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December 15, 1999

DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

December 17, 1999

DEBORAH L. McHENRY, CLERK
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Maynard, Justice, dissenting:

I dissent because I believe there is no evidence of record that indicates Ms. Cecil would not have been an impartial juror. Therefore, the trial court committed no error in failing to strike Ms. Cecil for cause.

As noted by the majority, “[t]he true test to be applied with regard to qualifications of a juror is whether a juror can, without bias or prejudice, return a verdict based on the evidence and the court’s instructions and disregard any prior opinions he may have had.” Syl. pt. 1, *State v. Harshbarger*, 170 W.Va. 401, 294 S.E.2d 254 (1982). Further, “[a]ctual bias can be shown by a juror’s own admission of bias or by proof of specific facts which show the juror has such prejudice or connection with the parties at trial that bias is presumed.”

In the instant case, Ms. Cecil indicated that she could reach an impartial verdict based upon the evidence. The majority reverses the conviction, however, because Ms. Cecil is the aunt of Eric Walls who was involved in the incident in which the defendant shot Mr. Cleary and was, therefore, interested in the outcome of the defendant’s trial. The majority concludes from this that “the *possibility* existed that Ms. Cecil would be susceptible to voting

to convict Mr. Christian, so as to preclude any later attempts to bring charges against her nephew, Mr. Eric Walls” (emphasis added). The majority further surmises that “[i]t would be unreasonable to assume that during [Ms. Cecil’s discussions with Eric Walls’s mother] there was no expression of concern that authorities might seek to criminally prosecute Mr. Eric Walls.”

I believe, rather, that the facts solicited from Ms. Cecil during voir dire constituted useful information which the defendant might use to intelligently exercise his peremptory challenge. The facts, however, do not rise to the level of a challenge for cause.

The problem with the majority’s conclusions is that they are based on mere speculation. The facts, on the other hand, do not leave a clear and definite impression that Ms. Cecil would be unable to faithfully and impartially apply the law. Also, no actual prejudice has been demonstrated in this case. Accordingly, the trial court did not abuse its discretion in failing to strike Ms. Cecil for cause and should be affirmed. For this reason, I dissent.