

**Summary of SC95464, *Kristine Smotherman and Brian Smotherman v. Cass Regional Medical Center***

Appeal from the Cass County circuit court, Judge William B. Collins  
Argued and submitted May 4, 2016; opinion issued September 20, 2016

**Attorneys:** The Smothermans were represented by Mark E. Parrish and Joshua A. Sanders of Boyd, Kenter, Thomas & Parrish LLC in Independence, (816) 471-4511; and Aaron N. Woods of Woods Law KC LLC in Lee's Summit, (816) 398-7877. The medical center was represented by Sean T. McGrevey of Adam & McDonald PA in Overland Park, Kansas, (913) 647-0670.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A woman appeals the trial court's judgment overruling her motion for a new trial on the basis of one juror's misconduct. In a 4-3 decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the judgment. The trial court did not abuse its discretion in finding the juror's misconduct did not prejudice the woman. It properly presumed prejudice from the misconduct and then analyzed the content of the extraneous evidence, the manner in which it was brought to the jury's attention and the weight of the evidence supporting the verdict. The trial court relied on the testimony of eight jurors who either did not hear the offending juror's isolated remark about the extraneous evidence or appropriately disregarded it.

Judge Richard B. Teitelman dissents. Given the high standard to overcome the presumption of prejudice caused by juror misconduct, the author would find the other jurors' testimony does not overcome this prejudice. As such, he would reverse the judgment and would remand (send back) the case for a new trial.

**Facts:** Kristine Smotherman sued Cass Regional Medical Center for injuries she sustained when she slipped and fell in a bathroom at the medical center. At trial, she argued a soap dispenser in the bathroom had leaked, creating a dangerous condition that caused her to fall and subjected the medical center to liability. Throughout the trial, the medical center challenged Smotherman's credibility, emphasizing in part that, during the course of litigation, she had changed her account numerous times about why she had fallen. The jury was instructed to find the medical center liable if it found that there was soap on the bathroom floor and that, as a result, the medical center's bathroom was not reasonably safe. The jury further was instructed not to communicate with any non-jurors during deliberations or to conduct any independent investigation or research. The jury returned a verdict in favor of the medical center. Smotherman's attorney asked two jurors about the verdict. One said he had Googled the weather for the day of the fall and found that significant snowfall was forecast for that day. Smotherman subsequently moved for a new trial on the basis of juror misconduct. During a hearing, the offending juror admitted he had conducted the search, one other juror remembered a comment about weather on the day of the fall but testified the weather was immaterial to the jury deliberations, and seven other jurors testified they did not recall hearing anything about the weather during deliberations. The trial court overruled the motion for a new trial. Smotherman appeals.

## **AFFIRMED.**

**Court en banc holds:** The trial court did not abuse its discretion in finding that Smotherman suffered no prejudice from the juror's misconduct. In Missouri, a juror's testimony about juror misconduct generally is not admissible to impeach (attack) the jury's verdict, but it is admissible to establish that a juror committed misconduct by improperly gathering evidence outside of trial. When misconduct is found, prejudice is presumed, and the burden shifts to the opposing party to rebut that presumption. To be prejudicial, the extraneous evidence obtained from the juror misconduct must be material to the consequential facts of the case. The trial court is in the best position to determine what effect, if any, juror misconduct may have had on the jury's verdict.

Here, the trial court properly presumed prejudice from the misconduct and then analyzed the content of the extraneous evidence, the manner in which it was brought to the jury's attention and the weight of the evidence supporting the verdict to decide whether the extraneous evidence improperly influenced the jury. The trial court determined the extraneous evidence was not material to the central issue in the case – whether there was soap on the bathroom floor that caused Smotherman to fall, as required in the verdict-directing instruction. The trial court also considered the weight of evidence presented at trial, which supported the jury's verdict. The trial court further determined the extraneous evidence obtained by the offending juror was not prejudicial to Smotherman. The trial court is in a superior position to determine the credibility of witnesses and is free to believe none, part or all of their testimony. The court found the testimony of the offending juror was not credible and ascribed it no weight, but it found the testimony of the other eight jurors to be credible and established that the offending juror made an isolated remark about his research that either was not heard by the other jurors or was disregarded appropriately by them. As such, no prejudice was shown.

**Dissenting opinion by Judge Teitelman:** Given the high standard to overcome the presumption of prejudice caused by juror misconduct, the author would find the other jurors' testimony does not overcome this prejudice. As such, he would reverse the judgment and would send the case back for a new trial. Smotherman is entitled to a fair trial based on evidence presented at trial rather than on other information gathered outside the trial through juror misconduct. Independent factual research by a juror is uniquely prejudicial, and the author would find the information the juror gathered was material to the case because it has a logical connection with consequential facts – what caused Smotherman to slip and fall. Even though the trial court found the eight non-offending jurors testified the offending juror's independent research had no effect on their deliberations, the fact remains that the offending juror admitted his research influenced his decision: When asked what factors led to the verdict in favor of the medical center, he responded that, upon checking, he had learned the weather forecast for the day of the accident was for eight to 10 inches of snow.