

#### **4. State of West Virginia v. Timothy Ray Sutherland, No. 11-0799**

**Voir dire:** During a process known as voir dire, potential jurors are questioned by the Court and attorneys about their backgrounds and potential biases before they are selected to sit on a jury. The Court is required to disqualify jurors “for cause” if a potential juror makes a statement of disqualifying prejudice or bias that would interfere with the juror’s ability to fairly consider the evidence at trial. The attorneys are normally given two to three “peremptory strikes” which means that they can eliminate, in their discretion, two or three prospective jurors from the jury panel. The “peremptory strikes” should only take place after the Court ensures that there is a panel of jurors that is free from exception. In the instant case, the defendant argues that the circuit court erred in failing to strike a juror for cause.

**Factual Background:** The defendant appeals his conviction of first degree murder and his sentence of life without mercy, which means the defendant will not be eligible for parole. On December 28, 2009, the defendant murdered his cousin by stabbing her in the neck while she slept. The defendant confessed to the crime, but argued that he was not guilty of first degree murder because he was “high” and “fueled by emotion.” During the defendant’s trial, the circuit court struck eleven jurors. The circuit court denied three challenges for cause, two were directed at the same juror, Juror W. Only one of the challenges is the subject of the instant appeal. After defense counsel asked, “Does anyone think if you intentionally murder someone, you should never leave prison?” Juror W. raised his hand. Juror W. was then asked “if you found Mr. Sutherland guilty of first degree murder, you could not recommend mercy?” to which he responded “No, I just feel if somebody takes a life, and since you don’t have the death penalty here in West Virginia, that’s where he ought to stay.” Defense counsel moved to strike Juror W., but this motion was denied. Defendant then used one of his peremptory challenges to strike Juror W. from the jury panel. Juror W. did not serve on the jury. On April 19, 2011, the defendant was sentenced to life in the penitentiary.

**Petitioner’s Argument:** The defendant argues that the circuit court erred in refusing to strike Juror W. for cause. The defendant argues that Juror W. was not suited to sit on a jury in a first degree murder case because of his opposition to granting mercy. The defendant argues that he is guaranteed under the law to have an unbiased jury panel and that he has a statutory right to reserve his challenges until an unbiased panel is assembled. The defendant argues that the circuit court’s failure to strike Juror W. for cause forced the defense to use a peremptory strike, and is therefore reversible error.

**Respondent’s Argument:** The State argues that Juror W.’s response to a general question during voir dire was not, in and of itself, sufficient for this Court to determine that bias and prejudice existed requiring Juror W.’s disqualification as a matter of law. The State asserts that defense counsel should have asked follow-up questions to ascertain whether the juror’s views were unalterable, and counsel’s failure to do so leaves the Court with a record insufficient to sustain the defendant’s claim of bias and prejudice. The State asserts that the defendant had a fair trial and was convicted by a fair and impartial jury.