

Workman, Chief Justice, dissenting:

I must dissent. The majority obviously felt sympathy for the Appellant, who does indeed strike the profile of a person whose chief character flaw seems to be the desire to "help" her friends.¹

However, judicial compassion must be tempered² not only by the goal of consistency and even-handedness, but also with some concern for the seriousness of the crime of voting fraud.³

The unrefuted evidence was that the Appellant, in an effort to help a close

¹In State v. Nelson, No. 21273 (W. Va. filed July 22, 1993) this same Defendant, while working for the Huntington Police Department, tried to help a friend by withholding information regarding the friend's criminal record from a prospective employer who presented Nelson with an authorization for the release of the friend's criminal record. That favor resulted in a criminal conviction, which this Court upheld.

²It should be noted that although the Appellant was given a sentence of one-year in the county jail, the sentence was suspended and she was placed on supervised probation.

³West Virginia Code § 3-2-42 (1990) provides, in pertinent part:

- (a) A person who willfully provides false information concerning a material matter or thing in a uniform statewide application for registration, reregistration or change of registration, under oath or affirmation lawfully administered, shall be deemed guilty of perjury; one who induces or procures another person to do so shall be deemed guilty of subordination of perjury.
- (b) A person who knowingly offers any application for registration, reregistration or transfer of registration when the applicant therein is not qualified to register or transfer his registration, or any person who knowingly administers an oath or affirmation to an applicant for registration, reregistration or change of registration when the application contains false information concerning a material or thing, or any person who falsely represents that an oath or affirmation was executed by an applicant for registration, reregistration or change of registration, shall be guilty of a felony

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friend, Ms. Sharon Ison, obtain a position as poll worker, contacted her in Wayne County, West Virginia, and suggested that she misrepresent her residency in order to register to vote in Cabell County.⁴ The evidence further reflected that the Appellant completed the registration form with information she knew to be false, that the voter registration was filed in the County Clerk's Office, and that Ms. Ison did serve as a Cabell County poll worker.

Ms. Ison testified that she gave the Appellant all the information by phone, but had no further involvement in completing or filing the application. In addition, a handwriting expert, Trooper K. H. McDowell, testified that he examined the handwriting on the registration card and was able to conclude that the Appellant filled out the hand-printed areas of the card based on the Appellant's handwriting samples. Trooper McDowell testified that Ms. Ison probably did not sign the registration card and the trooper could only conclude that the Appellant may have signed Ms. Ison's name to the card.

On February 3, 1988, a voter registration card bearing Ms. Ison's name and purportedly signed by Ms. Ison was offered for registration at the County Clerk's Office in Cabell County. The card had been notarized by Deputy Greg Cook of the Cabell County Sheriff's Office. Deputy Cook testified that he normally would not notarize a card without the presence of the person who signed the document, but acknowledged that he sometimes notarized documents for persons he knew without

⁴Appellant explained to Ms. Ison that in order to serve as a poll clerk, one must be registered to vote in the county where she would serve. In addition, the Appellant had previously counselled with and advised Ms. Ison on falsifying her residency in order to obtain municipal employment at the Huntington Civic Center.

the presence of the actual signer. The deputy had no recollection of this particular voters registration card. The evidence revealed that Deputy Cook worked with the Appellant.

In the fall of 1990, following the receipt of 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 in Huntington at the address given on the voters registration card. Ms. Ison apparently did not immediately respond. After the corporal's inquiry, the Appellant advised Ms. Ison to tell police that she lived at the Huntington address.

Ms. Ison apparently did not listen to the Appellant's advice and told police that she did not live in Huntington. Subsequently, the Appellant angrily telephoned Ms. Ison and told her that she had done Ms. Ison a favor and that Ms. Ison was not a very good friend because she would not say that she lived in Huntington.

Under these circumstances, it is rather fantastical for the majority to conclude that no logical inference can be drawn from the Appellant filling out Ms. Ison's form. It took no leap of logic for the jury to conclude that the Appellant generated the idea for the fraudulent voter registration, filled out the voter registration application and saw to it that it was filed.

It is the law of West Virginia that a general indictment as a principal in the first degree shall be sufficient to sustain a conviction as an aider and abettor or as an accessory before the fact. The circuit court so instructed the jury without

objection.

Consequently, it was unnecessary for the state to prove that the Appellant actually signed Ms. Ison's name to the voter registration application. Even if such proof was needed, there was overwhelming circumstantial evidence upon which the jury could have concluded that the Appellant did sign the form.

The majority has upheld far more serious criminal convictions than this on the basis of far less circumstantial evidence. In this case, however, it appears that fraudulent voter registration has been treated far too lightly by the majority.