to this."

Following the parties' arguments, the trial court granted Milstead's motion for a new trial. The court first acknowledged that the prosecution had conceded that the first three factors delineated in *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003), had been satisfied. Regarding the fourth factor, the trial court concluded that a reasonable juror may find the contested evidence credible on retrial and, thus, when considering the evidence that was previously introduced at trial in conjunction with the evidence that would be presented at a new trial, the newly discovered evidence would make a different result probable on retrial. The court reasoned:

> But what was really significant to me at the trial, that I found somewhat surprising, with respect to this outcome at trial, was the pressure, really, that was placed upon the victim by her stepmother, who was her, essentially, father's girlfriend at the time that this happened, but by all intents and purposes, this child looked to her as a mother figure in her life. And I guess not only the pressure that was pretty evident from the tape,[3] again, to [the prosecution's] credit that he readily had admitted into evidence so that the jury could evaluate that, but the fact that the stepmother, herself, had been a victim of sexual assault was something that was very evident when she was talking with this child. She had indicated at one point in time, and even kind of cut her off, and said, "No. If you want to see your mother again, you have to tell the truth." And at that point in time, the child changed her story. So, I mean, I think that is very unique to this particular case, and I think could have easily supported a finding the other way.
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> But that being said now, I do think that a reasonable juror could find, and it would very likely be probable, a different result, if this were to go to retrial, in light of the fact that this information was not an isolated incident. Although [the prosecution] has argued that this came out in the context of Dr. Sanchez being male, and that she's not particularly comfortable with men, I think [defense counsel's] point is well taken that there was quite a bit of time from that first intake to when

[3] At trial, the prosecution presented a recording of a conversation between complainant and her stepmother regarding the sexual abuse allegations against Milstead, and the truthfulness of those accusations.

they actually met with Dr. Sanchez, and it was clear in my review of the records that the individuals that she had met with prior were women.

But even above that, and beyond that, this statement was made to . . .her stepmother, and it was consistently made, as I understand it. That prompted them, then, to seek the services of Pine Rest, which referred them to The Right Door. So, I think [complainant's stepmother] was very clear in her testimony that because of these lying events that were happening at their home, first with the small types of things, but then for her to say that the big truth was that she was not assaulted, and [complainant's stepmother] had clearly interpreted that as it relates to this trial that had just recently occurred.

I noted that in the records themselves, that the child, [], does indicate that the truth would make her look bad, and, so, that's why she didn't want to say the truth. Really, the behavioral issues that she was having following her testimony, I believe, can really—a reasonable juror would find that as indicative of a child whose conscience was just not letting her rest, with respect to having gone into court and testified, and swearing, that this was truthful, when, in fact, she's indicated to her mother and to at least three individuals, I believe, at Pine Rest, The Right Door, and then Dr. Sanchez, that she had not been truthful at trial.

So, that combination, I think, really does preponderate towards a likelihood that there would be a not guilty verdict.

I do want to speak a minute to [complainant's mother's] testimony here today, because it's just an unfortunate and sad set of circumstances, and I recognize that based upon the information that she's presented, that are documented in the records from The Right Door, that she, herself, was a victim of a sexual assault, resulting in the conception of this child. But it was, I guess, very noteworthy to me that when she, essentially, abandoned her relationship and her support of Mr. Milstead, that it was at the same time that she began a relationship with somebody else, and I just see that as being, in her mind, a way of justifying.

But that being said, clearly, that, too, is new evidence that could be presented to a jury, and they may find differently. But I think the combination of events, with respect to these statements, the acting-out behaviors of this child, following this testimony that she, herself, says was not truthful, and then calling into question—not only being consistent about saying she was not truthful, but then acting out and being untruthful as it relates to these two incidents at school and then with her own father.

So, with that being said, I think there is enough here that it does warrant a new trial at this point . . . .

The trial court memorialized and implemented its bench ruling by order entered on May 19, 2025. This appeal ensued.

II. STANDARD OF REVIEW

We review a trial court's decision to grant or deny a motion for new trial for an abuse of discretion. *Cress*, 468 Mich at 691. "A trial court abuses its discretion when it selects an outcome that does not fall within the range of reasonable and principled outcomes." *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007). "This Court reviews for clear error the factual findings underlying the trial court's application of the law." *People v Rogers*, 335 Mich App 172, 191; 966 NW2d 181 (2020). "A finding is clearly erroneous when this Court is left with the definite and firm conviction that the trial court erred." *Id.*

III. ANALYSIS

The prosecution argues that the trial court erred by granting a new trial because the newly discovered evidence did not make a different outcome probable on retrial. We disagree.

In the context of a criminal defendant's request for a new trial based on newly discovered evidence, the four-part standard articulated by the Michigan Supreme Court in *Cress* applies, which permits relief if the defendant demonstrates that:

> (1) the evidence itself, not merely its materiality, was newly discovered; (2) the newly discovered evidence was not cumulative; (3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial; and (4) the new evidence makes a different result probable on retrial. [*Cress*, 468 Mich at 692 (quotation marks and citation omitted).]

In the present case, the parties do not dispute that the first three *Cress* factors are satisfied. Thus, the pertinent question is whether the consideration of complainant's recanting statements to Dr. Sanchez and her stepmother, complainant's purportedly false contentions regarding the sexual incidents at school, complainant's journal entries, and the contents of complainant's The Right Door medical and mental health records, would make a different result more probable on retrial.

As to the fourth *Cress* factor, a trial court must first determine whether the newly discovered evidence is credible. *People v Johnson*, 502 Mich 541, 566-567; 918 NW2d 676 (2018). As noted by the Michigan Supreme Court in *Johnson*, *id*. at 567-568 (citations omitted):

> In making this assessment, the trial court should consider all relevant factors tending to either bolster or diminish the veracity of the witness's testimony. A trial court's function is limited when reviewing newly discovered evidence, as it is not the ultimate fact-finder; should a trial court grant a motion for relief from judgment, the case would be remanded for retrial, not dismissal. In other words, a trial court's credibility determination is concerned with whether a reasonable juror could find the testimony credible on retrial. See *Connelly v United States*, 271 F2d 333, 335 (CA 8, 1959) ("The trial court has the right to determine the credibility of newly discovered evidence for which a new trial is asked, and if the court is satisfied that, on a new trial, such testimony would not be worthy of belief by the jury, the motion should be denied.") (quotation marks and citation omitted; emphasis added).
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> If a witness's lack of credibility is such that no reasonable juror would consciously entertain a reasonable belief in the witness's veracity, then the trial court should deny a defendant's motion for relief from judgment. However, if a witness is not patently incredible, a trial court's credibility determination must bear in mind what a reasonable juror might make of the testimony, and not what the trial court itself might decide, were it the ultimate fact-finder.

If the trial court resolves that the newly discovered evidence is credible, then the court must "consider the impact of the testimony in conjunction with the evidence that would be presented on retrial." *Id*. at 571. More specifically, "the evidence that must be taken into consideration when assessing a claim of newly discovered evidence is not simply the evidence presented at the original trial, but also the evidence that would be presented at a new trial." *Id*. Stated alternatively, the proofs that would be introduced at retrial "includes, but importantly is not limited to what, strictly speaking, would qualify as 'newly discovered evidence' to support a motion for new trial." *Rogers*, 335 Mich App at 201. Whether evidence is likely to be admitted on retrial and for what purpose such evidence may be admitted is, therefore, relevant to the *Cress* analysis. See *Johnson*, 502 Mich at 571.

Newly discovered evidence that takes the form of recantation testimony is traditionally regarded as suspect and untrustworthy. *Rogers*, 355 Mich App at 197; *People v Patmore*, 264 Mich App 139, 153; 693 NW2d 385 (2004); *People v Canter*, 197 Mich App 550, 559; 496 NW2d 336 (1992). Further, the Michigan Supreme Court has held that "newly discovered impeachment evidence ordinarily will not justify the grant of a new trial." *People v Grissom*, 492 Mich 296, 317-318, 821 NW2d 50 (2012). However, the *Grissom* Court simultaneously recognized that impeachment evidence alone may constitute an adequate basis for a new trial if the four-part test from *Cress* is satisfied. *Id*. at 321. The Court explained that newly discovered impeachment evidence may satisfy the factors under *Cress* if "there is an exculpatory connection on a material matter between a witness's testimony at trial and the new evidence," and "a different result is probable on retrial." *Id*. at 319. Stated alternatively, the trial court "must evaluate the new evidence and determine whether there exists an exculpatory connection between it and the heart of the complainant's testimony." *Id*. at 321.

In *Rogers*, this Court, citing *Grissom*, specifically addressed whether recantation evidence alone may warrant a new trial under the fourth *Cress* factor. *Rogers*, 335 Mich App at 204-208. The *Rogers* Court considered the complainant's recanting statements, contained in a video and a sworn affidavit, which asserted that she had lied at the defendant's criminal trial regarding the sexual abuse, in addition to her later contentions—made after being granted immunity—that she had falsely accused her adoptive parents and brother, neither of whom were the defendant, of sexual assault. *Id*. at 204-205. The Court noted that the complainant "admitted in sworn testimony that she made recanting statements in the video and affidavit, but she explained that those statements were actually lies." *Id*. at 205. This Court resolved, "A reasonable juror could conclude that, in fact, [the complainant] told the truth in the recanting statements or, at a bare minimum, the reasonable juror could conclude that [the complainant] was willing to lie on multiple occasions about the central issue of this case." *Id*. The *Rogers* Court further observed that the complainant "further admitted under oath that she made false allegations of similar sexual assaults against the [adoptive family], and from this a reasonable juror could conclude that [the complainant] was willing to falsely accuse family members of rape because she was angry with them." *Id*.

This Court, having determined that a reasonable juror may find the recanting evidence credible, considered the implications of this evidence on retrial. *Id*. The Court highlighted that the "original trial was a classic 'he said/she said' credibility contest between [the complainant] and defendant," because there were no other eyewitnesses who testified about the alleged assault and the physical evidence was inconclusive. *Id*. The *Rogers* Court summarized the complainant's trial testimony regarding the two alleged incidents of sexual assault resolving, "There clearly is a connection between [complainant's] recanting statements (defendant did not rape her) and her inculpatory trial testimony (defendant did rape her)." *Id*. at 206. This Court further advanced, "Admissions of lying about the central issue—whether the rape actually occurred—would *ceteris paribus* undermine any witness's credibility to some extent." *Id*. The Court further cited the material similarities between the complainant's allegations against the defendant and her false accusations against her adoptive family, including the involvement of family members, comparable physical acts, the presence of a female partner who knew than an assault was occurring, and a potential motive for the complainant's dishonesty. *Id*. at 207. The *Rogers* Court reasoned, "This evidence would likely be used not just for impeachment purposes, but would also likely be used to show that [the complainant] had a motive for falsely accusing defendant," or to demonstrate that the complainant "had a scheme, plan, or system of making false allegations of sexual assault as retribution against a family member with whom she became angry." *Id*. at 207-208. This Court ultimately concluded that the trial court abused its discretion by denying the defendant's motion for a new trial on the basis of newly discovered evidence stating:

> When we consider all of the evidence that could be used at retrial—including the evidence from the original trial, [the complainant's] recanting statements, [the complainant's] explanations for why she made the recanting statements, and the evidence of false accusations against the [adoptive family]—we conclude that a different result on retrial is probable. Simply put, the case against defendant rests largely, if not wholly, on [the complainant's] credibility, and the evidence that was presented on remand discredits [the complainant] to a significant extent. If her testimony on this score is not credible, then the case against [the] defendant collapses. [*Id*. at 208.]

Unlike *Rogers*, in the present case, to date, there is no direct evidence that complainant retracted her allegations that she was sexually penetrated by Milstead. Complainant was not called as a witness at the evidentiary hearing, nor did she provide a written or sworn statement recanting her trial testimony. Additionally, no oral recantation was presented to the trial court in the form of an audio or videorecording. Rather, the alleged recantation evidence identified in this case exists entirely in the form of hearsay statements, as relayed through the testimony of complainant's stepmother and Dr. Sanchez, and as reflected in complainant's The Right Door medical and mental health records and her journal entries.

Nevertheless, when evaluated under the fourth *Cress* factor—whether the newly discovered evidence would likely produce a different result on retrial—the trial court did not abuse its discretion in concluding that this standard was satisfied. Although complainant provided extensive testimony at trial describing the alleged sexual abuse, there were no other eyewitness to the assaults, and the physical evidence was inconclusive. As a result, Milstead's convictions rested largely on complainant's credibility. In that context, the testimony of complainant's stepmother strongly suggests that credible evidence exists which would significantly undermine the credibility

of complainant and, in turn, the prosecution's case against Milstead. The trial court considered this testimony in conjunction with a recording admitted at trial capturing an exchange between complainant and her stepmother, in which the complainant's stepmother appears to pressure complainant to assert that the sexual abuse occurred, stating, "If you want to see your mother again, you have to tell the truth," after which complainant "changed her story."

The trial court further noted that complainant's medical and mental health records indicated that the recanting statements were conveyed to multiple individuals, other than complainant's stepmother, including Dr. Sanchez and employees at Pine Rest and The Right Door.[4] While the court did not expressly consider whether the contents of these records were admissible given psychologist-patient privilege, the trial court implicitly did so by sharing the records with the parties' counsel and considering the pertinent documents in its ruling. See *People v Adamski*, 198 Mich App 133, 140, 497 NW2d 546 (1993) ("Whether to allow the use of any particular statement protected by the [psychologist-patient] privilege for impeachment is a separate question that is within the trial court's discretion.")[5]

The trial court further broadly neglected to consider that the purported recantation evidence largely consisted of hearsay statements within the meaning of MRE 801. Nonetheless, although this evidence may not be admissible in its current form as substantive proof of recantation at retrial, it may be admissible for impeachment purposes. *Rogers,* 335 Mich App at 198. Further, as our Supreme Court has made clear, impeachment evidence alone may support the grant of a new trial, provided that the four-part test in *Cress* is satisfied. *Grissom*, 492 Mich at 321. Thus, the fact that Milstead's newly discovered evidence may solely constitute impeachment evidence does not preclude appellate relief. *Id*. at 198-199.

The trial court additionally considered the testimony of complainant's stepmother regarding complainant's prior false allegation of sexual assault against a male classmate, complainant's false statement of a consensual sexual encounter with a male classmate, and the

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[4] The prosecution argues that the contention that complainant advanced these recanting statements regarding Milstead's purported sexual abuse to at least three individuals, in addition to her stepmother, is factually inaccurate. We agree that the record is unclear as to exactly how many persons complainant made such statements to; however, as discussed further herein, the more pertinent matter was that complainant allegedly made these recanting statements in the first instance, notwithstanding the exact number of individuals who heard them.

[5] We note that it is unclear exactly which portions of complainant's medical and mental health records were shared with the parties, or considered by the trial court, during the lower court proceedings because the issued protective order regarding these records solely states that the trial court "received for in-camera review certain counseling documentation," and that the parties' counsel "will be provided with copies of pertinent counseling documents." Accordingly, we cannot rule that complainant's medical and mental health records, in their entirety, were admissible. Rather, the record reflects that the trial court considered the recanting statements contained within those records and, in doing so, implicitly assessed the admissibility of those statements before rendering its broader ruling of Milstead's motion for a new trial.

allegedly untrue accusations that complainant's father had physically abused her. We note, however, that the trial court erred by failing to address the admissibility of these evidentiary items under the Michigan Rules of Evidence, notwithstanding the multiple layers of hearsay, and pursuant to *People v Hackett*, 421 Mich 338; 365 NW2d 120 (1984).[6] Despite this error, we conclude that it does not warrant reversal of the trial court's decision granting Milstead's motion for a new trial, given the potential impact of the previously discussed impeachment and recantation evidence.

Ultimately, because the case turned almost entirely on complainant's credibility, the trial court reasonably concluded that the newly discovered evidence, if presented at retrial, would likely produce a different result, thereby satisfying the fourth *Cress* factor. The court properly determined that the recording depicting the pressure complainant's stepmother placed on

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[6] In *Hackett*, 421 Mich at 348, the Michigan Supreme Court, in determining the constitutional application of the rape-shield statute, delineated the proper procedure for the admission of evidence of a complainant's prior sexual conduct, "sexual reputation," and other related character matters. The *Hackett* Court provided:

> The defendant is obligated initially to make an offer of proof as to the proposed evidence and to demonstrate its relevance to the purpose for which it is sought to be admitted. Unless there is a sufficient showing of relevancy in the defendant's offer of proof, the trial court will deny the motion. If there is a sufficient offer of proof as to a defendant's constitutional right to confrontation, as distinct simply from use of sexual conduct as evidence of character or for impeachment, the trial court shall order an *in camera* evidentiary hearing to determine the admissibility of such evidence in light of the constitutional inquiry previously stated. At this hearing, the trial court has, as always, the responsibility to restrict the scope of cross-examination to prevent questions which would harass, annoy or humiliate sexual assault victims and to guard against mere fishing expeditions. Moreover, the trial court continues to possess the discretionary power to exclude relevant evidence offered for any purpose where its probative value is substantially outweighed by the risks of unfair prejudice, confusion of issues or misleading the jury. We again emphasize that in ruling on the admissibility of the proffered evidence, the trial court should rule against the admission of evidence of a complainant's prior sexual conduct with third persons unless that ruling would unduly infringe on the defendant's constitutional right to confrontation. [*Id*. at 350-351 (citations omitted; first emphasis added).]

The trial court, therefore, erred by failing to make an explicit finding whether Milstead's offer of proof regarding complainant's prior false allegation of sexual assault against a male classmate, complainant's false accusation of a consensual sexual encounter with a male classmate, and the allegedly untrue accusations that complainant's father had physically abused her warranted an *in camera* evidentiary hearing under *Hackett*. See also *People v Butler*, 513 Mich 24, 31; 6 NW3d 54 (2024). We make no findings regarding the admissibility of this evidence, rather, we direct the trial court to address the admissibility of these evidentiary items under the cited procedure if the parties seek to introduce them at trial.

complainant to assert that the sexual abuse occurred—considered alongside complainant's recanting statements to multiple individuals that the underlying assaults did not transpire, and her concerning journal entries—could lead to a different outcome on retrial. Accordingly, the trial court did not abuse its discretion in granting Milstead's motion for a new trial.

Affirmed.

/s/ Thomas C. Cameron
/s/ Daniel S. Korobkin
/s/ Mariam S. Bazzi