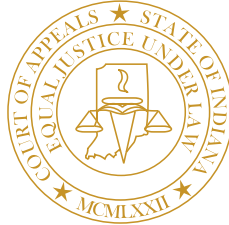


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.

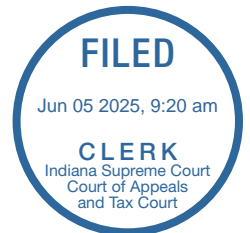


IN THE Court of Appeals of Indiana

Amanda Ping,
Appellant-Plaintiff

v.

Margaret Inman, M.D.,
Appellee-Defendant



June 5, 2025

Court of Appeals Case No.
24A-CT-2394

Appeal from the Marion Superior Court
The Honorable Kurt M. Eisgruber, Judge

Trial Court Cause No.
49D06-2006-CT-20070

Memorandum Decision by Judge Weissmann
Judges May and Scheele concur.

Weissmann, Judge.

[1] After losing her medical malpractice case against Dr. Margaret Inman, Amanda Ping learned that one of the jurors who returned the adverse verdict had not disclosed that she recognized the name of a defense expert witness. Ping sought a new trial, which the trial court summarily denied. Ping then appealed, claiming she was entitled to an evidentiary hearing to prove the juror committed misconduct. The Court of Appeals agreed and remanded for an evidentiary hearing, at which Juror 11 testified that she merely recognized the defense expert's name as that of the surgical department chairman at a Kentucky university hospital the juror once serviced as a medical device vendor.

[2] The trial court found the juror's failure to reveal her limited knowledge of the defense expert did not constitute gross misconduct or result in probable harm to Ping, who again appealed. Finding the trial court did not abuse its discretion in reaching that conclusion and that Ping is not entitled to a new trial, we affirm.

Facts

[3] Ping sued Dr. Inman for medical malpractice after a surgical procedure, and the case proceeded to a jury trial. At the beginning of voir dire, the trial court named the potential witnesses and asked the prospective jurors whether they recognized any of those names. Juror 11 identified two witnesses with whom she was familiar, but not the defense expert witness she later recognized. At the conclusion of voir dire, the jury was sworn and given preliminary instructions

that directed its members to inform the bailiff if they realized they had personal knowledge relating to the case.

[4] The trial ended four days later when the jury returned a verdict for Dr. Inman. The court allowed counsel to speak to the jurors immediately afterward. During this unrecorded meeting—attended by the trial court, counsel for both parties, and the jurors—Juror 11 mentioned that she recognized Dr. Cheadle, one of the defense’s expert witnesses, from Juror 11’s work as a medical device vendor. As a result of that disclosure, Ping filed a motion to correct error seeking either a new trial or an evidentiary hearing based on alleged juror misconduct. The trial court summarily denied this motion, and Ping appealed.

[5] In January 2024, this Court reversed the trial court’s ruling on Ping’s motion to correct error. *Ping v. Inman*, 228 N.E.3d 451, 456-57 (Ind. Ct. App. 2024). It remanded “with instructions to hold an evidentiary hearing to determine whether Juror 11 was actually biased or prejudiced against Ping due to her familiarity with Dr. Cheadle through her work as a medical device vendor.” *Id.*

[6] At the subsequent evidentiary hearing, Juror 11 testified that she had been involved in medical device sales since 2006 and had interacted with hundreds of physicians during her career. She explained that she was responsible for Kentucky accounts “off and on” but for several years had not visited the university hospital with which Dr. Cheadle was affiliated. Tr. Vol. II, p. 6. Juror 11’s knowledge of Dr. Cheadle was limited to recognizing his name and

believing he was head of surgery at that hospital due to seeing his name on a marquee there.

- [7] Juror 11 testified that she had “[n]ever heard anything about [Dr. Cheadle]” and had never spoken to or otherwise communicated with him. *Id.* Juror 11 also testified that she had not shared with the other jurors any information about Dr. Cheadle. *Id.* Her knowledge of Dr. Cheadle did not make her “job as a juror any easier,” according to Juror 11, and did not “factor” into her duties as a juror “at all.” *Id.* at 7.
- [8] Though Juror 11 did acknowledge during voir dire her familiarity with two other witnesses, she did not inform the court about her knowledge of Dr. Cheadle at that time because she “did not make the connection.” *Id.* at 12. Juror 11 testified that she first recognized Dr. Cheadle’s name much later in the trial when his curriculum vitae was admitted into evidence. She explained that she did not speak up at the time because her familiarity with Dr. Cheadle was “just by name.” *Id.* at 9.
- [9] When questioned whether her familiarity with Dr. Cheadle influenced her decision-making as a juror, Juror 11 replied, “Absolutely not.” *Id.* at 16. She also confirmed that she “did not give Dr. Cheadle’s testimony any greater weight” as a result of her familiarity with his name. *Id.* at 15.
- [10] Juror 11’s testimony was the only evidence admitted at the evidentiary hearing. Based on her testimony, the trial court found no gross misconduct and no bias

or prejudice. The court therefore denied Ping’s motion to correct errors seeking a new trial, prompting this second appeal.

Discussion and Decision

[11] “To merit a new trial upon a claim of juror misconduct, the challenger ‘must show that the misconduct was gross and probably harmed’ the challenging party.” *Henri v. Curto*, 908 N.E.2d 196, 202 (Ind. 2009) (quoting *Godby v. State*, 736 N.E.2d 252, 256 (Ind. 2000)). “Determining whether gross misconduct in all likelihood harmed the complaining party is within the trial court’s discretion.” *Id.* We therefore review this determination for an abuse of discretion, which “occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law.” *Bruder v. Seneca Mortg. Servs.*, 188 N.E.3d 469, 471 (Ind. 2022).

[12] Where, as here, “the trial court has entered findings of fact and conclusions [of law] pursuant to a party’s request, we engage in [a] two-tiered standard of review.” *Luxury Townhomes, LLC v. McKinley Props., Inc.*, 992 N.E.2d 810, 815 (Ind. Ct. App. 2013). We first determine whether the evidence supports the findings of fact and then whether the findings support the judgment. *Id.* “We will not reverse the findings and judgement unless they are clearly erroneous.” *Gates v. Houston*, 897 N.E.2d 532, 534 (Ind. Ct. App. 2008) (quotations omitted). “The judgment is clearly erroneous when it is unsupported by the findings of fact and conclusions entered on the findings.” *Id.* at 534-35. In

making these determinations, we neither reweigh the evidence nor judge witness credibility and consider only the evidence favorable to the judgment and all reasonable inferences. *Id.* at 535. We normally defer to the trial court’s factual findings but accord no deference to conclusions of law, which we review *de novo*. *Id.*¹

[13] Applying this standard, we find no error in the trial court’s determinations that Ping failed to establish: (1) gross juror misconduct from Juror 11’s failure to disclose her knowledge of Dr. Cheadle’s name; and (2) probable harm from the non-disclosure.

I. Juror 11’s Conduct Did Not Constitute Gross Misconduct.

[14] Ping argues that Juror 11’s failure to disclose her recognition of Dr. Cheadle’s name constitutes gross misconduct requiring a new trial. She claims the trial court incorrectly suggested that Juror 11’s recognition was limited only to Dr.

¹ Citing *Garriott v. Peters*, 878 N.E.2d 431, 438 (Ind. Ct. App. 2007), Ping claims we owe no such deference to the trial court’s factual findings because they simply reiterate Juror 11’s testimony. In *Garriott*, this Court ruled that “[w]hen a trial court enters purported findings that merely restate testimony, this court will not ‘cloak the trial court recitations in the garb of true factual determinations and specific findings as to those facts.’” *Id.* Although the applicability of this proposition outside the administrative context is debatable, *see Bowyer v. Ind. Dep’t of Nat. Res.*, 944 N.E.2d 972, 984 (Ind. Ct. App. 2011), we note that following *Garriott* here has no impact on the outcome. Ping does not challenge the factual findings, which accurately recite Juror 11’s testimony found in the transcript of the evidentiary hearing filed on appeal. Instead, Ping only challenges the trial court’s conclusions of law, asserting, in part, that they are based on an erroneous implicit finding by the trial court that Juror 11 merely knew Dr. Cheadle’s name and nothing else about Dr. Cheadle including his position. The trial court’s conclusions treat Juror 11’s testimony as credible and determine, on that basis, that no showing of gross juror misconduct or bias or prejudice to Ping had been made. As already noted, however, conclusions of law are owed no deference on appeal. *Luxury Townhomes*, 992 N.E.2d at 815. Therefore, there are no explicit findings that Ping challenges and to which she asks us to apply *Garriott*.

Cheadle's name rather than his professional position. According to Ping, Juror 11 possessed independent knowledge of specific details about Dr. Cheadle's leadership roles that were not presented at trial—knowledge that could have substantially influenced how she evaluated his testimony.

[15] Ping further contends that the record indicates Juror 11's non-disclosure was deliberate, pointing to two key factors. First, the alternate juror properly reported her undisclosed connection to a witness during trial after receiving identical instructions as Juror 11. Second, Juror 11 waited until after the verdict to reveal her knowledge, when any potential damage had already occurred. Ping also argues that inconsistencies in Juror 11's testimony during the post-trial evidentiary hearing demonstrate her lack of honesty.

[16] We reject Ping's characterizations as unsupported by the record. The evidence does not establish that Juror 11's knowledge of Dr. Cheadle extended beyond simple name recognition. Juror 11 testified that she knew him only "by name" and had never personally interacted with him. Tr. Vol. II, p. 6. Her knowledge was limited to having seen his name on a hospital marquee, which indicated in her memory that he headed the surgical department. Her testimony revealed she possessed no additional details about his professional background beyond what the parties presented in court. Importantly, evidence of Dr. Cheadle's professional positions and leadership roles was properly introduced to the entire jury. His comprehensive curriculum vitae—which listed his former position as acting chief of surgery at the university hospital—was admitted into evidence without objection.

- [17] The fact that an alternate juror disclosed her knowledge of a witness during trial, while Juror 11 did not, does not automatically transform Juror 11's non-disclosure into gross misconduct. Juror 11 explained that she did not make the connection until late in the trial, and her testimony demonstrated that her limited knowledge of Dr. Cheadle did not affect her jury service.
- [18] Ping's argument that Juror 11's post-verdict revelation suggests her actions were deliberate lacks merit. If Juror 11 had recognized the significance of her knowledge and intentionally concealed it to influence the verdict, she likely would not have voluntarily disclosed this information immediately after the verdict was rendered. Her candid admission during post-trial discussions suggests a lack of awareness about the potential significance of her limited recognition, rather than deliberate misconduct. This interpretation is supported by the fact that Ping herself had disclosed during voir dire her recognition of two other witnesses, corroborating her later testimony that she did not recognize Dr. Cheadle until late in the trial.
- [19] Regarding alleged contradictions in Juror 11's testimony, the trial court appeared to find Juror 11's testimony credible on three key points: (1) Juror 11 genuinely did not realize her connection to Dr. Cheadle's name during voir dire; (2) her knowledge was limited to seeing his name on a hospital marquee; and (3) this recognition did not influence her evaluation of his testimony or her verdict. The trial court determined that Juror 11's delayed disclosure was inadvertent. Given her limited knowledge of Dr. Cheadle and her failure to share even that minimal information with other jurors, the court concluded that

Juror 11's familiarity with the doctor did not introduce extraneous prejudicial information into any juror's deliberations.

[20] Having directly observed Juror 11's testimony and demeanor during the evidentiary hearing, the trial court was uniquely positioned to evaluate her credibility—the sole evidence supporting Ping's juror misconduct claim. We will not disturb this credibility determination on appeal. See *Wilfong v. Cessna Corp.*, 838 N.E.2d 403, 407 (Ind. 2005) ("The trial court sits 'in the best position to weigh any conflicting evidence and assess the credibility of the witnesses.'" (quoting *Hensler v. Brooks*, 684 N.E.2d 1180, 1184 (Ind. Ct. App. 1997))); *Gates*, 897 N.E.2d at 535 (noting that reviewing courts will not reweigh evidence or judge witness credibility).

[21] Ping's reliance on *State v. Dye*, 784 N.E.2d 469 (Ind. 2003), is misplaced. In *Dye*, our Supreme Court found gross misconduct when a juror deliberately concealed multiple pieces of directly relevant information, including her brother's death sentence, her own criminal history, and childhood sexual abuse. *Id.* at 474-77. Ping argues that Juror 11 similarly committed gross misconduct by deliberately failing to disclose her recognition of Dr. Cheadle until after trial, despite instructions to promptly reveal such connections. She contends that selectively following court instructions exceeds a juror's discretion and that knowingly violating trial court directives constitutes gross misconduct, as in *Dye*.

[22] But the juror in *Dye* concealed—at times intentionally, according to her own testimony—multiple facts directly relevant to the case that likely would have

resulted in her exclusion from the jury. *Id.* at 471-72. Unlike the *Dye* juror, Juror 11's non-disclosure was viewed by the trial court as inadvertent rather than deliberate, stemming from her failure to recognize the significance of her knowledge about Dr. Cheadle. Moreover, Juror 11 testified that she remained silent because her recognition came late in the trial and was limited to Dr. Cheadle's name. She further testified that she shared no information about Dr. Cheadle with any other juror, and Ping presented no evidence to contradict this statement.

[23] The present case more closely parallels *Warner v. State*, 773 N.E.2d 239, 246-47 (Ind. 2002), in which our Supreme Court affirmed a trial court's finding of no gross misconduct arising from a juror's inadvertent failure to disclose that her half-sister had been murdered. Not every instance of juror non-disclosure rises to gross misconduct. *See, e.g., Slaybaugh v. State*, 44 N.E.3d 111 (Ind. Ct. App. 2015), *aff'd*, 47 N.E.3d 607 (Ind. 2016) (finding no gross misconduct where juror failed to disclose during voir dire that victim's sibling was among her extensive list of social network friends). The trial court did not abuse its discretion in finding no gross juror misconduct here.

II. Ping Failed to Show Probable Harm.

[24] Even if we were to find gross misconduct, Ping has not demonstrated probable harm. To merit a new trial, a party claiming juror misconduct must show not only that the misconduct was gross but also that it “probably harmed” the challenging party. *Henri v. Curto*, 908 N.E.2d 196, 202 (Ind. 2009). Not all gross

juror misconduct carries with it probable harm. *See, e.g., Loehrlein v. State*, 158 N.E.3d 768 (Ind. 2020) (finding gross misconduct but no probable harm where juror failed to disclose both that she was a victim and alleged perpetrator of crime).

[25] Ping offers three reasons why probable harm occurred. First, she contends that Juror 11's knowledge of Dr. Cheadle's position as "head of surgery" and "chairman of the department" at the Kentucky university hospital materially enhanced his credibility in ways that prejudiced Juror 11's opinion and Ping's case. Tr. Vol. II, pp. 6, 9. Ping next suggests Juror 11's post-verdict comments, which Ping views as focusing on Juror 11's familiarity with Dr. Cheadle rather than the substance of his testimony, demonstrate her bias. Finally, Ping argues that when Juror 11 referenced her knowledge of Dr. Cheadle when asked about expert testimony, she demonstrated that "her knowledge of Dr. Cheadle was front of mind" and influenced her evaluation. Appellant's Br., p. 19.

[26] These arguments fall short. Although Dr. Cheadle was introduced at trial as a "Professor of Surgery," the distinction between this title and Juror 11's knowledge of him as "head of surgery" does not represent a significant enhancement of credentials that would materially affect how a reasonable juror would weigh his testimony.

[27] Moreover, Ping mischaracterizes Juror 11's post-verdict comment. When Juror 11 was directly questioned during the evidentiary hearing about whether her familiarity with Dr. Cheadle influenced her decision-making as a juror, she

unequivocally replied: “Absolutely not.” Tr. Vol. II, p. 16. She further confirmed that she “did not give Dr. Cheadle’s testimony any greater weight” because of her familiarity with his name. *Id.* at 15. She testified that she honored her oath “to be a fair and impartial juror . . . throughout that jury trial from start to finish.” *Id.* at 13-14. The trial court, having observed Juror 11’s testimony firsthand, found these statements credible, and we owe that assessment deference. *Luxury Townhomes*, 992 N.E.2d at 815.

[28] Proving probable harm requires more than establishing mere possibility or speculation. *See, e.g., Dye*, 784 N.E.2d at 477 (distinguishing between “possibility” and “probability”); *see also Lindke v. Combs*, 212 N.E.3d 1246, 1250 (Ind. Ct. App. 2023) (observing that, in personal injury context, plaintiff’s burden to establish causation is not met either through evidence based on “supposition” or “speculation,” that establishes a “mere possibility” of cause, or that lacks “reasonable certainty” or “probability”). Juror 11’s mention of her recognition of Dr. Cheadle during the post-trial discussion, standing alone, does not establish that this recognition probably influenced the verdict. Indeed, her willingness to volunteer this information immediately after the verdict suggests transparency rather than bias.

[29] Moreover, the trial’s outcome did not hinge solely on Dr. Cheadle’s testimony. This was a four-day trial involving multiple expert witnesses presenting competing testimony about the standard of care. Ping has not demonstrated that Dr. Cheadle’s testimony was so pivotal that Juror 11’s limited recognition of his name and position—information that was largely consistent with his

introduction at trial—probably affected the verdict. The trial court therefore did not abuse its discretion when it determined that Juror 11’s recognition of Dr. Cheadle’s name did not cause Ping probable harm.

[30] Finding the trial court did not abuse its discretion in determining no gross juror misconduct and that no probable harm resulted even if gross misconduct occurred, we affirm the trial court’s judgment.

May, J., and Scheele, J., concur.

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