IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 1993 Term

No. 21568

STATE OF WEST VIRGINIA,
Appellee

v.

LISA A. NELSON,
Appellant

Appeal from the Circuit Court of Cabell County
Honorable Alfred E. Ferguson, Judge
Civil Action No. 21568

REVERSED

Submitted: September 15, 1993
Filed: October 14, 1993

Darrell V. McGraw, Jr.
Attorney General
Stephen R. Van Camp
Assistant Attorney General
Charleston, West Virginia
Attorneys for the Appellee

George B. Morrone, III, Esquire
Kenova, West Virginia
Attorney for the Appellant

JUSTICE NEELY delivered the Opinion of the Court.

JUSTICE WORKMAN dissents and reserves the right to file a dissenting opinion.

SYLLABUS BY THE COURT

1. "In a criminal case, a verdict of guilt will not be set aside on the ground that it is contrary to the evidence, where the state's evidence is sufficient to convince impartial minds of the guilt of the defendant beyond a reasonable doubt. The evidence is to be viewed in the light most favorable to the prosecution. To warrant interference with a verdict of guilt on the ground of insufficiency of evidence, the court must be convinced that the evidence was manifestly inadequate and that consequent injustice has been done." Syl. pt. 1, State v. Starkey, 161 W.Va. 517, 244 S.E.2d 219 (1978).

2. "'Circumstantial evidence will not support a guilty verdict, unless the fact of guilt is proved to the exclusion of every reasonable hypothesis of innocence; and circumstances which create only a suspicion of guilt but do not prove the actual commission of the crime charged, are not sufficient to sustain a conviction.' Syl. pt. 2, State v. Dobbs, 163 W.Va. 630, 259 S.E.2d 829 (1979)." Syl. pt. 2, State v. Phillips, -- W.Va. --, 342 S.E.2d 210 (1986).

Neely, J.:

In 1987 Lisa A. Nelson was a clerk in the Cabell County Sheriff's Office and lived in Huntington with Charlie McComas, the director of security at the Huntington Civic Center. In late summer of that year, Ms. Nelson and Mr. McComas helped Ms. Nelson's lifelong friend Sharon Ison obtain a job at the Huntington Civic Center. Because the job required residence in Huntington, Ms. Ison, at the suggestion of Mr. McComas, falsely used the Huntington address of Mr. McComas' elderly aunt on her employment application while continuing to live in Wayne County.

In early 1988, Ms. Nelson alerted Ms. Ison to a job opening as poll worker in Cabell County. The job required that Ms. Ison be registered to vote in Cabell County; Ms. Ison was registered in Wayne County. In February 1988 Ms. Nelson called Ms. Ison to obtain information for the purpose of filling out Ms. Ison's voter registration card. The Cabell County voter registration card bearing Ms. Ison's name contains the false Huntington address. Ms. Ison did not fill out, sign or offer the registration card to the county clerk.

In fall 1990, following an anonymous letter to the Cabell County Sheriff's Office concerning irregularities in the signature of Sharon Ison on voting records, Corporal Robert Adkins asked Ms. Ison whether she lived at the Huntington address. Ms. Ison eventually admitted that she did not live there.

Ms. Nelson was indicted by a special grand jury for the felonies of forgery, uttering and perjury for offering Ms. Ison's voting registration card.

Because the handwriting expert for the state lacked sufficient evidence to conclude that the signature on the questioned form was that of Ms. Nelson, the court, on the state's motion, dismissed the forgery and uttering counts at the beginning of trial. Ms. Nelson was convicted for offering the fraudulent voter registration card in violation of W.Va. Code, 3-2-42 [1990]. W.Va. Code 3-2-42 [1990] provides in pertinent part:

> A person who knowingly offers any application for registration or transfer of registration when the applicant therein is not qualified to register or transfer his registration... shall be guilty of a felony...

The dispositive issue in this case is whether the state's evidence was sufficient to show that Ms. Nelson offered the questioned voter's form for registration at the Cabell County Clerk's Office. We stated the rule for appellate review of a guilty verdict in Syllabus Point 1 of State v. Starkey, 161 W.Va. 517, 244 S.E.2d 219 (1978):

> In a criminal case, a verdict of guilt will not be set aside on the ground that it is contrary to the evidence, where the state's evidence is sufficient to convince impartial minds of the guilt of the defendant beyond a reasonable doubt. The evidence is to be viewed in the light most favorable to the prosecution. To warrant interference with a verdict of guilt on the ground of insufficiency of evidence, the court must be convinced that the evidence was manifestly inadequate that consequent injustice has been done.

This case is based entirely on circumstantial evidence. Where circumstantial evidence is relied on, it must be scanned with caution. State v. Phillips, 342 S.E.2d 210, 212 (1986). In Syllabus Point 2 of State v. Dobbs, 163 W.Va. 630, 259 S.E.2d 829 (1979), we stated:

> Circumstantial evidence will not support a guilty verdict, unless the fact of guilt is proved to the exclusion of every reasonable hypothesis of innocence; and circumstances which create only a suspicion of guilt but do not prove the actual commission of the crime charged are not sufficient to sustain a conviction.

For the sake of clarity, we summarize the circumstances on which the State relies to connect Ms. Nelson with the crime.

The prosecution's handwriting expert, K.H. McDowell, testified that he determines whether a particular writing was prepared by the person in question on a four-level rating system: reasonably certain; probable; possible; and cannot be eliminated. Mr. McDowell ascertained that the signature on the questioned form probably was not that of Ms. Ison. He found in addition that it was reasonably certain that Ms. Nelson prepared the hand-printed areas on the form. However, he concluded it merely possible-- not probable or certain-- that Ms. Nelson signed the document. For this reason, the court, on the state's motion, dismissed the forgery and uttering counts at the beginning of trial.

Ms. Ison, whose registration card was at issue, testified that Ms. Nelson called her in early February for assistance in preparing Ms. Ison's voting form and that she herself neither filled out any information nor signed nor offered the card for registration. Ms. Ison presented no evidence on the issue of whether Ms. Nelson either signed or offered the questioned form.

In short, the State established only that Ms. Nelson probably prepared the form for Ms. Ison, which, it should be noted, is a perfectly legal act. It

is standard practice for clerks in offices to fill out routine forms for clients, either for the sake of efficiency or, as is increasingly common, when dealing with people of marginal literacy. Thus, no logical inference can be made from the fact that Ms. Nelson filled out Ms. Ison's form.

The state failed to prove that Ms. Nelson signed the form; in fact, so paltry was the evidence indicating that Ms. Nelson's signature appeared on the form that the court, on the state's motion, dismissed the forgery and uttering counts at the beginning of trial. Moreover, the Sheriff's Deputy Greg Cook, who notarized the questioned form bearing the signature of "Sharon G. Ison" maintained that Ms. Nelson could not possibly have signed the name of Ms. Ison in his presence as he knew Ms. Nelson at the time the document was notarized. Finally, none of the State's witnesses could furnish any evidence to show it was Ms. Nelson who offered the questioned Voter's Form.

In sum, the leap of logic we are asked to make-- that because Ms. Nelson probably filled out the form for Ms. Ison and although she cannot be proven to have signed it she nonetheless offered it for registration-- is too vast; too many reasonable hypotheses of innocence can be formed to allow us to sustain this conviction.

For the foregoing reasons, we reverse for evidentiary insufficiency.

Reversed.