2017 IL App (5th) 160107-U

NOS. 5-16-0107 & 5-16-0328 (consolidated)

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

PAUL CRANE, JR.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 14-L-501
	)	
MIDWEST SANITARY SERVICE, INC., BOB EVANS, SR., and NANCY DONOVAN,	)	
	)	
Defendants-Appellants,	)	
	)	
and	)	
	)	
BOB EVANS, JR.,	)	Honorable
	)	Dennis R. Ruth,
Defendant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Moore and Justice Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment entered on the jury's verdict in favor of the plaintiff and against the defendants on his retaliatory discharge and whistleblowing claims was affirmed where (1) the trial court did not abuse its discretion in barring testimony of defense witnesses not identified in the defendants' interrogatory answers; (2) the court did not abuse its discretion in denying the defendants' motion for a new trial based on juror misconduct; (3) the defendants forfeited their argument that the court erred in giving an expert witness limiting instruction; (4) the court did not abuse its discretion in giving a missing evidence instruction; (5) the court did not abuse its

discretion in barring evidence about the reasons for the plaintiff's prior suspensions; (6) the court did not abuse its discretion in admitting evidence about the substance of the defendant company's environmental violations; and (7) the court did not abuse its discretion in admitting evidence of the individual defendants' salaries.

¶ 2 The plaintiff, Paul Crane, Jr., brought this action against the defendants, Midwest Sanitary Service, Inc. (Midwest), Nancy Donovan (Nancy), Bob Evans, Sr. (Bob Sr.), and Bob Evans, Jr. (Bob Jr.), alleging claims for common law retaliatory discharge and violation of the Illinois Whistleblower Act (740 ILCS 174/1 *et seq.* (West 2014)). The jury found in favor of the plaintiff and against Midwest on the retaliatory discharge claim. On the whistleblower claim, the jury found in favor of the plaintiff and against Midwest, Nancy, and Bob Sr. but in favor of Bob Jr. The defendants filed a motion for a new trial, which was denied. The defendants appeal, arguing that the trial court (1) abused its discretion in barring the testimony of defense witnesses who were not identified in their interrogatory answers; (2) abused its discretion in denying their motion for a new trial on the basis of juror misconduct; (3) erred in giving an expert witness limiting instruction; (4) erred in giving a missing evidence instruction; (5) abused its discretion in barring evidence about the reasons for the plaintiff's prior suspensions; (6) abused its discretion in admitting evidence about the substance of Midwest's environmental violations; and (7) abused its discretion in admitting evidence of the individual defendants' salaries. We affirm.

¶ 3 BACKGROUND

¶ 4 Midwest is a family-owned company in the business of hauling waste materials, including hazardous waste. Nancy, Midwest's president, and her brother, Allen Evans

(Allen), have an ownership interest in the company. Their uncle, Bob Sr., and his son, Bob Jr., are Midwest employees but have no ownership interest in the company. Bob Sr. is paid $260,000 per year, and his job duties include assisting in the operation of trucks and trailers, dispatching work, maintaining and purchasing equipment, and making some employment decisions. Bob Jr. is paid $175,000 per year and works primarily with Midwest's customers. Before 2008, he handled safety and environmental issues for the company. Nancy, Allen, Bob Sr., and Bob Jr. are all involved in management issues for Midwest.

¶ 5 Midwest hired the plaintiff as a truck driver and trash collector in 1983. The plaintiff left the company in 2000 but returned in 2005 as a truck driver. He was later promoted to supervisor of the container shop, where containers are cleaned, repaired, and painted before being reused.

¶ 6 The plaintiff usually reported to Bob Sr. and Nancy and was suspended twice in 2010, once for an altercation with a coworker and once for allegedly ordering unauthorized parts. He objected to testimony about the suspensions. The court allowed evidence that he was suspended twice in 2010 but barred evidence about the reasons for the suspensions.

¶ 7 On October 7, 2013, the plaintiff made an anonymous call to the Illinois Environmental Protection Agency (IEPA) with concerns about the storage of barrels of flammable materials in the container shop. Identifying himself as a current Midwest employee, he spoke with Chris Cahnovsky, a senior public service administrator at the

IEPA, six or seven times about Midwest. He made a number of allegations, particularly regarding practices in the container shop.

¶ 8 On October 8, 2013, Cahnovsky and Kendall Couch, an IEPA inspector, conducted an unannounced inspection of Midwest. Cahnovsky advised Midwest representatives that a complaint had been made against the company but did not tell them who had complained. In fact, at that time, he did not know who had complained. Jeff Evans (Jeff), Midwest's safety manager, took Cahnovsky and Couch on a tour of Midwest's facilities, including the maintenance shed, the container shop, and an area west of the container shop. During the inspection, Cahnovsky made a number of observations about Midwest's practices and procedures, including its compliance with environmental regulations as well as its potential violations. He met with Bob Jr. and discussed procedures for disposing of residue that remained in containers when they were returned to the container shop. He also met with Nancy that day.

¶ 9 On October 31, 2013, Cahnovsky returned to Midwest for a follow-up inspection and interviews. He met with Nancy, Bob Sr., Bob Jr., and Jeff that day and learned that some of the violations observed during the earlier inspection had been remedied but others had not. While discussing the disposal of paint waste used in the container shop, Bob Sr. told Cahnovsky that Midwest used water-based paint to paint the containers, which Cahnovsky knew was untrue. Bob Jr. testified that Bob Sr. was confused when he made that statement to Cahnovsky.

¶ 10 On November 14, 2013, Cahnovsky sent Midwest a notice of violations, alleging 14 violations of environmental laws, regulations, or permits. Midwest received the notice of violations by certified mail at 11:24 a.m. on November 18, 2013.

¶ 11 Cahnovsky testified in detail about the plaintiff's complaints and the IEPA's investigation of Midwest. He testified, without objection, about his narrative report, but the defendants objected to the admission of the narrative report as a trial exhibit based on hearsay, confusion, and undue prejudice, noting that Midwest had not been fined or prosecuted for any IEPA violation. The narrative report was admitted into evidence over the defendants' objections. Cahnovsky testified that, other than spilling hazardous waste directly on the ground, Midwest's violations were probably the most egregious. On cross-examination by defense counsel, Cahnovsky stated that he had referred Midwest to the Attorney General's office for prosecution and that the Attorney General's office had accepted the case.

¶ 12 The plaintiff was terminated less than four hours after Midwest received the notice of violations. The plaintiff subsequently filed a complaint against Midwest, Nancy, Bob Sr., and Bob Jr., asserting retaliatory discharge and whistleblower claims, alleging that he was terminated in retaliation for reporting Midwest to the IEPA. The defendants denied that the plaintiff was terminated in retaliation for reporting Midwest to the IEPA or because he was a whistleblower, arguing that he was terminated for other reasons, including his bad attitude about having to drive a truck and a customer's complaint about his conduct on a jobsite.

¶ 13 According to the defendants, beginning around September 2013, Midwest was very busy with a project referred to as the "Chouteau job." The company was short on drivers and needed the plaintiff to drive a truck almost every day. The Chouteau job was a big job for Midwest, lasting three or four months and contributing about 25% of the company's 2013 revenue.

¶ 14 According to Bob Sr., the plaintiff was unhappy and complained about being assigned to drive a truck during that time. Bob Sr. stated that, during that time, the plaintiff asked him two or three times for a layoff so he could collect unemployment and work elsewhere. The plaintiff denied making those statements.

¶ 15 Eric Hicks, who was a container shop employee in 2013 but had been promoted to supervisor of the container shop at the time of trial, testified that he had heard the plaintiff complain about driving a truck and wanting to be unemployed. Allen testified that the plaintiff had a bad attitude about having to drive a truck during that time. Jeff testified that the plaintiff was unhappy about being on the Chouteau job and that he witnessed the plaintiff "over-revving" his truck, which he described as equipment abuse.

¶ 16 The plaintiff denied that he hates driving a truck and that he was rough on his truck. His wife also testified that he did not mind driving a truck in 2013.

¶ 17 Bob Jr. testified that, in late October or early November 2013, he received a voicemail message on his cell phone from Rob Jenkins, a Midwest customer and the onsite supervisor of the Chouteau job. Bob Jr. stated that, on the voicemail message, Jenkins said that the plaintiff had been complaining about Bob Jr. and questioning what

he was doing to such an extent that Jenkins was considering using a different company because of the plaintiff's complaints.

¶ 18 Allen testified that he heard the voicemail message and "wrote up" the plaintiff on November 4, 2013. Nancy testified that she typed the "write up" sometime in November 2013. Allen testified that he gave the plaintiff the write up a day or two after hearing the voicemail message and that he told the plaintiff that Midwest had gotten "a call from those guys down on Chouteau," and that he had to write up the plaintiff "because a guy called" and said he was tired of the plaintiff's attitude. Allen testified that he also told the plaintiff that the voicemail message was from Jenkins to Bob Jr. and that, according to Jenkins, the plaintiff had been "bad-mouthing" Bob Jr. on the jobsite. Allen testified that the plaintiff refused to sign the write up, walked out of the room, and said, "you'll be sorry."

¶ 19 The plaintiff acknowledged that he had spoken to Jenkins and that Allen had called him into the office on November 4, 2013, about the voicemail message and its contents. However, he denied that he had said anything negative about Midwest or Bob Jr. to Jenkins. He also denied that he had seen the write up or that he had been given an opportunity to sign it.

¶ 20 Allen testified that he had reported the voicemail message to Nancy, Jeff, and Bob Jr. and that he had considered it in deciding to terminate the plaintiff. Nancy testified that it was her understanding that the voicemail message indicated that the plaintiff had been badmouthing Midwest to Jenkins and had suggested that Jenkins use a different

company. Bob Sr. testified that he had become aware of the voicemail message through Bob Jr.

¶ 21 Bob Sr. testified that he was involved in the decision to terminate the plaintiff and that he agreed with the decision because the plaintiff had become very insubordinate, was not happy with Midwest, and wanted to dictate in what capacity he would work for the company (or, in the alternative, be laid off to collect unemployment rather than having to drive a truck). Bob Sr. stated that he informed the plaintiff of his termination at about 3 p.m. on November 18, 2013. He testified that he waited until later in the day to inform the plaintiff of his termination because he wanted other members of management to be involved.

¶ 22 Bob Jr. testified that he was not involved in the decision to terminate the plaintiff. He acknowledged that he did attend the meeting during which the plaintiff was terminated.

¶ 23 Nancy, Bob Sr., and Allen testified that they made the decision to terminate the plaintiff before November 18, 2013, but they acknowledged that he was actually terminated the same day that Midwest received the notice of violations. They stated that they did not know he was the one who had complained to the IEPA until after he was terminated.

¶ 24 The plaintiff testified that he had made several complaints to Nancy and Bob Sr. in 2013 about environmental and employee-health concerns related to the container shop. He also stated that he had taken photos showing environmental issues about a year before he was terminated.

¶ 25 Bob Sr. acknowledged that the plaintiff had spoken to him about the procedure for disposing of waste that remained in containers when they were returned to Midwest. Nancy also acknowledged that the plaintiff had told her about waste coming back to Midwest in containers and another employee not properly cleaning out those containers. Bob Sr. and Nancy also acknowledged that no other employee had complained to them about environmental issues. Nancy also acknowledged that some of the violations alleged in the notice of violations involved issues the plaintiff had complained to her about before his termination. Allen even acknowledged that he had suspected that the plaintiff was the one who had reported Midwest to the IEPA before the plaintiff was terminated.

¶ 26 Midwest often included an "inspirational note" or "life lesson" with employees' paychecks. The saying that was included with the plaintiff's paycheck that was issued four days after his termination states:

> "Think before you speak. Words can get you into trouble much easier than they can get you out of it."

Allen testified that the same note was included with his paycheck. Bob Sr. testified that he did not know why that particular saying was included with the plaintiff's paycheck. Nancy, who was in charge of payroll, testified that her secretary, Tricia Thurber, may have selected that saying to be included with paychecks for that pay period.

¶ 27 On the Friday before trial, the plaintiff filed a motion *in limine*, seeking to exclude the testimony of seven defense witnesses who were not identified in the defendants' interrogatory answers: Jenkins, Thurber, Hicks, Bobby Watson, Brian Ross, Steve

Donelson, and Ken Cherry. Hicks, Ross, and Donelson were the plaintiff's coworkers. During the pretrial conference, the defendants opposed the plaintiff's motion to exclude the witnesses' testimony, arguing that (1) Jenkins, Hicks, and Ross had been identified in depositions earlier in the case; (2) the plaintiff was aware of Jenkins since the first deposition in the case; and (3) the plaintiff had asked questions about Jenkins in earlier depositions and was not surprised or prejudiced by their failure to identify him in their interrogatory answers. The plaintiff withdrew his objection to Hicks' testimony because he had identified Hicks as a potential witness in his own discovery responses.

¶ 28 The trial court barred the testimony of the six witnesses. The defendants filed a motion to reconsider, which was denied.

¶ 29 The defendants made an offer of proof regarding Jenkins' testimony. The offer of proof states that, if called to testify, Jenkins would testify to the following: Jenkins was Midwest's customer's representative on the Chouteau job; Jenkins had conversations with the plaintiff in which the plaintiff accused Bob Jr. of not doing his job, indicated that he was unhappy about having to be on the Chouteau job, and indicated that he did not like Bob Jr.; Jenkins had heard the plaintiff say negative things about Bob Jr. to others on the jobsite; in late October or early November 2013, Jenkins had called Bob Jr. and left a voicemail message, reporting his observations and conversations with the plaintiff; and, in early November 2013, the plaintiff had told Jenkins that he had been "written up" as a result of that voicemail message.

¶ 30 In his motion *in limine*, the plaintiff also sought to exclude testimony about the voicemail message, arguing it was hearsay. The defendants opposed the motion, arguing

that testimony about the voicemail message was not being offered for the truth of the matter asserted but, instead, to demonstrate why the defendants acted as they did (motive) in terminating the plaintiff. The trial court allowed testimony about the voicemail message but gave a limiting instruction, which was a modified version of Illinois Pattern Jury Instructions, Civil, No. 2.04 (2011) (IPI Civil No. 2.04), regarding the testimony. At various times during the trial, the court read the limiting instruction to the jury.

¶ 31 The trial court also gave a missing evidence instruction based on Illinois Pattern Jury Instructions, Civil, No. 5.01 (2011) (IPI Civil No. 5.01), as a result of the defendants' failure to identify the voicemail message as a lost or destroyed document in response to the plaintiff's request to produce. The defendants objected to the instruction, arguing it lacked evidentiary support in that the only evidence of spoliation was Bob Jr.'s testimony that he deleted the voicemail message before Midwest received the plaintiff's litigation hold letter. They also argued that the content of the voicemail message was not unfavorable to them and that they had a reasonable excuse for not producing it because they were unaware that they would be sued. The missing evidence instruction was given over the defendants' objection.

¶ 32 The plaintiff also sought to admit photos and a video of Midwest's premises that he claimed were taken by Hicks and sent to him via Hicks' wife's email address. The defendants objected on the basis of relevance, lack of authentication and foundation, and the plaintiff's failure to produce the photos and video in discovery. The photos and video were admitted into evidence over the defendants' objections, and the video was played for the jury.

¶ 33 The defendants also objected to the introduction of photos of containers with hazardous waste stickers (and evidence related to hazardous waste handled by Midwest) on the basis of relevance and undue prejudice. The evidence was admitted over the defendants' objections.

¶ 34 The defendants also objected to the introduction of evidence about Bob Sr. and Bob Jr.'s compensation on the basis of relevance and undue prejudice. Evidence of Bob Sr. and Bob Jr.'s compensation was admitted over the defendants' objections.

¶ 35 On the common law retaliatory discharge claim, the jury found in favor of the plaintiff and against Midwest. On the whistleblower claim, the jury found in favor of the plaintiff and against Midwest, Nancy, and Bob Sr. but in favor of Bob Jr. The jury awarded the plaintiff $160,000 in compensatory damages against Midwest, Nancy, and Bob Sr. and $625,000 in punitive damages against Midwest.

¶ 36 During the week after the trial ended, one of the jurors went to Midwest and asked to speak to Nancy. Because Nancy was not there, Jeff spoke with the juror, who stated that she believed the defendants should challenge the verdict. She gave Jeff her phone number and told him she wanted to talk to Nancy and defense counsel. After she left, Jeff contacted defense counsel, told them what the juror had said, and gave them her phone number.

¶ 37 The defendants filed a motion for a new trial, arguing they were entitled to a new trial because (1) after the judgment was entered, they learned of juror misconduct warranting a new trial; (2) the court erred in barring defense witnesses' testimony based on an alleged discovery violation; (3) the court erred in giving a limiting instruction and a

missing evidence instruction; (4) the court abused its discretion in admitting evidence about Midwest's environmental violations; (5) the court abused its discretion in barring evidence of the reasons for the plaintiff's prior suspensions; (6) the court abused its discretion in allowing evidence of the individual defendants' compensation; and (7) the verdict was against the manifest weight of the evidence.

¶ 38 The trial court denied the defendants' motion for a new trial. The defendants appeal.

¶ 39 ANALYSIS

¶ 40 The defendants first argue that the trial court abused its discretion in barring the testimony of defense witnesses solely because they were not identified in the defendants' interrogatory answers when they were named in deposition testimony and the court failed to consider any relevant factors in determining whether to bar their testimony. We disagree.

¶ 41 The plaintiff served the defendants with Illinois Supreme Court Rule 213(f) (eff. Jan. 1, 2007) interrogatories early in the litigation, requesting, *inter alia*, the names of any witnesses who would be testifying at trial. In response, the defendants identified five witnesses: Nancy, Bob Sr., Bob Jr., Allen, and Jeff. They never supplemented that answer. The plaintiff deposed all five of the witnesses who were identified.

¶ 42 Ten days before trial, the defendants emailed the plaintiff a witness list, adding seven witnesses who were not identified in their Rule 213(f) interrogatory answers: Jenkins, Thurber, Watson, Hicks, Ross, Donelson, and Cherry. A week later, shortly before the pretrial conference, the plaintiff filed a motion *in limine*, seeking to bar the

witnesses' testimony. The defendants opposed the motion, arguing that (1) Jenkins, Hicks, and Ross had been identified in depositions earlier in the case; (2) the plaintiff was aware of Jenkins since the first deposition in the case; and (3) the plaintiff had asked questions about Jenkins in earlier depositions and was not surprised or prejudiced by their failure to identify him in their Rule 213(f) interrogatory answers. The plaintiff withdrew his objection to Hicks' testimony because he had identified Hicks as a potential witness in his own written discovery responses. The court barred the witnesses' testimony. The defendants filed a motion to reconsider, which was denied.

¶ 43 Although the defendants initially sought to call seven previously unidentified witnesses, they limit their argument here to three of those witnesses: Jenkins, Thurber, and Donelson. They argue that, because these individuals were mentioned during discovery depositions, amendment of their Rule 213(f) interrogatory answers was not a prerequisite to calling the witnesses at trial. Accordingly, they argue that their oversight in not supplementing their Rule 213(f) interrogatory answers was not a discovery violation or grounds for excluding the testimony.

¶ 44 Under Illinois Supreme Court Rule 213(f), "[u]pon written interrogatory, a party must furnish the identities and addresses of witnesses who will testify at trial" and for each lay witness "must identify the subjects on which the witness will testify." Ill. S. Ct. R. 213(f)(1) (eff. Jan. 1, 2007). Moreover, under Illinois Supreme Court Rule 213(i), "[a] party has a duty to seasonably supplement or amend any prior answer or response whenever new or additional information subsequently becomes known to that party." Ill. S. Ct. R. 213(i) (eff. Jan. 1, 2007).

¶ 45 The defendants' argument is, essentially, that if a witness's name is mentioned in a discovery deposition, the disclosure requirements of Rule 213(f) and (i) are met. In support of this argument, they rely on Illinois Supreme Court Rule 213(g), which states:

> "The information disclosed in answer to a Rule 213(f) interrogatory, or in a discovery deposition, limits the testimony that can be given by a witness on direct examination at trial. Information disclosed in a discovery deposition need not be later specifically identified in a Rule 213(f) answer, but, upon objection at trial, the burden is on the proponent of the witness to prove the information was provided in a Rule 213(f) answer or in the discovery deposition. Except upon a showing of good cause, information in an evidence deposition not previously disclosed in a Rule 213(f) interrogatory answer or in a discovery deposition shall not be admissible upon objection at trial." Ill. S. Ct. R. 213(g) (eff. Jan. 1, 2007).

¶ 46 The defendants take the phrase "[i]nformation disclosed in a discovery deposition need not be later specifically identified in a Rule 213(f) answer" to mean that, if a name is mentioned during a discovery deposition, then the requirements of Rule 213(f) are met. Rule 213(g) is a rule concerning limitation on testimony. The rule begins with the unambiguous statement that "[t]he information disclosed in answer to a Rule 213(f) interrogatory, or in a discovery deposition, limits the testimony that can be given by a witness on direct examination at trial." "Information" refers to Rule 213(f)(1)'s requirement that a Rule 213(f)(1) respondent "identify the subjects on which the witness will testify." It means that, if a party meets the requirements of Rule 213(f)(1), *i.e.*, provides the name and address of a witness together with "reasonable notice of the

testimony" that witness is expected to give, and subsequently during a deposition the witness gives additional information, that additional information need not be later specifically identified in a Rule 213(f) answer. However, even in that situation, the burden is on the proponent of the witness to prove that the information was provided in a Rule 213(f) answer or a discovery deposition. The trial court properly found that the defendants violated Rule 213(f) by failing to identify the witnesses in their Rule 213(f) interrogatory answers.

¶ 47 The defendants next argue that, even if a Rule 213 violation occurred, the trial court abused its discretion in excluding the witnesses' testimony without considering the factors required by Illinois law. Under Illinois Supreme Court Rule 219(c), a trial court is authorized to impose a sanction, including barring a witness from testifying, upon any party who unreasonably refuses to comply with any provisions of the supreme court's discovery rules or any order entered pursuant to those rules. Ill. S. Ct. R. 219(c)(iv) (eff. July 1, 2002). Here, the court granted the plaintiff's motion to bar the witnesses because the defendants failed to identify the witnesses in their Rule 213(f) interrogatory answers, as required by Rule 213(f).

¶ 48 The decision to impose a particular sanction under Rule 219(c) is within the trial court's discretion and will not be reversed absent a clear abuse of that discretion. *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 120 (1998). An abuse of discretion occurs when no reasonable person would take the view adopted by the court. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 16. In determining whether the trial court abused its discretion in imposing a sanction, we must consider the same factors

the trial court was to consider in deciding what sanction, if any, to impose: "(1) the surprise to the adverse party; (2) the prejudicial effect of the proffered testimony or evidence; (3) the nature of the testimony or evidence; (4) the diligence of the adverse party in seeking discovery; (5) the timeliness of the adverse party's objection to the testimony or evidence; and (6) the good faith of the party offering the testimony or evidence." *Shimanovsky*, 181 Ill. 2d at 123-24. No one factor is dispositive. *Id.* at 124. After considering these factors, we find that the trial court did not abuse its discretion in barring the previously unidentified defense witnesses in this case.

¶ 49 As to the first factor, the surprise to the adverse party, the plaintiff was clearly surprised when the defendants added seven witnesses 10 days before trial. A party should be allowed to rely on an opposing party's Rule 213(f) interrogatory answers and expect that only those witnesses identified under Rule 213(f) will be called to testify at trial. *Jackson v. Mount Pisgah Missionary Baptist Church Deacon Board*, 2016 IL App (1st) 143045, ¶ 63. In addition, "Rule 213(i) imposes on each party a continuing duty to inform the opponent of new or additional information whenever such information becomes known to the party." *Sullivan v. Edward Hosp.*, 209 Ill. 2d 100, 109 (2004). The plaintiff relied on the defendants' Rule 213(f) interrogatory answers in preparing for trial and expected that only those five identified witnesses would be called to testify. Less than two weeks before trial, and long after the close of discovery, the defendants identified seven additional witnesses. Allowing those witnesses to testify with less than two weeks' notice to the plaintiff would result in exactly the type of ambush that Rule 213(f) was designed to prevent.

¶ 50 As to the second factor, the prejudicial effect of the proffered testimony or evidence, the defendants argue that allowing the additional witnesses to testify would have resulted in no surprise to the plaintiff because the witnesses' names had been mentioned during depositions in the case. In discussing the prejudicial effect of the proffered testimony, the defendants discuss only Jenkins' testimony, and we will do likewise. The defendants claim that Jenkins' testimony was crucial to their case because it would have shown jurors, through a neutral witness, that the plaintiff was terminated for his conduct at work and his complaints about Midwest made to an important customer (Jenkins) rather than any whistleblowing activity. This testimony would have been strong evidence against the plaintiff. Permitting Jenkins to testify without giving the plaintiff an opportunity to depose him or otherwise prepare to cross-examine him would have been prejudicial to the plaintiff. This factor weighs in favor of barring Jenkins' testimony.

¶ 51 As to the third factor, the nature of the testimony or evidence, the defendants, again, only discuss Jenkins' testimony, and we will do likewise. They claim that Jenkins' testimony would have shown that the plaintiff was terminated for his conduct at work and his complaints about Midwest made to Jenkins rather than any whistleblowing activity. However, this is information that they would have known they needed to present from the beginning of the lawsuit. Had they deemed Jenkins' testimony key to their case, they should have disclosed him as a witness in their Rule 213(f) interrogatory answers. This factor weighs in favor of barring Jenkins' testimony.

¶ 52 The fourth and fifth factors, the diligence of the adverse party in seeking discovery and the timeliness of the adverse party's objection to the testimony or evidence, also weigh in favor of barring Jenkins' testimony. The plaintiff was diligent in seeking discovery. He timely served the defendants with his interrogatories, requesting, *inter alia*, the identities of persons having knowledge of any of the facts alleged in the case and requesting the identities of any witnesses who would testify at trial. His objection to the defendants' witness list was also timely. He filed his motion to bar the additional defense witnesses less than one week after receiving the defendants' witness list and before the pretrial conference.

¶ 53 The sixth, and final, factor, the good faith of the party offering the testimony or evidence, also weighs in favor of barring the witnesses' testimony. If, as the defendants claim, the testimony of Jenkins, Thurber, and Donelson was crucial to their defense, they would have known this from the inception of the lawsuit and should have identified these individuals as witnesses in their Rule 213(f) interrogatory answers.

¶ 54 We, therefore, find that all of the factors weigh in favor of barring the witnesses' testimony. Thus, the trial court did not abuse its discretion in barring the witnesses' testimony.

¶ 55 We turn now to the defendants' argument that the trial court abused its discretion in denying their motion for a new trial on the basis of juror misconduct. In support of their argument, they submitted an affidavit of Juror No. 10, which the plaintiff moved to strike. During the hearing on the plaintiff's motion to strike the affidavit and the defendants' motion for a new trial, the court struck paragraphs 14 through 18 and

reserved ruling on the other paragraphs. That ruling is not at issue here. The parts of the affidavit that were not stricken provide, in pertinent part, as follows:

"2. During the week of November 9, 2015, I served as one of the 12 jurors for the trial of [the present case].

3. During the trial, I heard testimony from various [Midwest] employees that [the plaintiff] was fired *** in part because a Midwest customer contact called and complained about [his] behavior on a job site. The customer contact was [Jenkins].

4. [Jenkins] did not testify during trial.

5. While the trial was in session, I asked my husband *** things *** to help me understand things about trucks, trucking companies, and how things are run at trucking companies *** because he had been a terminal manager for a trucking company; he was a fleet foreman, and a diesel mechanic. He has also had to testif[y] in court [in] a case, for the company he work[s] for, about a driver and a truck that driver had worked on.

6. During trial, we *** waited for the testimony of [Jenkins][,] but it never came. The day before deliberations, *** when [Jenkins] had not yet testified, I was very concerned, and I asked my husband why a key witness, who was a customer of Midwest[,] would not testify. My husband stated maybe he will be there tomorrow or maybe they do not want him to testify so they don't get the customer involved. My husband told me that there may be many reasons why a customer might not testify, including that a customer may not want to testify. My

husband also told me that maybe [Midwest] did not want to involve the customer in the case.

7. During the trial, I heard testimony regarding [the plaintiff] abusing equipment on a job site. During the trial, and before jury deliberation started, I also asked my husband about whether a person can tell if another truck driver is abusing equipment by the way [he is] revving the engine and picking up and dropping things with the truck.

8. While the trial was in session, and before the jury began deliberating, I also drove by the Midwest physical location because I wanted to know what the business looked like, including the size of the facilities. Part of my reason for driving by was to better understand where [the plaintiff] worked and how far away the main office was from where [he] worked.

9. During jury deliberations, the jury members discussed the fact that [Jenkins] did not testify. We also discussed the instruction that [the judge] read when Midwest witnesses testified about conversations with [Jenkins]. The jury discussed that we could not consider as truthful or as evidence testimony regarding conversations between Midwest witnesses and [Jenkins] because [the judge] instructed us not to.

10. After deliberating for a period of time, there was a general agreement among most of the jury members that because [Jenkins] did not testify, that meant that Midwest witnesses probably made up the story about [Jenkins] complaining about [the plaintiff]. In addition, there was a general consensus that Midwest

witnesses made up the story that [Jenkins] left a voicemail for [Bob Jr.] complaining about [the plaintiff].

11. I told the other members of the jury what my husband told me about why [Jenkins] may not have testified. I told them that my husband said that maybe [Jenkins] did not testify because Midwest did not want to involve the customer and harm its business relationship with that customer. More than one juror responded that if the case was about them, they would have done everything they could have to have the customer testify instead of worry[ing] about the business relationship. They also said that if [Jenkins] had really complained, that is a really important piece of evidence, and Midwest would have asked him to testify.

12. I also discussed with my husband why [the plaintiff] would have taken pictures of spills on company property more than a year prior to his termination. My husband told me that the [plaintiff] had probably threatened [Midwest] with the pictures he took of alleged toxic spills as far back as a year prior to his termination. During deliberations, I repeated to the jury what my husband told me about the pictures and that [the plaintiff] probably threatened Midwest and held the pictures over the management's heads well before his actual termination.

13. I believe that one of the main reasons *** the jury found for [the plaintiff] *** is because [Jenkins] did not testify. I believe that because we discussed as a group not believing Midwest's story about the termination because [Jenkins] did not testify."

¶ 56 In discussing the juror misconduct issue at the hearing, the trial court stated:

> "This is simply speculation on *** her husband's part that she *** adopted as her own speculations as to why these things occurred. There is no fact ***, there is speculation that she then says she conferred to her fellow [jurors].
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> ***
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> *** [I]t appears by [the juror's] own affidavit that *** she put this speculation out there, *** and by her own words it didn't influence the verdict.
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> ***
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> *** [W]hat was the extraneous information that was introduced that *** may have influenced a verdict. *** I don't see it.
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> ***
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> *** [T]o the extent that she did introduce this information that was clearly speculative, *** there's no indication by her own words that it in any way influenced the verdict, so I'm denying the motion for a new trial on that basis."

¶ 57 The determination of whether jurors have been influenced and prejudiced to such an extent that they would not, or could not, be fair and impartial is within the sound discretion of the trial court. *People v. Runge*, 234 Ill. 2d 68, 104-05 (2009).

¶ 58 Generally, a verdict may not be impeached by testimony or affidavits relating to the motive, method, and process of jury deliberations. *Redmond v. Socha*, 216 Ill. 2d 622, 636 (2005). However, a verdict may be impeached by testimony or affidavits establishing the existence of improper extraneous influences on the jury. *Id.*

¶ 59 Even where a jury has been exposed to improper extraneous influences, however, the verdict is not subject to automatic reversal. *Eskew v. Burlington Northern & Santa Fe Ry. Co.*, 2011 IL App (1st) 093450, ¶ 66. The party challenging the verdict must demonstrate prejudice by showing that the information relates directly to something at issue in the case and that it may have influenced the verdict. *Id.* Because it is impossible to prove whether extraneous information affected jurors' decisions, courts do not require proof of actual prejudice when determining whether a jury verdict has been tainted. *Id.* Instead, a presumption of prejudice exists if the extraneous information related to a crucial issue in the case and may have improperly influenced the verdict. *Id.* Once this presumption is triggered, the burden shifts to the prevailing party to show that no actual prejudice occurred. *Id.*

¶ 60 In addressing this issue, we will briefly address each of the pertinent paragraphs of Juror No. 10's affidavit. Paragraphs 2 through 5 of the affidavit provide, in pertinent part, as follows:

> "2. During the week of November 9, 2015, I served as one of the 12 jurors for the trial of [the present case].
>
> 3. During the trial, I heard testimony from various [Midwest] employees that [the plaintiff] was fired *** in part because a Midwest customer contact called and complained about [his] behavior on a job site. The customer contact was [Jenkins].
>
> 4. [Jenkins] did not testify during trial.

5. While the trial was in session, I asked my husband *** things *** to help me understand things about trucks, trucking companies, and how things are run at trucking companies *** because he had been a terminal manager for a trucking company; he was a fleet foreman, and a diesel mechanic. He has also had to testif[y] in court [in] a case, for the company he work[s] for, about a driver and a truck that driver had worked on."

Paragraphs 2 through 5 merely provide background information for the paragraphs that follow and do not allege any prejudicial extraneous influence on the jury.

¶ 61 After removing those statements that are inadmissible to impeach the jury's verdict because they relate to the jury's motive, method, or process (see *Redmond*, 216 Ill. 2d at 636), all that remains of paragraphs 6, 9, 10, 11, and 13, which concern Jenkins, is the following:

"6. *** The day before deliberations, *** when [Jenkins] had not yet testified, *** I asked my husband why a key witness, who was a customer of Midwest[,] would not testify. My husband stated maybe he will be there tomorrow or maybe they do not want him to testify so they don't get the customer involved. My husband told me that there may be many reasons why a customer might not testify, including that a customer may not want to testify. My husband also told me that maybe [Midwest] did not want to involve the customer in the case.

* * *

11. I told the other members of the jury what my husband told me about why [Jenkins] may not have testified. I told them that my husband said that maybe [Jenkins] did not testify because Midwest did not want to involve the customer and harm its business relationship with that customer."

¶ 62 Jenkins' testimony was crucial for the defendants because he could have corroborated their claim that the plaintiff was terminated, in part, because Jenkins had complained about him via a voicemail message left for Bob Jr., which was deleted before a lawsuit was filed. However, as discussed above, Jenkins' testimony was properly excluded because the defendants failed to identify him as a witness in their Rule 213(f) interrogatory answers.

¶ 63 According to paragraph 11 of the affidavit, Juror No. 10 shared with the other jurors her husband's speculation that "maybe [Jenkins] did not testify because Midwest did not want to involve the customer and harm its business relationship with that customer." Even if the jurors had believed that speculation, however, it would not have prejudiced the defendants; rather, it would have given them a valid reason for not calling Jenkins to testify.

¶ 64 Paragraph 7 of the affidavit states:

"7. During the trial, I heard testimony regarding [the plaintiff] abusing equipment on a job site. During the trial, and before jury deliberation started, I also asked my husband about whether a person can tell if another truck driver is abusing equipment by the way [he is] revving the engine and picking up and dropping things with the truck."

Paragraph 7 states only that the juror asked her husband the question. It does not state what her husband told her. Thus, it does not allege any prejudicial extraneous influence on the jury.

¶ 65 Paragraph 8 of the affidavit states:

> "8. While the trial was in session, and before the jury began deliberating, I also drove by the Midwest physical location because I wanted to know what the business looked like, including the size of the facilities. Part of my reason for driving by was to better understand where [the plaintiff] worked and how far away the main office was from where [he] worked."

Paragraph 8 merely states that the juror drove by Midwest's facilities and what she was hoping to learn by doing so; it does not state what she learned by doing so. There is nothing to indicate that the defendants may have been prejudiced by her driving by Midwest's facilities.

¶ 66 Paragraph 12 of the affidavit states:

> "12. I also discussed with my husband why [the plaintiff] would have taken pictures of spills on company property more than a year prior to his termination. My husband told me that the [plaintiff] had probably threatened [Midwest] with the pictures he took of alleged toxic spills as far back as a year prior to his termination. During deliberations, I repeated to the jury what my husband told me about the pictures and that [the plaintiff] probably threatened Midwest and held the pictures over the management's heads well before his actual termination."

¶ 67 Paragraph 12 contains rank speculation by the juror's husband, and it is inconceivable that anyone who heard the evidence in this case would believe that speculation to be true. To prove that he was terminated in retaliation for reporting Midwest to the IEPA, the plaintiff had to prove that the defendants knew he was the one who had reported Midwest to the IEPA before he was terminated. To do so, he testified that he had complained to Nancy and Bob Sr. about environmental concerns in the container shop before he was terminated. He also got both of them to acknowledge this fact on cross-examination. In addition, he testified about the photos but did not claim that he had showed them to management or that he had told management about them. If, as the juror's husband speculated, the plaintiff had "threatened Midwest and held the pictures over the management's heads well before his actual termination," the plaintiff would have testified that he had made the defendants aware of the photos before he was terminated because that would have helped him prove his case. Thus, the defendants failed to show that the juror's husband's rank speculation in paragraph 12 may have affected the verdict.

¶ 68 Accordingly, the trial court did not abuse its discretion in concluding that the jurors were not influenced and prejudiced by the juror misconduct to such an extent that they would not, or could not, be fair and impartial. See *Runge*, 234 Ill. 2d at 104-05. Thus, the court did not abuse its discretion in denying the defendants' motion for a new trial on the basis of juror misconduct.

¶ 69 We turn now to the defendants' argument that the trial court erred in giving an expert witness limiting instruction regarding Jenkins' voicemail message. In his motion

in limine, the plaintiff sought, *inter alia*, to exclude testimony about the voicemail message, arguing it was hearsay. The defendants opposed the motion, arguing that testimony about the voicemail message was not being offered for the truth of the matter asserted but, instead, to demonstrate why they acted as they did (motive) in terminating the plaintiff. The court ruled that it would allow testimony about the voicemail message for that limited purpose, and the plaintiff requested a limiting instruction. The court ruled that it would give a limiting instruction and read the instruction, which was a modified version of IPI Civil No. 2.04, on the record. Although the defendants objected to the giving of the instruction, arguing that no limiting instruction was appropriate, they did not object to the language of the limiting instruction; nor did they tender an alternate instruction. The court, therefore, gave the jury the following limiting instruction:

> "I allowed witnesses to testify in part to *** voicemail statements that were not admitted into evidence. The testimony was allowed for a limited purpose. It was allowed so that witnesses could tell you what they relied on to inform them of their opinions. The material referred to is and was not evidence in this case and may not be considered by you as evidence. You may consider the material for the purpose of deciding what weight if any you will give the opinions testified to by the witnesses."

¶ 70 In their appellate briefs, the defendants argue that "the more appropriate instruction *** can be found in IPI 2.02." Because the defendants failed to make this argument before the trial court and did not offer an alternate instruction, they forfeited any objection to the language of the instruction that was given. See *Mikolajczyk v. Ford*

Motor Co., 231 Ill. 2d 516, 557-58 (2008) ("A party forfeits the right to challenge a jury instruction that was given at trial unless it makes a timely and specific objection to the instruction and tenders an alternative, remedial instruction to the trial court.").

¶ 71 The defendants next argue that the trial court erred in giving a missing evidence instruction regarding the voicemail message. The plaintiff sent the defendants a "litigation hold" letter 18 days after his termination. He later served an Illinois Supreme Court Rule 214 (eff. July 1, 2014) request for production of documents on the defendants, requesting, *inter alia*, "[a]ll documents that reflect or suggest that plaintiff's employment with defendants would have come to an end in 2013 or 2014 irrespective of the allegations in plaintiff's complaint"; "[a]ll documents that purport to show that defendants did not terminate plaintiff's employment in retaliation for plaintiff making a report to the EPA"; and "[a]ny and all documents, emails, statements, affidavits, etc. in defendants' possession or control which describe or purport to describe *** plaintiff's work performance, and/or plaintiff's conduct while employed by defendants." The request to produce specified that "[a]ny request for document(s), record(s), note(s), or other tangible information seeks and requires the production **not only** of all written or other tangible physical objects which record information, but **also includes and requires the production of all digital and/or electronically stored information**." (Emphasis in original.) The voicemail message was not produced in response to the request to produce.

¶ 72 At the pretrial conference, defense counsel advised the court that, after playing the voicemail message for other members of management, Bob Jr. erased it before Midwest

received the plaintiff's litigation hold letter. In response, the plaintiff's attorney advised the court that, in his request to produce, the plaintiff had also asked that, if any documents had been destroyed, the defendants explain the circumstances in which they were destroyed and that the defendants had responded, "N/A."

¶ 73 The court ruled that it would give a missing evidence instruction based on IPI Civil No. 5.01 as a result of the defendants' failure to identify the voicemail message as a lost or destroyed document in response to the plaintiff's request to produce. The defendants objected to the instruction, arguing it lacked evidentiary support in that the only evidence of spoliation was Bob Jr.'s testimony that he deleted the voicemail message before Midwest received the plaintiff's litigation hold letter. They also argued that the content of the voicemail message was not unfavorable to them and that they had a reasonable excuse for not producing it because they were unaware that they would be sued.

¶ 74 The following missing evidence instruction, which was based on IPI Civil No. 5.01, was given to the jury over the defendants' objection.

> "As regards a recorded phone message the defendants allege was received from a third-party which phone recording the defendants have not offered as evidence you may infer that the phone recording if presented as evidence would be adverse to the defendants if you believe each of the following elements:
>
> 1. The evidence was under the control of the defendants and could have been produced by the exercise of reasonable diligence;
>
> 2. The evidence was not equally available to plaintiff;

3. A reasonably prudent person under the same or similar circumstances would have offered the evidence if he believed it to be favorable to him;

4. No reasonable excuse for the failure has been shown."

¶ 75 The decision whether to tender IPI Civil No. 5.01 to the jury is within the trial court's discretion, and that decision will not be reversed absent a clear abuse of that discretion. *Dunning v. Dynegy Midwest Generation, Inc.*, 2015 IL App (5th) 140168, ¶ 84. IPI Civil No. 5.01, the "missing-evidence instruction," allows a jury to draw an adverse inference from a party's failure to offer evidence. *Id.* It is proper to give IPI Civil No. 5.01 "where some foundation is presented on each of the following: (1) the evidence was under the control of the party and could have been produced through the exercise of reasonable diligence, (2) the evidence was not equally available to the adverse party, (3) a reasonably prudent person under the same or similar circumstances would have offered the evidence if he believed the evidence to be in his favor, and (4) no reasonable excuse for the failure has been shown." *Id.* ¶ 85.

¶ 76 After considering each of these elements, we conclude that the trial court did not abuse its discretion in giving the missing evidence instruction in this case. The voicemail message was under the defendants' control; it was not equally available to the plaintiff; a reasonably prudent person under the same or similar circumstances would have offered it if he believed it to be in his favor; and there was evidence upon which the jury could conclude that no reasonable excuse for the failure had been shown. If the jury found that the four elements were shown, it was allowed, but not required, to infer that the voicemail message would have been adverse to the defendants.

¶ 77 We turn now to the defendants' argument that the trial court abused its discretion in refusing to admit evidence of the reasons for the plaintiff's two prior suspensions. Prior to trial, the plaintiff filed a motion *in limine*, seeking to bar testimony about the substance of his prior suspensions. The defendants responded that the prior suspensions (one for an altercation with a coworker and the other for an alleged unauthorized parts order) were relevant to their decision to terminate him. The court allowed the defendants to testify that the plaintiff was suspended twice in 2010 but would not allow them to testify about the reasons for the suspensions.

¶ 78 "Generally, evidentiary motions, such as motions *in limine*, are directed to the trial court's discretion, and reviewing courts will not disturb a trial court's evidentiary ruling absent an abuse of discretion." *People v. Harvey*, 211 Ill. 2d 368, 392 (2004).

¶ 79 The defendants argue that evidence of the reasons for the plaintiff's two prior suspensions was relevant and admissible to show their motive, knowledge, and intent in deciding to terminate him after the third offense. They argue that they were substantially prejudiced by their inability to discuss the substance of his prior suspensions and how his prior conduct contributed to their decision to terminate him. We disagree.

¶ 80 After the 2010 discipline, Midwest continued to employ the plaintiff for 3½ years, giving him raises and bonuses. In addition, in response to the plaintiff's interrogatory asking the defendants to "[s]tate each and every reason why defendants terminated plaintiff's employment," the defendants responded:

> "Defendant terminated plaintiff's employment because in September 2013 his attitude became increasingly inappropriate. He was very frustrated and angry

> and voiced his frustrations and anger to customers and employees of [Midwest]. [He] requested from [Bob Sr.] to consider laying him off and allow [him] to collect unemployment because he had another job that he would be paid cash for. [He] informed Midwest that he would no longer drive trucks for them and as such, he could not be employed by Midwest. [He] also informed Midwest customers that Midwest was inefficient and complained about Midwest to customers. [He] was verbally abusive to other Midwest employees and had a bad temper."

This is not a case where the plaintiff was terminated because this was his third strike. As demonstrated by the defendants' interrogatory answer quoted above, the plaintiff's termination was unrelated to his suspensions 3½ years earlier, and the trial court did not abuse its discretion in limiting the scope of the defendants' testimony about the prior suspensions.

¶ 81 The defendants next argue that the trial court abused its discretion in admitting evidence about the substance of Midwest's environmental violations. More specifically, they challenge the admission, over their objections, of (1) photos and a video allegedly of Midwest's premises, purportedly taken by Hicks, and supposedly sent via his wife's e-mail address to an e-mail address the plaintiff shared with his wife, without any relevance, authentication, or foundation; (2) Cahnovsky's narrative report; (3) photos of roll-off containers with hazardous waste stickers; and (4) evidence related to hazardous waste handled by Midwest.

¶ 82 "Generally, rulings on admissibility of evidence are within the trial court's discretion, and the court's rulings will not be overturned absent an abuse of discretion."

Greco v. Orthopedic & Sports Medicine Clinic, P.C., 2015 IL App (5th) 130370, ¶ 21. Moreover, "[e]ven if an abuse of discretion has occurred, it will not warrant a reversal unless the record indicates the existence of substantial prejudice affecting the outcome of the trial." *Id.*

¶ 83 Here, even assuming, without deciding, that the trial court abused its discretion in admitting the challenged evidence, reversal is not warranted because there was no substantial prejudice affecting the outcome of the trial. At trial, Cahnovsky, a senior public service administrator at the IEPA, testified in detail about the plaintiff's complaints and the IEPA's investigation of Midwest. He testified, without objection, about his narrative report, but the defendants objected to the admission of the narrative report as a trial exhibit based on hearsay, confusion, and undue prejudice, noting that Midwest had not been fined or prosecuted for any IEPA violation. The narrative report was admitted into evidence over the defendants' objections. Cahnovsky testified that, other than spilling hazardous waste directly on the ground, Midwest's violations were probably the most egregious. In addition, on cross-examination by defense counsel, Cahnovsky stated that he had referred Midwest to the Attorney General's office for prosecution and that the Attorney General's office had accepted the case. Admission of Cahnovsky's narrative report itself, which more specifically describes the manner and results of his investigation of Midwest, was no more prejudicial than his testimony, which was admitted without objection.

¶ 84 The plaintiff also sought to admit photos and a video of Midwest's premises that he claimed were taken by Hicks and sent to him via Hicks' wife's email address. The

defendants objected on the basis of relevance, lack of authentication and foundation, and the plaintiff's failure to produce the photos and video in discovery. The photos and video were admitted into evidence over the defendants' objections, and the video was played for the jury. In their appellate briefs, the defendants discuss what was depicted on the photos and video as follows:

> "The photos and video *** w[ere] said to consist of Midwest's drain system, tanks, the floor of Midwest's shop, and employees in Tyvek suits. *** The video footage and photographs showed liquid on the floor of a shop *** without any testimony indicating what the liquid was. The liquid very well could have been water."

The defendants' own description of what was depicted on the photos and video demonstrates that they were not substantially prejudiced by the admission of the photos and video. The photos and video merely provided context for the witnesses' testimony.

¶ 85 The defendants also objected to the introduction of photos of containers with hazardous waste stickers (and evidence related to hazardous waste handled by Midwest) on the basis of relevance and undue prejudice. The photos were admitted over the defendants' objections. Again, these photos merely provided context for the witnesses' testimony, and the defendants were not substantially prejudiced by the admission of the photos. The fact that Midwest was in the business of hauling waste, including hazardous waste, was undisputed and important in providing the context of the plaintiff's complaint to the IEPA.

¶ 86 Finally, the defendants argue that the trial court abused its discretion in allowing the plaintiff to present evidence of the individual defendants' salaries, arguing that it was irrelevant and unduly prejudicial. We disagree.

¶ 87 A party may question a witness's credibility by demonstrating the witness's interest in the outcome. *Rush v. Hamdy*, 255 Ill. App. 3d 352, 363 (1993). Although Bob Sr. and Bob Jr. have no ownership interest in Midwest, it is a family-owned company, they are members of the family, and they are paid annual salaries of $260,000 and $175,000, respectively. The jury easily could have found that Bob Sr. and Bob Jr. had an interest in the jury finding in favor of Midwest so that they could continue receiving such salaries. The trial court exercised its discretion in ruling that the jury should hear evidence of Bob Sr. and Bob Jr.'s compensation on the issue of their bias or motive to lie, and that determination was not unreasonable under the circumstances.

¶ 88 CONCLUSION

¶ 89 For the foregoing reasons, the judgment of the circuit court of Madison County is affirmed.

¶ 90 Affirmed.