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IN THE
COURT OF APPEALS OF INDIANA

WILLIAM MAYS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0609-CR-482
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jane Magnus-Stinson, Judge
Cause No. 49G06-0510-FB-185420

August 29, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

William Mays ("Mays")[1] appeals his convictions for attempted murder, a Class A felony, and unlawful possession of a firearm by a serious violent felon, a Class B felony. Mays argues that the trial court erred by allowing the State to amend the charging information after the omnibus date and by denying his motion to correct error based on alleged juror misconduct. Concluding that Mays has waived review of his challenge to the amended charging information by failing to object to the amendment before the trial court and that Mays has failed to show that the juror's alleged misconduct was gross and that it probably harmed him, we affirm the trial court's judgment.

Facts and Procedural History

Shortly before midnight on October 14, 2005, Stanley Flowers, Jr. ("Flowers") drove his blue Chevrolet Avalanche truck to the Shadeland Court Apartments to meet Bobby Thompkins ("Thompkins"), nicknamed "Forty," who was driving a burgundy Dodge Stratus and had Mays and another individual nicknamed "Cuz" in his car. Tr. p. 55-56. Mays, Thompkins, and Cuz got into Flowers' truck, and Flowers drove to a liquor store, where they purchased a pint of liquor and began drinking it in the truck. Flowers then drove Mays, Thompkins, and Cuz to a downtown Indianapolis nightclub called "The Government." *Id.* at 57. The four men drank some more liquor in the truck before entering the nightclub around 1:30 a.m.

When the four men left the nightclub around closing time at 3:00 a.m., they heard gunshots in the alley behind the nightclub, and then Mays pulled out a little chrome gun.

[1] The record on appeal contains alternate spellings for Mays' name. The parties spell the name as Mays; thus, we will do the same.

No more gunshots were fired, and Flowers drove the group back to the Shadeland Court Apartments with Mays sitting in the front passenger seat, Cuz sitting in the rear passenger seat, and Thompkins sitting in the rear driver's side seat. Flowers parked his truck in the apartment's parking lot, and the four men sat in the truck talking and drinking. Mays, Thompkins, and Cuz also snorted cocaine.

As they were sitting in the truck, Mays and Flowers began to argue, and Mays told Flowers that he was going to "take [Flowers'] truck and take [his] stuff[.]" *Id.* at 62. When Flowers told Mays that Mays was not going to take his truck, Mays pulled out his pistol and shot Flowers in the right upper arm. Flowers jumped out of his truck, and Mays shot Flowers again in the arm. Flowers ran to a fence that was fifteen to twenty feet away from his truck, and, as Flowers attempted to climb over the fence, Mays shot Flowers in the back. Flowers got to the other side of the fence, heard more shots being fired, and lay on the ground pretending to be dead until he no longer heard any more gunshots. Flowers then crawled along the fence line until he encountered some construction workers working on a bridge. One of the workers called police, and once the police arrived, Flowers told one of the officers that "Will" shot him. *Id.* at 68, 132. Flowers was then taken to the hospital for treatment.

Leander Scott ("Scott"), who lived in the Shadeland Court Apartments, returned home to the apartments around 3:40 a.m. and noticed a maroon Stratus that looked like Thompkins' car, with two or three guys inside, drive out of the apartment's parking lot. After Scott parked his car, he saw a blue truck, which had the keys in the ignition and the two passenger doors open with the windows down, parked in the parking lot. Scott

closed the truck's windows and doors, locked the truck, left a note on the truck indicating that "Maintenance has keys," and dropped the keys at the apartment's office. *Id.* at 114.

A police evidence technician arrived at the Shadeland Court Apartments later that morning and processed Flowers' truck for evidence. The technician was able to obtain a latent print from the truck's rear passenger window, and that print was later identified as matching Mays's right index finger.

Flowers remained in the hospital for one week for treatment of his "potentially life threatening" injuries. *Id.* at 174. A police detective visited Flowers a few days after the shooting, and Flowers told the detective that Mays shot him and "immediately" identified Mays in a photo array. *Id.* at 278.

On October 27, 2005, the State charged Mays with Count I, aggravated battery, a Class B felony;[2] Count II, unlawful possession of a firearm by a serious violent felon, a Class B felony;[3] Count III, battery as a Class C felony;[4] and Count IV, carrying a handgun without a license enhanced to a Class C felony.[5] The trial court set the omnibus date for December 23, 2005.

On December 27, 2005, Mays belatedly filed a Notice of Alibi Defense, which alleged that he was at his girlfriend's house on the night of the alleged crimes.[6] The trial

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[2] Ind. Code § 35-42-2-1.5.

[3] Ind. Code § 35-47-4-5.

[4] Ind. Code § 35-42-2-1.

[5] Ind. Code §§ 35-47-2-1, 35-47-2-23.

[6] Indiana Code § 35-36-4-1 provides that when a criminal defendant intends to offer evidence of an alibi defense, he "shall, no later than . . . twenty (20) days prior to the omnibus date if the defendant is

court held a hearing and permitted Mays to belatedly file his alibi notice. The trial court vacated the January 9, 2006, trial date and set a pre-trial conference for February 14, 2006.

On February 13, 2006, the State filed a motion to amend the charging information to add a count of attempted murder. In its motion, the State acknowledged that the motion was being filed after the omnibus date but asserted that the amendment did not prejudice Mays' substantial rights because it would not affect his anticipated alibi defense. According to the State's motion, it originally discussed its intention to add an attempted murder count with Mays' attorney on the day that Mays filed his alibi notice, but it agreed to delay its filing of the amended charge pending plea negotiations with Mays under the original charges, and Mays agreed that "although these negotiations started after the omnibus date, this time during these negotiations would not count against the State." Appellant's App. p. 48. In its motion to amend, the State also noted that it contacted Mays' attorney prior to filing its motion to amend "to determine whether he objects to th[e] motion" and that Mays' counsel did "object to the amended count." *Id.* The following day, the trial court held the pre-trial hearing and granted the State's motion to amend the charging information to add Count V, attempted murder, a Class A felony.[7] The record does not indicate that Mays objected to the amendment during the pre-trial conference or requested a continuance.[8]

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charged with a felony[,] . . . file with the court and serve upon the prosecuting attorney a written statement of his intention to offer such a defense." (Formatting altered). The omnibus date was set for December 23, 2005; thus, Mays' December 27th alibi notice was belatedly filed.

[7] Ind. Code §§ 35-41-5-41, 35-42-1-1.

A jury trial was held in April 2006. During the trial, Mays' defense was that he was not present when Flowers was shot and that someone else shot Flowers. Mays presented testimony from his girlfriend, Lajoya Watson ("Lajoya"), and her mother, Erma Watson ("Erma"), in support of his alibi defense. Lajoya testified that she picked up Mays, who was walking along 30th Street, sometime after 11:00 or 11:30 p.m. on October 14, 2005, and that she and Mays went back to her mother's house before 1:00 a.m. and went to bed. Lajoya also testified that she woke up between 8:30 and 9:00 a.m. and that she did not notice Mays get out of bed while she was sleeping. On cross-examination, Lajoya admitted that Mays had mailed her a copy of his probable cause affidavit, which noted the exact time that the shooting occurred, and that she visited Mays in jail about twice a week and spoke with him by phone in a way that it would not be recorded by the sheriff's department. Lajoya also testified that, despite the fact that Mays was arrested in October 2005 for the shooting of Flowers, she did not go to police to tell them that Mays was with her on the night of the shooting and that she instead waited until December 2005 when she told Mays' attorney. Erma testified that she "guess[ed] that Lajoya and Mays arrived at her house on the night of October 14, 2005, around "10:00, 11:00, maybe even midnight," *id.* at 389, but that she was "[n]ot sure of the exact time," *id.* at 397.

The jury found Mays guilty of attempted murder, aggravated battery, battery, and carrying a handgun without a license as a Class A misdemeanor. Mays waived his right to have a jury determine whether he had committed unlawful possession of a firearm by a

[8] The record does not include a transcript of the February 14, 2006, pre-trial hearing. The chronological case summary ("CCS") indicates that the trial court granted the State's motion to amend and does not indicate that Mays objected to such amendment.

serious violent felon and whether his carrying a handgun without a license should be enhanced to a Class C felony. Thereafter, in May 2006, the trial court found Mays guilty of the Class C felony enhancement of carrying a handgun without a license and of unlawful possession of a firearm by a serious violent felon.

When sentencing Mays, the trial court did not enter judgment on Mays' aggravated battery, battery, and carrying a handgun without a license convictions due to double jeopardy concerns. The trial court sentenced Mays to thirty-five years on his attempted murder conviction and ten years on his serious violent felon conviction and ordered that these sentences be served concurrently.

Thereafter, Mays filed a motion to correct error, in which he alleged juror misconduct. Specifically, Mays argued that Juror No. 2, who responded on his juror questionnaire that his occupation was a "Counselor" for "Fairbanks Hosp[ital,]" committed misconduct when he omitted from his juror questionnaire that his occupation entailed providing addictions counseling to inmates at the Marion County Jail Annex and when he answered in the negative to the following question on the juror questionnaire, "Have you or anyone close to you ever worked in any other law-related job?" Appellant's App. p. 159. Mays argued that Juror No. 2's answers to his juror questionnaire amounted to "gross misconduct that probably harmed" him and "impaired" his ability to "challenge Juror No. 2 peremptorily or for cause[.]" *Id.* at 143.

The trial court held a hearing on Mays' motion to correct error, during which Juror No. 2 testified that, at the time of the trial, he was employed as a counselor by Fairbanks Hospital and that he provided group substance abuse counseling at Marion County

Community Corrections. Juror No. 2 testified that he did not believe his occupation as a counselor was a law-related job because he did not have the authority to "lock up or arrest anyone," he has never made any laws, and he was not a law enforcement officer or an attorney. Tr. p. 529. Juror No. 2 also testified that he truthfully answered the questionnaire and questions posed by counsel during voir dire, that he was not asked about the nature of his employment during voir dire, and that he had no intention to mislead the attorneys regarding his work history. Juror No. 2 also testified that he had previously provided counseling for postal service employees and their families, worked as a mental health counselor at Midtown Mental Health, worked as a counselor in a maximum security prison, was a parole officer, and served as a mitigation specialist for defendants, and he testified that he did not believe these positions to be law-related positions because he had no arrest powers.

Thereafter, the trial court entered the following order denying Mays' motion to correct error:

* * * * *

> The issue before the court arises from [Juror No. 2's] answers to several questions on his juror questionnaire. When asked for his occupation, [Juror No. 2] stated "Counselor." When asked for his employer, [Juror No. 2] stated "Fairbanks Hospital." The parties agree that these answers are truthful. [Juror No. 2] does work as a counselor for Fairbanks, but the location of his employment is the Marion County Community Corrections Annex, where he provides substance abuse counseling for offenders. No transcript of voir dire was submitted for the Court's review in support of Mays' motion, and there is no evidence that [Juror No. 2] was questioned about the nature of the counseling he provided.
>
> The next answer in question is No. 7. The question states: Have you or anyone close to you ever worked in any law-related job? [Juror No. 2] answered the question by checking the "No" box. Again, as [no]

transcript of voir dire was submitted, there is no evidence as to whether [Juror No. 2] was questioned further on this topic. Mays rests his claim of misconduct on this negative answer. [Juror No. 2] testified at the hearing on the Motion to Correct Error that he did not consider his current job law-related. He explained that he did not have authority to lock anyone up or arrest him or her, he did not write laws, and that he was neither a lawyer nor a law enforcement officer. The court accepts [Juror No. 2's] answers to be truthful. Further questioning of [Juror No. 2] established that in the past he had served as a mitigation specialist for defendants, that he had been a parole officer and a counselor in a maximum-security prison. [Juror No. 2] again explained that he did [not] believe these positions to be law-related.

Mays labels [Juror No. 2's] answers as unreasonably narrow and "a means to cloak his current and past employment." Mays' Supplemental Memorandum in Support of Motion to Correct Error, p. 3. Mays infers a deliberate intent on [Juror No. 2's] part to mislead, how[ever] the Court finds such inference unsupported by the evidence. Near the conclusion of [Juror No. 2's] testimony at the hearing on the Motion to Correct Error, [Juror No. 2] testified that he brought his current employment location at Community Corrections to the attention of the Jury Pool personnel. He was told "he would be asked about it upstairs." Apparently the asking never happened. The Court fully credits this testimony and infers from it a contrary intent to that suggested by Mays: [Juror No. 2] sought to highlight his current employment to a person in authority, rather than conceal it. That the promised further inquiry never came is not the fault of [Juror No. 2].

In order to prevail on his claim of juror misconduct, under federal law Mays must show that Juror No. 2, failed to answer honestly a material question [. . .] and then further show that a correct response would have provided a valid basis for a challenge for cause. *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 556, 104 S. Ct. 845, 850, 78 L.Ed.2d 663, 671 (1984). To prevail under Indiana law, Mays must show gross misconduct that probably harmed him. *State v. Dye*, 784 N.E.2d 469, 472-473 (Ind., 2003).

Under the federal standard, the Court finds that Mays has failed to show that a more thorough response from [Juror No. 2] would have supported a challenge for cause. *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 556, 104 S. Ct. 845, 850, 78 L.Ed.2d 663, 671 (1984). In fact, an inference perhaps more readily drawn from full disclosure would support a showing of bias in favor of, and not against the defense. Mays was not denied a fair trial and he is not entitled to a new trial under the federal standard.

Applying the Indiana standard, the Court also finds that Mays has not carried his burden of showing entitlement to relief. A defendant seeking a hearing on juror misconduct must first present some specific, substantial evidence showing a juror was possibly biased. [*See*] *Dickenson v. State*, 732 N.E.2d 238, 241 (Ind. Ct. App. 2000) citing *Lopez v. State*, 527 N.E.2d 1119, 1130 (Ind. 1988). In order to warrant a new trial, there must be a showing that the misconduct was gross and that it probably harmed the defendant. *Id.*; *State v. Dye*, 784 N.E.2d 469, 472-473 (Ind., 2003).

First, the Court finds that Mays has failed to show misrepresentation on the part of [Juror No. 2] supporting a finding of misconduct. As noted above, there is no evidence that [Juror No. 2] was questioned about his occupation, and there is evidence that he brought to the attention of the jury pool authorities his concern about his current employment situation. But the further questioning promised by the jury pool employees did not occur. Jurors cannot be expected to answer questions they are not asked, no matter how relevant the answers may be to the lawyers and the trial court.

Even if the Court were to find misrepresentation occurred, the Court concludes that [Juror No. 2's] alleged "unreasonably narrow" opinion of what constitutes a law-related job does not rise to the level of gross misconduct. The Court rejects Mays' theory that [Juror No. 2] engaged in a subterfuge so as to be seated on a jury so that he could convict someone. The Court finds instead that [Juror No. 2] has spent most of his career providing services to help offenders, so no anti-defense bias exists.

Finally, if a reviewing court disagrees with the Court's view as to whether gross misconduct occurred, the Court finds that Mays was not harmed by it. "Juror misconduct will warrant a new trial only when the misconduct is both 'gross' and 'harmed the defendant.'" *Allen v. State*, 749 N.E.2d 1158, 1164 (Ind. 2001)[, *reh'g denied*]. Contrary to Mays' assertion in his Supplemental Memorandum to his Motion to Correct Errors, the Court does not find that the case against Mays was weak. The victim in the case identified Mays[] as the shooter within minutes of the crime, and as he lay bleeding waiting for medical attention. While Mays attempted to suggest a third party as the shooter, the suggestion was unconvincing in light of the immediate identification by the victim, before there was any time to concoct a misidentification. Mays['] alibi evidence was belatedly disclosed, and came from his girlfriend and her mother, after jail phone calls between Mays and the girlfriend. Their testimony was impeached by the State. In sum, the Court finds there was substantial evidence of guilt, and when juxtaposed with the fact that there was no

> actual evidence of bias on the part of [Juror No. 2], the Court finds Mays was not harmed by [Juror No. 2's] presence on the jury.

Appellant's App. p. 182-86. Mays now appeals.

Discussion and Decision

Mays argues that the trial court erred by allowing the State to amend the charging information after the omnibus date and by denying his motion to correct error based on juror misconduct.

I. Amendment to Charging Information

Mays argues that the trial court erred when it allowed the State to amend the charging information to include a charge of attempted murder after the omnibus date because the amendment was one of substance in violation of Indiana Code § 35-34-1-5(b), which provides:

> The indictment or information may be amended in matters of substance or form, and the names of material witnesses may be added, by the prosecuting attorney, upon giving written notice to the defendant, at any time up to:
>
> (1) *thirty (30) days* if the defendant is charged with a felony; or
>
> (2) fifteen days if the defendant is charged only with one (1) or more misdemeanors;
>
> *before the omnibus date*. When the information or indictment is amended, it shall be signed by the prosecuting attorney.

(Emphases added). Our Indiana Supreme Court recently held that Indiana Code § 35-34-1-5(b) "prohibits any amendment as to matters of substance unless made thirty days before the omnibus date for felonies[.]" *Fajardo v. State*, 859 N.E.2d 1201, 1207 (Ind. 2007) (footnote omitted).

Here, the omnibus date was December 23, 2005, and the State filed its motion to amend on February 13, 2006. Assuming without deciding that the amendment was one of substance, the amendment to add the attempted murder charge was untimely under the statute. *See id.* at 1208.[9]

However, as the State points out, it is well settled that to preserve a claim that the trial court erred in allowing a charging instrument to be amended, a defendant "must object to the request to amend and, if the objection is overruled, seek a continuance to prepare his or her defense in light of the change." *Haak v. State*, 695 N.E.2d 944, 951 n.5 (Ind. 1998) (citing *Wright v. State*, 690 N.E.2d 1098, 1104 (Ind. 1997), *reh'g denied*).

The record before us indicates that after the omnibus date, Mays belatedly filed a notice of alibi defense in late December 2005 and that the trial court granted Mays' motion. In February 2006, the State filed a motion to amend the charging information to add a count of attempted murder. In its motion, the State acknowledged that the motion was being filed after the omnibus date but asserted that the amendment did not prejudice Mays' substantial rights because it would not affect his anticipated alibi defense. According to the State's motion, it originally discussed its intention to add an attempted murder count with Mays' attorney on the day that Mays filed his alibi notice, but it agreed to delay its filing of the amended charge pending plea negotiations with Mays under the original charges. When the plea negotiations failed, the State filed its motion to amend, and, in it, noted that it contacted Mays' attorney prior to filing its motion to

[9] We note that after *Fajardo* was decided, the General Assembly amended Indiana Code § 35-34-1-5 so that a charging information may be amended at any time prior to trial as to either form *or* substance, so long as such amendment does not prejudice the substantial rights of the defendant. *See* P.L. 178-2007 § 1 (emergency eff. May 8, 2007). However, because Mays committed his offense before the legislature amended the statute, our review is based on the old statute.

amend "to determine whether he objects to th[e] motion" and that May's counsel did "object to the amended count." Appellant's App. p. 48. The trial court held the pre-trial hearing on February 14, 2006, and granted the State's motion to amend the charging information to add a charge of attempted murder. Although the State's motion indicates that Mays initially objected to the motion to amend—which Mays points to as his basis that he objected—the record before us does not indicate that Mays objected to the amendment during the pre-trial conference on the motion or requested a continuance.[10] Accordingly, the issue is waived.[11] *See, e.g.*, *Absher v. State*, 866 N.E.2d 350, 356 (Ind. Ct. App. 2007) (holding defendant waived issue of untimely amended information adding two new charges where no contemporaneous objection made and no showing of fundamental error).

II. Juror Misconduct

Mays next argues that the trial court abused its discretion by denying his motion to correct error based on alleged juror misconduct and should have instead granted him a new trial.[12] Generally, proof that a juror was biased against the defendant or lied during

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[10] Mays also did not object to the amendment at trial.

[11] We note that the only way to avoid waiver for a failure to object to the amendment is to raise a claim of fundamental error. *See Absher v. State*, 866 N.E.2d 350, 355 (Ind. Ct. App. 2007). Mays, however, makes no such allegation of fundamental error.

[12] We reject Mays' suggestion that the trial court erred when it referred to the federal standard applied in situations of juror misconduct as set forth in *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548, 556 (1984).

In Mays' motion to correct error, Mays argued that "Juror No. 2's misconduct impaired [Mays'] right in this case to challenge Juror No. 2 peremptorily or for cause[.]" Appellant's App. p. 143. During the hearing, Mays' counsel also specified that he was arguing "a separate and distinct error beyond a showing of bias" and that Juror No. 2's omissions "impair[ed] Mr. Mayes' right to challenge jurors peremptorily." Tr. p. 546.

In its order on Mays' motion to correct error, the trial court referred to the federal standard for a claim of juror misconduct as explained in *McDonough*, which explained that "to obtain a new trial . . . , a

voir dire entitles a defendant to a new trial. *Warner v. State*, 773 N.E.2d 239, 246 (Ind. 2002). A defendant seeking a new trial based on juror misconduct must show that the misconduct was gross and probably harmed him. *Majors v. State*, 773 N.E.2d 231, 235 (Ind. 2002). We review a trial court's determination for an abuse of discretion. *Id.* We will find an abuse of discretion only when the trial court's decision is clearly against the logic and effect of the facts and circumstances. *Id.*

Mays contends that Juror No. 2's failure to fully disclose the true nature of his employment and his "unreasonably narrow" definition of the term law-related when answering the juror questionnaire, whether done intentionally or not, constituted gross misconduct. *See* Appellant's Br. p. 12. Mays also argues that Juror No. 2's responses probably harmed him because: (1) more information regarding Juror No. 2's law-related jobs would have led to more questioning during voir dire and "very likely dismissal from jury service either for cause or peremptorily[,]" *see id.* at 14; and (2) it "enabl[ed] a guilty

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party must first demonstrate that a juror failed to answer honestly a material question on voir dire, and then further show that a correct response would have provided a valid basis for a challenge for cause." *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 556 (1984). The trial court concluded that, under this standard, Mays "failed to show that a more thorough response from [Juror No. 2] would have supported a challenge for cause." Appellant's App. p. 184. The trial court then went on to conclude that Mays had also failed to carry his burden under the Indiana standard of showing that there was gross misconduct that probably harmed him.

We conclude that Mays' argument that the trial court erred by referring to the federal standard in *McDonough* is of no moment. First, given Mays' argument referencing his inability to challenge Juror No. 2 peremptorily or for cause, the trial court's reference to the standard in *McDonough* is understandable. Additionally, our Indiana Supreme Court has explained that the standard contained in *McDonough* is consistent with the gross misconduct and probable harm standard applied by Indiana Courts. *See Lee v. State*, 735 N.E.2d 1112, 1114 n.2 (Ind. 2000). In *Lee*, the Indiana Supreme Court explained that "a defendant who proves that a juror lied on voir dire or was biased against the defendant is entitled to a new trial, upon demonstrating both gross misconduct and probable harm." *Id.* at 1114. The *Lee* Court noted the defendant, however, relied primarily on *McDonough* in support of his argument that he was entitled to a new trial based on alleged juror bias but explained that the defendant's reliance on *McDonough* was inconsequential because the "analysis [in *McDonough*] is consistent with that which has been applied by Indiana courts[.]" *Id.* at 1114 n.2. Thus, we reject Mays' argument that the trial court erred by referring to the standard set forth in *McDonough*.

verdict even with the alibi evidence and highlighted deficiencies in the police investigation," *id.* at 15.

The State argues that the trial court did not abuse its discretion by denying Mays' motion to correct error because Mays failed to show that Juror No. 2 was "untruthful in answering the juror questionnaire, and as a result, Mays has not established misconduct, let alone gross misconduct[.]" Appellee's Br. p. 10. The State also contends that Mays failed to show that any alleged misconduct probably harmed him because the case against him was not weak. In support of its argument, the State cites to *Warner v. State*, 773 N.E.2d 239, 246 (Ind. 2002). We agree with the State.

In *Warner*, a juror indicated on her juror questionnaire that none of her close family members had been victimized by a serious crime, and she remained silent when the trial court asked a similar question during voir dire. *Warner*, 773 N.E.2d at 246. Sometime after the jury found the defendant guilty of murder, it was discovered that the juror's sister had been murdered a year or two earlier. *Id.* During a hearing on the matter, the juror testified that she did not disclose the information during voir dire because she "just blanked that out" and that she answered negatively on her juror questionnaire because she "evidently . . . hurried up and filled it out[.]" *Id.* The juror also indicated that her sister's murder did not affect her ability to render a fair and impartial verdict. *Id.* The trial court concluded that the juror did not deliberately withhold information, that she was not biased, and that the defendant received a fair trial. *Id.* On appeal, we held that the trial court did not abuse its discretion by finding that the defendant was not entitled to a new trial based on the alleged juror misconduct. We

concluded that "[a]lthough it was wrong for the juror to omit this information from her questionnaire," such omission did not rise to the level of gross misconduct. *Id.* at 246-47. We also concluded that, given the evidence presented by the State, the defendant was "not harmed" and that there was "very little likelihood that the juror's omitted response in any way affected the verdict." *Id.* at 247.

Similar to *Warner*, we conclude that Juror No. 2's alleged omissions did not rise to the level of gross misconduct that probably harmed Mays. During the hearing on Mays' motion to correct error, Juror No. 2 testified that, at the time of the trial, he was employed as a counselor by Fairbanks Hospital, that he provided group substance abuse counseling at the Marion County Community Corrections, and that he did not believe his occupation as a counselor was a law-related job because he did not have the authority to "lock up or arrest anyone," he has never made any laws, and he was not a law enforcement officer or an attorney. Tr. p. 529. Juror No. 2 also testified that he truthfully answered the questionnaire and questions posed by counsel during voir dire, that he was not asked about the nature of his employment during voir dire, and that he had no intention to mislead the attorneys regarding his work history.

As noted by the trial court, even if Juror No. 2's response regarding any law-related jobs were considered misconduct, it did not rise to the level of gross misconduct. Furthermore, given the evidence presented by the State—which included eyewitness testimony from the victim and corroborating fingerprint evidence that placed Mays at the crime scene—we find that there is little likelihood that Juror No. 2's omitted response in any way affected the verdict, and we cannot conclude that Mays was probably harmed by

Juror No. 2's omission. Accordingly, we conclude that the trial court did not abuse its discretion by denying Mays' motion to correct error regarding alleged juror misconduct. *See, e.g.*, *Warner*, 773 N.E.2d at 247.

Affirmed.

ROBB, J., and BRADFORD, J., concur.