

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE
September 4, 2025 Session

**KENDALL COLLIER EX REL. CHAYCE C. v. PERICLIS ROUSSIS, M.D.
ET AL.**

**Appeal by Permission from the Court of Appeals
Circuit Court for Knox County
No. 2-562-12 William T. Ailor, Judge**

No. E2022-00636-SC-R11-CV

In this appeal, we address the analytical framework for determining whether a jury’s exposure to extraneous information during deliberations in a civil case warrants a new trial. The parties in this healthcare liability action tried a complex, multi-day trial in which a central issue was whether it was appropriate for medical personnel not to use epinephrine to treat a pregnant patient’s anaphylactic reaction. The trial included extensive expert testimony about the risks, benefits, and usage of epinephrine during pregnancy. The jury returned a verdict for the Defendants. Thereafter, the Plaintiff learned that one night during jury deliberations, a juror at home examined the warning label on an EpiPen, an epinephrine auto-injector device, and shared that information with the jury during continued deliberations. The Plaintiff moved for a new trial based in part on a claim that the jury’s exposure to the EpiPen information “tainted the verdict.” The trial court denied the motion, finding that the Plaintiff had not established by clear and convincing evidence that exposure to the EpiPen information affected the jury. The Court of Appeals reversed, concluding that the trial court had applied an incorrect legal standard. We granted permission to appeal to decide the proper analysis when a party in a civil case implicating the constitutional right to a jury trial challenges a verdict because the jury allegedly was exposed to extraneous information. Considering our analogous precedent from criminal cases, we hold that our courts should use a burden-shifting framework to determine whether error occurred and a new trial is required. More specifically, the party challenging the verdict bears the initial burden of proving error—that the jury was exposed to material extraneous information—by a preponderance of the evidence. Upon a successful showing, a rebuttable presumption of prejudice arises. This circumstance places a burden on the party defending the verdict to rebut the presumption of prejudice by showing that exposure to the material extraneous information was harmless error. To make this showing, the party must demonstrate that there is no reasonable possibility that the information would have altered the verdict of a reasonable jury. Absent this showing, a new trial is warranted due to the violation of the constitutional right to a jury trial. Because the trial court did not

have the benefit of this framework when deciding the motion for a new trial, we vacate the judgment of the Court of Appeals and remand this case to the trial court for further proceedings consistent with this opinion.

**Tenn. R. App. P. 11 Appeal by Permission;
Judgment of the Court of Appeals Vacated;
Case Remanded to the Trial Court**

JEFFREY S. BIVINS, C.J., delivered the opinion of the Court, in which HOLLY KIRBY, SARAH K. CAMPBELL, DWIGHT E. TARWATER, and MARY L. WAGNER, JJ., joined.

Raymond G. Lewallen, Jr., Knoxville, Tennessee, for the appellant, Periclis Roussis, M.D.

Rick L. Powers and Rachel P. Hurt, Knoxville, Tennessee, for the appellants, Fort Sanders Perinatal Center and Fort Sanders Regional Medical Center.

Joe Bednarz, Sr., Joe Bednarz, Jr., and Aaron Armstrong, Hendersonville, Tennessee, for the appellee, Kendall Collier ex rel. Chayce C.

OPINION

I. FACTUAL AND PROCEDURAL BACKGROUND

In June 2009, Kendall Collier went into labor and was admitted to Fort Sanders Regional Medical Center (“Medical Center”). Ms. Collier tested positive for a Streptococcus infection, and Medical Center employees administered ampicillin to treat it. Ms. Collier suffered an anaphylactic reaction to the medicine. Medical Center employees and Ms. Collier’s treating physician, Dr. Periclis Roussis, took various actions to address Ms. Collier’s anaphylactic reaction, such as repositioning her, giving her oxygen, and administering various medications. However, Dr. Roussis decided not to administer epinephrine, a medication commonly used to treat anaphylaxis.

Several hours after suffering the anaphylactic reaction, Ms. Collier gave birth to her son, Chayce. Unfortunately, Chayce was diagnosed after birth with severe brain injuries. Ms. Collier alleges that her anaphylaxis caused her son’s injuries.

In October 2012, Ms. Collier, on her son’s behalf, (“the Plaintiff”) brought a healthcare liability action against Dr. Roussis, the Fort Sanders Perinatal Center, and the Medical Center (collectively, “the Defendants”). The case first went to trial in 2015. At trial, the Plaintiff argued that Dr. Roussis’s treatment fell below the standard of care because he failed to administer epinephrine when Ms. Collier experienced the anaphylactic reaction. The Plaintiff also argued that Medical Center employees negligently failed to monitor Ms. Collier when she had the reaction. The jury returned a verdict for the

Defendants. Collier v. Roussis, No. E2016-01591-COA-R3-CV, 2017 WL 3382801, at *1 (Tenn. Ct. App. Aug. 7, 2017), perm. app. denied, (Tenn. Dec. 6, 2017) (designated not for citation). On the Plaintiff's appeal, the Court of Appeals vacated the trial court's judgment for erroneously allowing previously undisclosed testimony from Medical Center nurses and a defense expert witness. Id. at *6–7. The Court of Appeals remanded the case to the trial court for a new trial. Id. at *6.

The case was re-tried before a second jury in 2019. Once again, a central issue at trial was whether Dr. Roussis negligently failed to administer epinephrine to treat Ms. Collier's anaphylactic reaction. The Defendants' experts, on the one hand, testified that a physician always should weigh the risks and benefits of administering epinephrine and that Dr. Roussis reasonably exercised his judgment in electing not to administer epinephrine to Ms. Collier. The Plaintiff's experts, on the other hand, acknowledged the general need to weigh the risks and benefits of administering any medicine, including epinephrine, but testified that epinephrine's benefits always outweigh the risks when a patient is having an anaphylactic reaction.

The jury, which was not sequestered, returned a verdict for the Defendants. The Plaintiff's counsel later learned that a juror engaged in misconduct during deliberations. Specifically, despite instructions from the trial court to the contrary,¹ Juror 8 conducted his own research by looking at the warning label on an EpiPen at home and sharing that information with the jury.

The Plaintiff filed a motion for a new trial based in part on the jury's exposure to this "outside research." Attached to the motion were affidavits from two jurors stating that, during deliberations, Juror 8 "shared with the other jurors that he had gone home over the weekend and looked at the warnings on EpiPens."² Juror 8 allegedly told the jury that the "EpiPen stated that caution should be used during pregnancy" and either stated or at least insinuated that "epinephrine should only be used when the potential benefit justified the potential risk to the fetus." In the Plaintiff's view, this "extraneous prejudicial information," which was not introduced in open court and subject to adversarial challenge

¹ In accordance with pattern jury instructions, the trial court instructed the jury not to "conduct your own private investigation into this case," not to "read any textbooks or articles concerning any issue in this case, or consult any other source of information," and "to decide this case only from the evidence which was presented at this trial." See T.P.I.—Civil 1.02 & 15.20.

² Rule 606(b) of the Tennessee Rules of Evidence governs the admissibility of testimony from a juror in the context of a challenge to the validity of a verdict. The Rule generally prohibits testimony about matters occurring during deliberations but allows testimony as to whether the jury was exposed to "extraneous prejudicial information" or an improper outside influence. We will address Rule 606(b) in more detail later in this opinion.

at trial, “tainted the verdict.”³

With very little explanation, the trial court initially granted the Plaintiff’s motion for a new trial. The Defendants then moved to alter or amend the trial court’s order. The Defendants did not dispute that the jury improperly received the EpiPen information. Rather, the Defendants asserted that the information “was nothing new to them.” According to the Defendants, the EpiPen information was consistent with the proof presented at trial in that expert witnesses for all parties acknowledged that medical providers must balance the benefits and risks of using epinephrine before administering it. As such, the Defendants contended that the information was neither extraneous nor prejudicial, and moreover, that the Plaintiff had offered no evidence that the EpiPen information influenced the jury. In that regard, the Defendants asserted that the Plaintiff was required to introduce clear and convincing evidence that any extraneous information prejudiced the Plaintiff. The Defendants argued that the Plaintiff had failed to meet that heightened evidentiary standard.

The trial court granted the Defendants’ motion to alter or amend. The court acknowledged that the EpiPen information was extraneous, that is, “information outside of what was brought into the trial.” The court further acknowledged that the use of epinephrine was a central issue in the case, but the court agreed with the Defendants that the substance of the EpiPen information was “not new” and had been testified to by experts at trial. Curiously, the court stated both that there was “no testimony presented that the extraneous information affected the jury in any way” and that “the evidence had to have an influence on the jury.” The court ultimately found that the Plaintiff failed to present clear and convincing evidence of prejudice resulting from the exposure, especially evidence that the EpiPen information subjectively affected the jury. To that point, the court stated that Rule 606(b) “does not preclude the question to jurors as to whether or not that information affected them.”

The Plaintiff then filed a motion to alter or amend the trial court’s order, asserting that she was not required to offer clear and convincing evidence of prejudice. Rather, the Plaintiff argued that Tennessee law presumes that prejudice resulted from the jury’s exposure to the EpiPen information and that the Defendants failed to rebut that presumption. Furthermore, the Plaintiff pointed out that Rule 606(b) prohibited her from introducing evidence of the information’s subjective effect on the jury. See Tenn. R. Evid. 606(b) (“[A] juror may not testify as to . . . the effect of anything upon any juror’s mind or emotions as influencing that juror to assent to or dissent from the verdict . . . or concerning the juror’s mental processes . . .”).

After an unexplained two-year delay in resolving the matter, the trial court entered

³ Both the Plaintiff and the Defendants tracked the language of Rule 606(b)—extraneous prejudicial information—when articulating their positions concerning the jury’s exposure to the EpiPen information.

an order denying the Plaintiff's motion to alter or amend. On this occasion, the trial court stated that the "appellate [c]ourts are not clear as to the standard to be applied to the rule or how it is to be applied." Nevertheless, the court concluded that the Plaintiff failed to prove that exposure to the EpiPen information resulted in prejudice. In so ruling, the court again noted that the parties' experts provided testimony similar to the information that reportedly was listed on the EpiPen warning label.

Upon the Plaintiff's appeal, the Court of Appeals reversed the trial court's decision. See Collier ex rel. Chayce C. v. Roussis, No. E2022-00636-COA-R3-CV, 2024 WL 694237, at *1 (Tenn. Ct. App. Feb. 20, 2024), perm. app. granted, (Tenn. June 21, 2024). The Court of Appeals held that the trial court mistakenly subjected the Plaintiff's claim to a heightened "clear and convincing evidence" standard of proof. Id. at *8. Applying the burden-shifting framework that this Court has applied in criminal cases, the Court of Appeals concluded that prejudice to the Plaintiff was presumed from the jury's undisputed exposure to the EpiPen information, that the Defendants failed to rebut that presumption, and that the Plaintiff was entitled to a new trial. Id. at *9–10. The Plaintiff's other issues on appeal were pretermitted. Id. at *10 n.7. Thereafter, we granted the Defendants' application for permission to appeal.

II. ANALYSIS

The Plaintiff sought a new trial after an adverse jury verdict, asserting that juror misconduct exposed the jury to extraneous information that "went directly" to one of the central issues at trial. Tennessee law recognizes that a party may seek a new trial if a juror conducted independent research into the case and shared the results with the jury. See, e.g., State v. Adams, 405 S.W.3d 641, 654 (Tenn. 2013) (acknowledging cases in which new trials were granted "because jurors have conducted independent research on issues presented at trial"); Martin v. Opryland USA, Inc., No. 01-A-01-9412-CV-00567, 1995 WL 322632, at *1, 3–4 (Tenn. Ct. App. May 16, 1995), perm. app. denied, (Tenn. Aug. 28, 1995) (granting a new trial due to a juror's independent research of medical literature concerning the possible causes of a party's injury). However, a new trial is not required simply because a jury was exposed to independent research.

In this case, the courts below reached different results because they applied different legal frameworks and standards to the Plaintiff's claim. Thus, in this appeal, we are called upon to clarify the analytical framework and legal standards for determining whether the jury's exposure to extraneous information during deliberations in this civil case requires a new trial. These are questions of law that we decide de novo with no presumption of

correctness. See, e.g., Funk v. Scripps Media, Inc., 570 S.W.3d 205, 210–11 (Tenn. 2019) (noting that issues concerning the appropriate legal standard are questions of law).

A. The Right to an Unbiased and Impartial Jury

Article I, Section 6 of the Tennessee Constitution guarantees the right to a jury trial in certain civil cases.⁴ “The right to a jury trial envisions that all contested factual issues will be decided by jurors who are unbiased and impartial.” State v. Smith, 418 S.W.3d 38, 45 (Tenn. 2013); see also McClay v. Airport Mgmt. Servs., LLC, 596 S.W.3d 686, 690 (Tenn. 2020) (citing Tenn. Const. art. I, § 6); Ricketts v. Carter, 918 S.W.2d 419, 421 (Tenn. 1996) (same). This requirement has a “special resonance” in criminal matters, but in Ricketts, this Court recognized that the parties in that negligence action similarly had a right to have the factual issues determined by an unbiased and impartial jury. 918 S.W.2d at 421.

“An unbiased and impartial jury is one that begins the trial with an impartial frame of mind, that is influenced only by the competent evidence admitted during the trial, and that bases its verdict on that evidence.” Smith, 418 S.W.3d at 45. Tennessee law recognizes a concern about a jury’s exposure to extraneous information precisely because “a fair trial requires that jurors base their verdict solely on the evidence introduced at trial,” which was tested through the adversarial process. Id.; accord Adams, 405 S.W.3d at 650; see also Patterson v. Colorado, 205 U.S. 454, 462 (1907) (“The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print.”).

B. Tennessee’s Historical Approach to a Jury’s Exposure to Extraneous Information

Tennessee courts always have sought to protect litigants from verdicts tainted by extraneous information. Long ago, if a jury was exposed to extraneous information that

⁴ Our Constitution guarantees the right to a jury trial as it existed at common law under the laws and constitution of North Carolina at the time of the adoption of the Tennessee Constitution of 1796. Young v. City of LaFollette, 479 S.W.3d 785, 793 (Tenn. 2015) (citing Tenn. Const. art. I, § 6). Thus, the right does not extend to all civil cases. For instance, “there is no constitutional right to a trial by jury in a matter inherently equitable.” Id. (quoting Smith Cnty. Educ. Ass’n v. Anderson, 676 S.W.2d 328, 336 (Tenn. 1984)). In some circumstances, the General Assembly has provided for a jury trial by statute. See, e.g., Tenn. Code Ann. § 21-1-103 (2021) (providing a jury trial for certain cases in chancery court). Here, however, we address a case implicating the constitutional right to a jury trial. We leave for another day whether the framework and standards we adopt today apply in equal measure in a case that does not implicate the right to a jury trial provided by Article I, Section 6.

may have prejudiced a party's position at trial, our Court presumed that prejudice resulted and remanded for a new trial.

For example, in Sam v. State, this Court considered whether a defendant found guilty of assault was entitled to a new trial because two jurors shared extraneous evidence with their fellow jurors on a disputed issue. 31 Tenn. 61, 61–62 (1851). Specifically, the two jurors told the jury that they personally were familiar with the disputed area where the alleged offense occurred and that the property at issue was in Anderson County, as the State alleged, rather than Roane County, as the defendant argued. Id. at 62–63. The Court held that the defendant was entitled to a new trial, explaining that “the proof is not upon the [defendant] to show affirmatively that he was prejudiced by the improper evidence received by the jury.” Id. at 66. Rather, “[i]t is enough that he may have been prejudiced, and the law will so presume.” Id.

Likewise, in Nile v. State, a jury convicted the defendant of petit larceny. 79 Tenn. 694, 695 (1883). During deliberations, one juror told the others that he had been a juror in another proceeding against the defendant and that it was very common for the defendant to be in court. Id. This Court held that a new trial was required, reiterating that “[i]t is not necessary that the [defendant] should show that he was prejudiced by improper conduct of the jury.” Id. at 696. Instead, “[i]t is enough that he may have been, and the law will presume he was.” Id.; accord Ryan v. State, 36 S.W. 930, 931 (Tenn. 1896) (“[T]o vitiate the verdict in this case, the proof is not upon the [defendant] to show affirmatively that he was prejudiced by the improper evidence received by the jury. It is enough that he may have been prejudiced, and the law will so presume.”).

This Court applied the same presumption in early civil cases. In Wade v. Ordway, a juror in a tort dispute told his fellow jurors that he had examined the scene of the alleged incident and had confirmed that a witness's view of the incident was unobstructed, as the witness had testified at trial. 60 Tenn. 229, 237 (1872). The Court noted that this extraneous information was “material” to the jury's deliberations over the disputed factual issue and warranted a new trial. Id. at 237–44.

In doing so, the Court reiterated “the rule that when improper evidence is allowed to go to the jury, it is enough that the case may have been prejudiced thereby, and the law will so presume.” Id. at 243. The Court found “no sound reason why the rule should be departed from in civil cases and upheld in criminal ones, as it is based on principles equally applicable” in both contexts. Id. A presumption of prejudice was necessary in both criminal and civil cases, the Court concluded, “in order to insure the administration of justice from even the suspicion of being tainted, and thus maintain in the public mind a proper respect for law and justice, as administered by the courts of the country.” Id. at 244.

Nearly thirty years later, at the turn of the twentieth century, this Court applied the same approach in another civil case, Jackson & Suburban Street Railroad v. Simmons.

There, the Court held that the defendants were entitled to a new trial based on a juror's statements during deliberations about one of the defendant's past settlement offers and a jury's preliminary award in a prior trial. 64 S.W. 705, 707–08 (Tenn. 1901). Invoking Wade and the criminal cases collected above, the Court explained that “when improper evidence is allowed to go to the jury, it is enough that the case may have been prejudiced thereby, and the law will so presume.” Id. at 708. This “rule,” the Court explained, “in criminal and civil cases is the same.” Id.

C. The Evolution of the Framework in Modern Criminal Cases

In more recent years, however, our approach has evolved. Throughout more contemporary criminal cases, this Court has continued to presume prejudice if a defendant seeking a new trial proves that the jury was exposed to extraneous information bearing on a fact at issue in the case or an improper outside influence. Yet under this modern precedent, the presumption of prejudice does not end the inquiry. Instead, the State can rebut the presumption of prejudice by showing harmlessness of the error.

This burden-shifting approach was exemplified in State v. Blackwell. In that case, the defendant was convicted of selling alcoholic beverages to a minor. 664 S.W.2d 686, 687 (Tenn. 1984). The defendant moved for a new trial, relying on testimony from two jurors who saw another juror have a private conversation with the mother of the minor who bought the liquor. Id. at 688. After that conversation, the juror came into the deliberations, explained who the woman was, and said that the defendant was guilty, suggesting that the juror had obtained convincing information supporting the defendant's guilt. Id.

This Court concluded that the juror's contact with the minor's mother “resulted in the transmission of extraneous prejudicial information to the jury.” Id. at 689. The Court acknowledged that our historical precedent would “invoke[] a presumption of prejudice” to the defendant rather than require the defendant “to show affirmatively that he was prejudiced by the improper influence received by the jury.” Id. (first citing Ryan, 36 S.W. at 931; then citing Sam, 31 Tenn. at 66). However, the Court went on to take note of more recent federal precedent on the subject, including the seminal case of Remmer v. United States, 347 U.S. 227 (1954). Id. The Court observed that this federal precedent held that “a rebuttable presumption of prejudice arises and the burden then shifts to the government to explain the conduct or to demonstrate the harmlessness of it.” Id. (citing Remmer, 347 U.S. at 229). Ultimately, the Court articulated a similar burden-shifting framework in Blackwell, one that first required a defendant to show that “some extraneous prejudicial information, fact or opinion, was imported to one or more jurors,” after which the burden “of showing no prejudice” would shift to the State. Id.

This Court continued to apply Blackwell's burden-shifting approach in subsequent criminal cases.⁵ For example, in Walsh v. State, a court officer improperly told a deadlocked deliberating jury that it had to reach a verdict. 166 S.W.3d 641, 644 (Tenn. 2005). Thereafter, the lone holdout juror relented, and the jury reached a unanimous guilty verdict. Id. We applied a burden-shifting analysis to the defendant's claim that the verdict was tainted. Id. at 647 ("[W]hen it has been shown that a juror was exposed to extraneous prejudicial information or subjected to improper influence, a rebuttable presumption of prejudice arises, and the burden shifts to the State to explain the conduct or demonstrate that it was harmless."). Thus, our holding reflected that the defendant proved the officer had an improper influence on the jury, that this circumstance triggered a presumption of prejudice to the defendant, and that the State failed to rebut the presumption of prejudice. Id. at 649–50.

Similarly, in State v. Adams, a discharged alternate juror left a note in the jury foreman's hotel room stating that he and another discharged alternate juror thought the defendant was guilty. 405 S.W.3d at 649. Faced with a challenge to the validity of the guilty verdict, we applied a burden-shifting framework. More specifically, we observed that "[a] party challenging the validity of a verdict must produce admissible evidence to make an initial showing that the jury was exposed to extraneous prejudicial information or subjected to an improper outside influence." Id. at 651. "[O]nce the challenging party has made the initial showing . . . , a rebuttable presumption of prejudice arises and the burden shifts to the State to introduce admissible evidence to explain the conduct or demonstrate that it was harmless." Id.

Applying that framework in Adams, we held that the defendant carried his initial burden of showing that the foreman was exposed to an improper outside influence, which triggered a presumption of prejudice. Id. at 651. However, we went on to conclude that the State successfully rebutted the presumption of prejudice because there was no reasonable possibility that the note altered the verdict, emphasizing that only the foreman learned of the note, the note did not impart any extrajudicial evidence, and the State had presented overwhelming evidence of the defendant's guilt. Id. at 654–56.

⁵ We acknowledge that Remmer's burden-shifting framework in federal court has been the subject of debate. After Remmer, the United States Supreme Court released two cases that have caused confusion among the lower courts: Smith v. Phillips, 455 U.S. 209 (1982), and United States v. Olano, 507 U.S. 725 (1993). Neither case purported to overrule Remmer, but in their wake, lower courts have reached different results about the circumstances in which Remmer's presumption of prejudice applies. See generally, e.g., United States v. Lawson, 677 F.3d 629, 641–44 (4th Cir. 2012) (describing circuit split concerning the applicability of a presumption of prejudice). Of course, opinions from the federal appeals courts and federal district courts are not binding on this Court. Webb v. Nashville Area Habitat for Human., Inc., 346 S.W.3d 422, 430 (Tenn. 2011). As the discussion in this opinion reveals, this Court has applied a burden-shifting approach in modern criminal cases with consistency.

Finally, in State v. Smith, a juror exchanged Facebook messages during trial with the medical examiner who performed the victim’s autopsy and testified for the State. 418 S.W.3d at 43–44. The defendant later moved for a new trial, attaching the messages and arguing that they were improper extra-judicial communications between a juror and a witness. Id. at 44. This Court once again followed a burden-shifting approach. The initial burden was on the defendant to produce “evidence that . . . some extraneous prejudicial fact or opinion was imported to one or more jurors or some outside improper influence was brought to bear on one or more jurors.” Id. at 46 (citation modified). Thereafter, “when it is shown that a juror has been exposed to extraneous prejudicial information or an improper influence, a rebuttable presumption arises and the burden shifts to the State to explain the conduct or demonstrate that it was harmless.” Id.

In Smith, we determined that there was “reliable and admissible evidence that an extra-judicial communication between a juror and third party occurred” and that the information “related to potentially prejudicial external influences.” Id. at 48. We concluded that the evidence “was sufficient to trigger the rebuttable presumption of prejudice . . . , thereby requiring the State to explain the conduct or to demonstrate that it was harmless.” Id. We remanded the case to the trial court for an evidentiary hearing to determine whether the State could overcome the presumed prejudice by showing that the communication “was harmless beyond a reasonable doubt.” Id. at 49.

D. Rule 606(b)

As mentioned above, the phrase “extraneous prejudicial information” corresponds to language in Rule 606(b). The rule often has an application to cases like this one, in which a party suggests that a jury verdict was tainted by something from outside the trial and seeks to prove as much through testimony from the jurors. Furthermore, many opinions—including from this Court—refer to Rule 606(b)’s “extraneous prejudicial information” language in the analysis of whether the misconduct at issue required a new trial. See, e.g., Smith, 418 S.W.3d at 46; Adams, 405 S.W.3d at 651; Walsh, 166 S.W.3d at 647; Blackwell, 664 S.W.2d at 689. Accordingly, we briefly will address the substance of the rule and its relationship to the burden-shifting framework.

Long ago, common law prohibited the consideration of testimony from a juror to impeach a verdict. See Tanner v. United States, 483 U.S. 107, 117 (1987) (stating that the common law rule, which originated from a 1785 opinion of Lord Mansfield, flatly prohibited juror testimony to impeach a verdict); see also Walsh, 166 S.W.3d at 646 (citing Tanner, 483 U.S. at 121). However, exceptions developed for “situations in which an ‘extraneous influence’ was alleged to have affected the jury.” Tanner, 483 U.S. at 117 (citation modified) (quoting Mattox v. United States, 146 U.S. 140, 149 (1892) (“[A] juryman may testify to any facts bearing upon the question of the existence of any extraneous influence, although not as to how far that influence operated upon his mind.”)). Ultimately, in 1975, Congress adopted Federal Rule of Evidence 606(b), which was

“grounded in the common-law rule against admission of jury testimony to impeach a verdict and the exception for juror testimony relating to extraneous influences.” Id. at 121. Tennessee followed suit with our own Rule 606(b) in 1990.⁶

Upon an inquiry into the validity of a verdict, our Rule 606(b) establishes a broad prohibition against juror testimony “as to any matter or statement occurring during the course of the jury’s deliberations or to the effect of anything upon any juror’s mind or emotions as influencing that juror to assent to or dissent from the verdict . . . or concerning the juror’s mental processes.” Tenn. R. Evid. 606(b). Nevertheless, the rule goes on to allow a party challenging a jury verdict to present testimony “on the question of whether extraneous prejudicial information was improperly brought to the jury’s attention [or] whether any outside influence was improperly brought to bear upon any juror.” Id. Thus, a juror may testify about whether and how “extraneous prejudicial information” found its way into the jury room, but the testimony cannot address the effect of the information on the juror. See Walsh, 166 S.W.3d at 649. In other words, the rule allows testimony about “objective facts—who said what to whom and when and what specifically was injected into the jury discussion. But juror assessments about the impact of the improper extraneous influence are off limits.” State v. Christensen, 929 N.W.2d 646, 679 (Iowa 2019) (addressing analogous evidentiary rule in Iowa).

In this way, Rule 606(b) expresses a compromise between important public policies. On the one hand, the rule enables the courts to protect litigants from verdicts tainted by extraneous prejudicial information or improper outside influence. On the other hand, it recognizes the importance of protecting a jury’s deliberative processes from intrusive inquiry. See Walsh, 166 S.W.3d at 646 n.2 (citing Caldararo ex rel. Caldararo v. Vanderbilt Univ., 794 S.W.2d 738, 741 (Tenn. Ct. App. 1990)); see also 27 Wright & Miller’s Federal Practice and Procedure § 6075, at 535 (2d ed. 2007) (“The rule embodies a balance between the desire for finality on the one hand and the need to achieve an acceptable level of fairness and accuracy on the other.”). Thus, the rule promotes the finality of jury verdicts and encourages both frank discussion in the jury room and a willingness to return an unpopular verdict, while also promoting the community’s trust in a system that relies on the decisions of laypeople. Walsh, 166 S.W.3d at 649; Tanner, 483 U.S. at 120–21.

We emphasize that Rule 606(b) is only an evidentiary rule. It does not specify or dictate the substantive grounds for a new trial. Rather, it governs a juror’s competency to testify or supply an affidavit to establish such grounds. See 3 Christopher B. Mueller & Laird C. Kirkpatrick, Federal Evidence § 6:16 (4th ed. July 2025 update) (stating that the rule regulates the manner of proof, not the grounds on which a verdict may be impeached);

⁶ In Blackwell, released after the adoption of Federal Rule 606(b) but before the adoption of our Rule 606(b), this Court took note of the principles in the federal rule and pointed out that the rule was “essentially a codification of Tennessee law in respect to the admissibility of juror testimony when the validity of a verdict is challenged.” 664 S.W.2d at 688.

1 Kenneth S. Broun et al., McCormick on Evidence § 68 (9th ed. Feb. 2025 update) (same). Accordingly, the role of Rule 606(b) in the burden-shifting framework is only an evidentiary one, simply providing a manner for the parties to produce admissible evidence pertinent to what is required under the framework.

E. Determining the Proper Framework in Modern Civil Cases

Against that legal backdrop, we now consider this case, a healthcare liability action involving the question of whether the jury's exposure to the EpiPen information during deliberations violated the Plaintiff's constitutional right to have contested factual issues resolved by an unbiased and impartial jury. Before this Court, as in the courts below, the parties suggest different frameworks and standards for addressing the question of whether a jury's exposure to extraneous information requires a new trial.

No party advocates continuation of the per-se-reversal framework associated with our historical precedent in civil cases. For her part, the Plaintiff draws on our precedent in modern criminal cases and urges us to apply a burden-shifting framework. See Adams, 405 S.W.3d at 651; Walsh, 166 S.W.3d at 647. In contrast, the Defendants contend that the appropriate framework does not entail burden-shifting. Instead, the party asserting error must establish by clear and convincing evidence: (1) that the jury was exposed to "extraneous prejudicial information," and (2) harmfulness or prejudice, in other words, that the information had an influence on the jury. See Mayo v. Shine, 392 S.W.3d 61, 65 (Tenn. Ct. App. 2012); Whiteside v. Hedge, No. E2004-02598-COA-R3-CV, 2005 WL 1248975, at *3 (Tenn. Ct. App. May 26, 2005); State v. Booker, No. E2018-01439-CCA-R3-CD, 2020 WL 1697367, at *31 (Tenn. Crim. App. Apr. 8, 2020), rev'd in part on other grounds, 656 S.W.3d 49 (Tenn. 2022).

Having considered the arguments, we conclude that it is appropriate to apply a burden-shifting framework in this civil case. Initially, we observe that our decision to apply a burden-shifting framework in modern criminal cases flows in part from a criminal defendant's constitutional right to trial by an impartial jury, which requires that jurors render their verdict based only on the evidence introduced at trial. See Adams, 405 S.W.3d at 650 (citing Tenn. Const. art. I, § 9). In the criminal context, an error of constitutional dimension typically "casts on someone other than the person prejudiced by it a burden to show that it was harmless." Chapman v. California, 386 U.S. 18, 24 (1967). As previously mentioned, civil litigants with a constitutional right to a jury trial also are entitled to have factual issues resolved by an unbiased and impartial jury. See McClay, 596 S.W.3d at 690 (citing Tenn. Const. art. I, § 6); Ricketts, 918 S.W.2d at 421 (same). Thus, it is equally appropriate in that context to place on the party defending the verdict the burden of demonstrating the harmlessness of an error, in other words, to burden-shift.

Moreover, Rule 606(b) applies in civil cases just as it does in criminal ones. Therefore, the rule presents the same challenges for a civil litigant asserting error to prove

prejudice resulting from a jury’s exposure to material extraneous information, given the rule’s prohibition of juror testimony about how extraneous information affected the jury. Thus, adopting a burden-shifting framework in this case—with its accompanying presumption of prejudice—is consistent with the limitations imposed by Rule 606(b). See Stallings v. Black & Decker (U.S.), Inc., 796 N.E.2d 143, 147 (Ill. App. Ct. 2003) (noting that proof of actual prejudice is not required when determining whether a jury verdict was tainted because evidentiary rules make it impossible to prove whether extraneous information affected the jurors’ decisions); see also Barksdale v. Wilkowsky, 20 A.3d 765, 771 (Md. 2011) (noting the employment of a presumption of prejudice for certain civil errors “due to the practical impossibility of proving prejudice”).

Accordingly, we conclude that it is appropriate to apply a burden-shifting approach analogous to our modern criminal precedent in this civil case. That approach requires the party defending a verdict to rebut the presumption of prejudice that arises once the party asserting error proves that the jury was exposed to material extraneous information. See Mueller & Kirkpatrick, supra, § 6:18 (suggesting that a juror’s outside research into the evidence presented by a case is “presumptively prejudicial” and that the party defending the verdict bears the burden of showing that exposure to the research was harmless). Having decided to apply a burden-shifting framework, we now identify the specific burdens borne by the parties.

1. Part One: Proving that the Jury Was Exposed to Material Extraneous Information

Drawing on our analogous precedent in modern criminal cases, we note that the burden-shifting framework includes two parts. First, the party asserting error bears the initial burden of proving, by a preponderance of the evidence, that the jury was exposed to material extraneous information.

“Extraneous” quite simply refers to information “coming from without.” Adams, 405 S.W.3d at 650; Neil P. Cohen et al., Tennessee Law of Evidence § 6.06[4], at 6-57 (7th ed. 2024). In other words, “extraneous” refers to information that was not admitted into evidence in open court and subjected to the adversarial process. See 27 Wright & Miller’s Federal Practice and Procedure, supra, § 6075, at 521, 530–31; see also Ex parte Arthur, 835 So. 2d 981, 983 n.2 (Ala. 2002) (identifying extraneous information as “obtained by the jury or introduced to it by some process outside the scope of the trial”).

Our language describing the type of extraneous information that must be proved has varied. In Wade, we described the extraneous information at issue as “material” to the jury’s consideration of a disputed factual issue or “bearing on the matter of investigation.” 60 Tenn. at 237, 239. More recently, in Adams, we described it as information that “bears on a fact at issue in the case.” 405 S.W.3d at 650. Regardless, these characterizations are consistent and describe the same thing—information “having some logical connection with

the facts of the case or the legal issues presented.” See Evidence, Black’s Law Dictionary (12th ed. 2024) (defining “material evidence”); see also State v. Abdi, 45 A.3d 29, 34 (Vt. 2012) (stating that extraneous information must be “relevant to an issue capable of affecting the verdict”). Because of its connection to the facts or issues of the case, such extraneous information is capable of jeopardizing a jury’s impartiality. Therefore, we clarify that a party challenging a verdict based on the jury’s exposure to extraneous information must demonstrate that the information was “material” to establish error.

To satisfy the initial burden and trigger a presumption of prejudice, the party asserting error need not present clear and convincing evidence, as the trial court and some intermediate appellate court opinions have suggested. See Mayo, 392 S.W.3d at 65; Whiteside, 2005 WL 1248975, at *3; Booker, 2020 WL 1697367, at *31. These opinions did not explain the rationale behind imposing a heightened evidentiary standard at this stage, and none of our precedents discussed above suggested a heightened standard. As a result, we see no reason to impose a heightened standard as to the initial burden.⁷ Instead, a presumption of prejudice arises if the party asserting error proves, by a preponderance of the evidence, that the jury was exposed to material extraneous information. See Teter v. Republic Parking Sys., Inc., 181 S.W.3d 330, 341 (Tenn. 2005) (“Generally, in civil cases, facts are proved by a mere preponderance of the evidence.”). To the extent the opinions in Mayo, Whiteside, or Booker, or any other opinions, suggest that a clear-and-convincing standard applies, they are overruled.

In summary, we hold that the first part of the burden-shifting framework requires the party challenging the verdict to establish error by proving, by a preponderance of the evidence, that the jury was exposed to material extraneous information. Upon a successful showing, a rebuttable presumption of prejudice arises.

2. Part Two: Rebutting the Presumption of Prejudice

Turning to the second step in the burden-shifting framework, we reiterate that the presumption of prejudice is not absolute. The prevailing party at trial can overcome the presumption of prejudice by demonstrating that the jury’s exposure to material extraneous information was harmless. The question remains as to precisely what the appropriate harmless error standard is. We have answered that question in modern criminal cases, particularly Walsh, Adams, and Smith, which we will describe below before deciding whether to apply a similar standard in this civil case.

⁷ We are not persuaded by the Defendants’ argument that a heightened standard applies in the context of “extraneous prejudicial information,” with a preponderance-of-the-evidence standard reserved for the “quotient verdict” context. See Tenn. R. Evid. 606(b) (allowing juror testimony also about the existence of a so-called “quotient verdict”). We find no reason to draw such a distinction, and we note that the text of Rule 606(b) likewise reflects no such distinction between “extraneous prejudicial information” and a “quotient or gambling verdict.”

Our Rules of Appellate Procedure address the concept of harmless error generally, providing that “[a] final judgment from which relief is available and otherwise appropriate shall not be set aside unless, considering the whole record, error involving a substantial right more probably than not affected the judgment or would result in prejudice to the judicial process.” Tenn. R. App. P. 36(b). The reality of harmless error analysis often is more complex. See 7 Wayne R. LaFare et al., Criminal Procedure § 27.6(b), at 134 (4th ed. 2015) (“Few areas of doctrinal development have been marked by greater twisting and turning than the development of standards for applying the harmless error rule.”). Indeed, in the context of criminal cases, we have articulated distinct standards depending on the type of error at issue, divided into three categories. See, e.g., State v. Rodriguez, 254 S.W.3d 361, 371–72 (Tenn. 2008).

One category is comprised of so-called “structural” constitutional errors. These errors flatly “are not amenable to harmless error review, and therefore, require automatic reversal when they occur.” Id. at 371. A second category is comprised of non-structural constitutional errors. These errors do not require automatic reversal. Instead, they require reversal “unless the State demonstrates beyond a reasonable doubt that the error is harmless.” Id. The third category is comprised of non-constitutional errors. These errors do not place a burden on the State to demonstrate harmlessness and instead require the defendant “to demonstrate that the error ‘more probably than not affected the judgment or would result in prejudice to the judicial process.’” Id. at 372 (quoting Tenn. R. App. P. 36(b)).

Our holdings in modern criminal cases indicate that an error entailing the jury’s exposure to material extraneous information lies in the second category, a non-structural constitutional error.⁸ See Smith, 418 S.W.3d at 46; Adams, 405 S.W.3d at 654; Walsh, 166 S.W.3d at 649. Structural constitutional errors, which are few and far between, involve “structural defects in the constitution of the trial mechanism” that affect “[t]he entire conduct of the trial from beginning to end.” Momon v. State, 18 S.W.3d 152, 165 (Tenn. 1999) (alteration in original) (quoting Arizona v. Fulminate, 499 U.S. 279, 309 (1991)). Non-structural constitutional errors, by contrast, are “discrete defects,” Greer v. United States, 593 U.S. 503, 513 (2021), with “a readily identifiable scope,” Cottingham v. Cottingham, 193 S.W.3d 531, 536 (Tenn. 2006). A jury’s exposure to material extraneous information falls into the latter category. See, e.g., United States v. Warner, 498 F.3d 666, 679 (7th Cir. 2007); Sherman v. Smith, 89 F.3d 1134, 1138–40 (4th Cir. 1996) (en banc).

⁸ In State v. Bobo, this Court made a broad statement that “any errors affecting the constitutional right to trial by jury will result in such prejudice to the judicial process that automatic reversal is required.” 814 S.W.2d 353, 358 (Tenn. 1991). However, the issue before the Court in that case entailed the substitution of a previously discharged alternate juror for a regular juror who was discharged after deliberations had begun, with no instructions to begin deliberations anew. Id. at 354–55. We have no occasion to revisit here the issue presented in Bobo, but we note that its broad statement is not consistent with the multiple later opinions from this Court which concluded that a jury’s exposure to material extraneous information or an improper outside influence is subject to review for harmless error.

With respect to a non-structural constitutional error in a criminal case, the familiar refrain requires the beneficiary of the error—the State—to demonstrate beyond a reasonable doubt that the error was harmless. See Rodriguez, 254 S.W.3d at 371; Chapman, 386 U.S. at 24. However, courts have described this general standard using more specific language that has varied on occasion.

For instance, the United States Supreme Court has recognized the standard as “requiring the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” Chapman, 386 U.S. at 24. Similarly, the Court also recognized framing the inquiry as “whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction.” Id. at 23 (quoting Fahy v. Connecticut, 375 U.S. 85, 86–87 (1963)). Chapman made clear that there was “little, if any, difference” between the varying expressions of the standard. Id. at 24.

Mirroring Chapman, this Court likewise has articulated the standard with similar varying language. For example, in State v. Cecil, which addressed whether the erroneous omission of a jury instruction was harmless beyond a reasonable doubt, this Court articulated the standard as “whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” 409 S.W.3d 599, 610 (Tenn. 2013). However, in State v. Valentine, which addressed whether the admission of illegally obtained evidence was harmless beyond a reasonable doubt, this Court articulated the standard as “whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction.” 911 S.W.2d 328, 333 (Tenn. 1995).

Given this background, it is not surprising that this Court’s language has varied when articulating the standard in the specific context of modern criminal cases involving the jury’s exposure to material extraneous information or an improper outside influence. In Smith, we stated that such an error is harmless if “it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” 418 S.W.3d at 46 (quoting State v. Brown, 311 S.W.3d 422, 434 (Tenn. 2010)). In Adams and Walsh, we described the “ultimate inquiry” as “whether there exists a reasonable possibility that the extraneous prejudicial information or improper outside influence altered the verdict.” Adams, 405 S.W.3d at 654; accord Walsh, 166 S.W.3d at 649 (quoting Haugh v. Jones & Laughlin Steel Corp., 949 F.2d 914, 917 (7th Cir. 1991) (framing the harmless error inquiry as “whether there is a reasonable possibility that the [extraneous] communication altered [the] verdict”)).

The language in Adams and Walsh varies slightly from that of Smith, which mirrors language from Chapman. However, Adams and Walsh gave no indication that the formulation of the harmless error standard represented a break from Chapman and its progeny. Like the United States Supreme Court in Chapman, we conclude that there is

“little, if any, difference” between these formulations of the standard. Chapman, 386 U.S. at 24.

Having examined our modern criminal cases on the subject, we turn to the question of whether we should apply the Adams/Walsh standard in this civil case. We have not had an occasion in a contemporary civil case to address the correct standard by which to rebut the presumption of prejudice—that is, to demonstrate harmlessness—arising from the jury’s exposure to material extraneous information. Perhaps not surprisingly, the broad question of whether it is appropriate to apply a heightened harmless error standard associated with criminal jurisprudence in the context of a civil case has engendered debate.

On the one hand, some courts have indicated that a logical distinction can be made between the harmless error standard to be applied in a civil case and that in a criminal case, with the general thought being that a heightened standard ordinarily is not a good fit in the civil context. See, e.g., Haddad v. Lockheed Cal. Corp., 720 F.2d 1454, 1459 (9th Cir. 1983); State v. Atkins, 261 S.E.2d 55, 59–60 (W. Va. 1979). The distinction derives primarily from the different burdens of proof at trial between the two types of cases. See Atkins, 261 S.E.2d at 59 (“The standard of harmless error must bear a close relationship to the burden of evidentiary proof required in the trial.”); Haddad, 720 F.2d at 1459 (stating that “the lower burden of proof in civil cases implies a larger margin of error” and that “[t]he civil litigant’s lessened entitlement to veracity continues when the litigant becomes an appellant”). See generally Stephen A. Saltzburg, The Harm of Harmless Error, 59 Va. L. Rev. 988, 993, 1020–21 (1973) (drawing a distinction between civil and criminal cases based on the different standards of proof at trial and urging a less stringent harmless error standard in the civil context).

In contrast, other courts have rejected this proposition and elected to apply in civil cases a heightened standard associated with the criminal context. See, e.g., McQueeney v. Wilmington Trust Co., 779 F.2d 916, 925–27 (3d Cir. 1985); Special v. West Boca Med. Ctr., 160 So. 3d 1251, 1256–57 (Fla. 2014). Responding to Haddad’s reliance on the “civil litigant’s lessened entitlement to veracity,” McQueeney stated:

There is no logical reason, however, that the tolerance for error in the civil context must be compounded by a less stringent standard of harmless error review. Society’s tolerance for risk of error in civil cases may have been subsumed in the decision to establish a lower burden of proof in civil cases; further enlargement of the margin of error would therefore distort, rather than reflect, society’s wishes.

779 F.2d at 926. Regardless of the different evidentiary burdens in civil and criminal trials, the decision to apply a heightened standard of harmless error review in the civil context derived from a conclusion that the standard “strikes the appropriate balance between the need for finality and the integrity of the judicial process.” Special, 160 So. 2d at 1257. See

generally Roger J. Traynor, The Riddle of Harmless Error 48 (1970) (advocating for a unitary harmless error standard).

For our part, in Rodriguez, in which this Court set forth the three categories of error in criminal cases and their corresponding harmless error standards, we also stated generally that “the harmless error doctrine should operate the same way in criminal proceedings that it does in civil proceedings.” 254 S.W.3d at 370. Of course, we need not—and do not—decide here whether the same tripartite harmless error structure applies broadly in civil cases. The question presently before us is, in this civil case, by what standard must a party defending a verdict in the face of the jury’s exposure to material extraneous evidence rebut the presumption of prejudice, that is, demonstrate the harmlessness of the error.

We conclude that the Adams/Walsh standard is appropriate here. In our modern criminal cases on the subject, we recognized that the error at issue implicates the constitutional right to a jury trial. See Adams, 405 S.W.3d at 650 (citing Tenn. Const. art. I, § 9). Because the error implicates a constitutional right, we applied the heightened harmless error standard for a nonstructural constitutional error. See id. at 654. Clearly, however, applying a heightened standard of harmless error review was not derived simply from the criminal nature of the case, for there are errors in criminal cases that are not subject to the heightened standard. See Rodriguez, 254 S.W.3d at 372. Indeed, we long have observed that the standard for assessing harm resulting from a constitutional error is more exacting than that for a non-constitutional error. See State v. Harris, 989 S.W.2d 307, 314 (Tenn. 1999).

In this civil case, an error entailing the jury’s exposure to material extraneous information also would implicate the constitutional right to a jury trial. See Tenn. Const. art. I, § 6. Civil litigants with a constitutional right to a jury trial, just the same as an accused in a criminal prosecution, are entitled to have factual issues resolved by jurors who base their verdict on the evidence introduced at trial and tested through the adversarial process. See McClay, 596 S.W.3d at 690; Ricketts, 918 S.W.2d at 421. It certainly is true that the evidentiary burden of proving the elements of a case differs between civil and criminal matters. However, the substance of the constitutional guarantee implicated by an error in this context does not. This Court recognized long ago that the relevant principles are “equally applicable” in both the civil and criminal contexts. Wade, 60 Tenn. at 243. Because the right to a jury trial is a “foundational right” in “both civil and criminal cases,” Smith, 418 S.W.3d at 44, we do not believe that a less stringent harmless error standard is warranted in this civil case.⁹

⁹ We note that the United States Supreme Court has not squarely addressed the issue of whether Chapman’s heightened standard—harmless beyond a reasonable doubt—is ever appropriate when evaluating error in a civil case. Yet the Court, albeit with little discussion, applied this very standard in a civil case that entailed an alleged constitutional violation. See Tenn. Secondary Sch. Athletic Ass’n v. Brentwood Acad., 551 U.S. 291, 303 (2007).

Accordingly, we now determine that the Adams/Walsh standard is the appropriate harmless error test. To rebut the presumption of prejudice resulting from a jury's exposure to material extraneous information, the party defending the verdict must demonstrate that there exists no reasonable possibility that the information altered the verdict. See Adams, 405 S.W.3d at 654.

There are several non-exclusive considerations that could bear on whether a party has rebutted the presumption of prejudice: (1) the nature and content of the information or influence, including the importance of the issue to which the information or influence related, whether the content was cumulative of other evidence adduced at trial, and whether its nature was inflammatory; (2) the number of jurors exposed to the information or influence; (3) the manner and timing of the exposure of the juror(s); (4) the extent to which the jury discussed the information or influence; and (5) the strength of the evidence supporting the verdict. See id.; see also Lawson, 677 F.3d at 646; Castaneda ex rel. Correll v. Pederson, 518 N.W.2d 246, 251 (Wis. 1994); 27 Wright & Miller's Federal Practice and Procedure, supra, § 6075, at 563–67. However, we emphasize that this list is not exclusive, and other considerations may be relevant in determining whether exposure to the information or influence was harmless, depending on the circumstances of the case. Furthermore, no single consideration is necessarily dispositive. Adams, 405 S.W.3d at 654.

Lastly, we note that in Adams, this Court declined to employ an objective standard—that is, a standard which assesses the impact of the material extraneous information upon a reasonable jury—and instead stated that the determination should be made “in light of the *specific jurors*, facts, evidence, and circumstances of each case.” Id. at 654 n.7 (emphasis added). We agree that our courts should consider the facts, evidence, and circumstances of the case at bar when determining whether the presumption of prejudice has been rebutted. However, upon further consideration, we do not believe that the determination should be made “in light of the specific jurors” of each case, because that approach is inconsistent with the limitations imposed by Rule 606(b). Instead, we agree with the numerous authorities which recognize that determining whether a party has rebutted the presumption of prejudice is an objective inquiry, focused on the likely effect of the material extraneous information on a reasonable jury rather than its subjective effect on the particular jurors who decided the case.¹⁰ See Abdi, 45 A.3d at 35 (noting that the inquiry is objective in nature); Castaneda, 518 N.W.2d at 251 (looking to the effect “upon a hypothetical average jury”); Amphavannasouk v. Simoneau, 861 A.2d 451, 453 (R.I. 2004) (same); see also Mueller & Kirkpatrick, supra, § 6:18 (“The task involves estimating what effect the matter in question would have on a typical, average, or reasonable juror.”); Broun et al., supra, § 68 (same).

¹⁰ To the extent our opinion in Adams, 405 S.W.3d at 654 n.7, or any other opinion suggests employing a subjective inquiry into the extraneous information's effect on the jury that heard the case, it is overruled.

In summary, we hold that the second part of the burden-shifting framework requires the party defending the verdict to rebut the presumption of prejudice by showing that the jury's exposure to material extraneous information was harmless error. To show that the exposure was harmless, the party must demonstrate that there is no reasonable possibility that the information would have altered the verdict of a reasonable jury. The trial court should evaluate the issue using the considerations described above, but we reiterate that the list of considerations is not exclusive and that no single consideration is necessarily dispositive.

F. Remand for Application of Correct Framework

The trial court did not have the benefit of this analytical framework when it ruled on the Plaintiff's motion for a new trial in this case. Indeed, the trial court appeared to be under the misimpression that the Plaintiff necessarily had the affirmative burden to prove prejudice and was required to do so by clear and convincing evidence.

In these circumstances, we believe the most prudent course of action is to remand the case to allow the trial court to determine, in the first instance, whether the Plaintiff is entitled to a new trial under the proper framework set forth above.¹¹ See, e.g., First Cmty. Bank, N.A. v. First Tenn. Bank, N.A., 489 S.W.3d 369, 407 (Tenn. 2015) (remanding for trial court to apply new analytical framework in the first instance). We offer no opinion on whether the Plaintiff is entitled to a new trial in this case.

Finally, we are very cognizant of the lengthy time that this case has been pending. Given this unfortunate situation, we trust that the litigants and the trial court will conduct the necessary proceedings on remand in a most expeditious manner.

III. CONCLUSION

We hold that a burden-shifting framework applies to claims that the jury's exposure to material extraneous information in a civil case violated a party's constitutional right to a jury trial. In particular, to show error, the party challenging a verdict must prove, by a preponderance of the evidence, that the jury was exposed to material extraneous information. Upon a successful showing, a rebuttable presumption of prejudice arises. The party defending the verdict can rebut the presumption of prejudice if it can demonstrate harmlessness of the error, or stated another way, that there is no reasonable possibility that

¹¹ In reversing the trial court, the Court of Appeals recognized a "tension" between the abuse-of-discretion standard of review ordinarily applicable to a trial court's decision denying a motion for a new trial and this Court's indication in Adams, 405 S.W.3d at 656, that the issue there was subject to de novo review. Collier, 2024 WL 694237, at *10 n.6. Before this Court, the parties did not delve extensively into this "tension." Because we are remanding to give the trial court an opportunity to apply the correct analytical framework, we need not resolve the issue here.

the information would have altered a reasonable jury's verdict. Because the trial court did not have the benefit of this framework when it ruled on the Plaintiff's motion for a new trial, we vacate the judgment of the Court of Appeals and remand this case to the trial court for further proceedings consistent with this opinion. On remand, the Plaintiff can reassert this issue and any other properly preserved issue that she raised in the Court of Appeals that was pretermitted by that court's judgment.

The costs of this appeal are taxed equally to the Appellants and the Appellee, and their sureties, for which execution may issue if necessary.

JEFFREY S. BIVINS, CHIEF JUSTICE