When a prospective juror expresses a bias for or against the law, the law must be explained to them, and they must be asked whether they can follow that law regardless of their personal views. [In the Matter of A.V.](17-3-6B)

On June 8, 2017, the Eastland Court of Appeals held that when a prospective juror expresses bias or prejudice in favor of or against the defendant (as opposed to a bias or prejudice against the law), it is not ordinarily deemed possible for the prospective juror to be qualified by stating that they can lay aside such prejudice or bias.

¶ 17-3-6B. **In the Matter of A.V.**, MEMORANDUM, No. 11-16-00078-CV, 2017 WL 2484348 (Tex. App.—Eastland, 6/8/2017).

**Facts:** This is an appeal from a judgment of disposition in a juvenile delinquency matter involving determinate-sentence offenses. See TEX. FAM. CODE ANN. §§ 53.045(a), 54.04 (West Supp. 2016). After the grand jury approved the juvenile court petition, A.V. pleaded true to allegations that he had engaged in delinquent conduct by engaging in organized criminal activity and by committing the offenses of aggravated robbery, and the trial court adjudicated A.V. See id. § 53.045. Several weeks later, a jury was empaneled for the disposition hearing. The jury found that A.V. was in need of rehabilitation or that disposition was required to protect either A.V. or the public. See id. § 54.04(a), (c). The jury sentenced A.V. to commitment in the Texas Juvenile Justice Department with a possible transfer to the Texas Department of Criminal Justice for a term of thirty years, and the trial court entered a judgment of disposition based on the jury’s verdict. See id. § 54.04(d)(3). We affirm.

In his second issue, A.V. contends that the trial court erred when it overruled his challenge for cause to one of the members of the venire panel.

**Held:** Affirmed

**Memorandum Opinion:** A.V. argues that the trial court erred when it overruled his challenge for cause to Veniremember No. 30. A.V. contends that this prospective juror was disqualified because she was biased and prejudiced. See TEX. GOV’T CODE ANN. § 62.105 (West 2013); TEX. CODE CRIM. PROC. ANN. art. 35.16 (West 2006). The record shows that Veniremember No. 30 had twice been a victim of a crime similar to the one committed by A.V. She stated during voir dire that she knew how it felt to be a victim of such a crime: “Worse than horrible.” When questioned further at the bench, Veniremember No. 30 first said that she thought A.V. needed some jail time but then said that she could consider probation if the facts showed that probation “would do him good.” She then indicated that, given her history, her judgment could possibly be a little cloudy but that A.V. is “a different person than who robbed me, and it would be probably completely different circumstances than what happened to me.” A.V. moved to excuse Veniremember No. 30 for cause, and the trial court overruled that motion. A.V. properly preserved this issue for our review. See Green v. State, 934 S.W.2d 92, 105 (Tex. Crim. App. 1996).

We review a trial court’s ruling on a challenge for cause with considerable deference because the trial court is in the best position to evaluate the demeanor and responses of a prospective juror. Gardner v. State, 306 S.W.3d 274, 295–96 (Tex. Crim. App. 2009). We may reverse a trial court’s ruling on a challenge for cause only if the trial court clearly abused its discretion. Id. at 296. When the answers of the challenged veniremember are vacillating, unclear, or contradictory, we accord particular deference to the trial court’s decision. Id. at 295; In re M.R., No. 11–08–00155–CV, 2010 WL 1948286, at \*2 (Tex. App.–Eastland May 13, 2010, pet. denied) (mem. op.).

A veniremember is challengeable for cause if she has (1) a bias or prejudice for or against a party or (2) a bias or prejudice against the law upon which the parties are entitled to rely. Gardner, 306 S.W.3d at 295; M.R., 2010 WL 1948286, at \*1. A veniremember is not challengeable for cause merely because she has a bias against the crime committed. M.R., 2010 WL 1948286, at \*3.

When a prospective juror expresses bias or prejudice in favor of or against the defendant (as opposed to a bias or prejudice against the law), it is not ordinarily deemed possible for the prospective juror to be qualified by stating that she can lay aside such prejudice or bias. Id. at \*1 (citing Smith v. State, 907 S.W.2d 522, 530 (Tex. Crim. App. 1995)). When a prospective juror expresses a bias for or against the law, the question is whether the bias or prejudice would substantially impair the prospective juror’s ability to carry out her oath and instructions in accordance with the law. Gardner, 306 S.W.3d at 295; M.R., 2010 WL 1948286, at \*2. Before a veniremember may be excused for cause, the law must be explained to her, and she must be asked whether she can follow that law regardless of her personal views. Gardner, 306 S.W.3d at 295; M.R., 2010 WL 1948286, at \*2. The proponent of a challenge for cause carries the burden of establishing that the challenge is proper. Gardner, 306 S.W.3d at 295. The proponent does not meet this burden until the proponent shows that the veniremember understood the requirements of the law and could not overcome her prejudice well enough to follow the law. Id.

**Conclusion:** Veniremember No. 30 did not express a bias or prejudice against A.V. but, rather, against the crime he committed. Veniremember No. 30 vacillated somewhat with respect to any bias or prejudice as it related to the law—specifically, probation. However, we defer to the trial court’s determination and hold that A.V. did not meet his burden to show that Veniremember No. 30 understood the law but could not overcome her prejudice well enough to follow the law. A.V.’s second issue is overruled.