

**IN THE COURT OF APPEALS OF IOWA**

No. 0-032 / 09-0745  
Filed February 24, 2010

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**ANNA MARIE BUNCH,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, James D. Coil,  
Judge.

Anna Marie Bunch appeals from her conviction of possession of a  
controlled substance, second offense. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson,  
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglas, Assistant Attorney  
General, Thomas J. Ferguson, County Attorney, and Brian Williams, Assistant  
County Attorney, for appellee.

Considered by Vogel, P.J., Eisenhauer, J., and Zimmer, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**ZIMMER, S.J.**

Anna Marie Bunch appeals from her conviction of second offense possession of a controlled substance following a jury trial. She contends there is insufficient evidence to show she was in constructive possession of crack cocaine. Because we conclude substantial evidence supports a finding of constructive possession, we affirm her conviction.

***I. Background Facts and Proceedings.*** On October 22, 2008, Officer Kyle Richter was on patrol in Waterloo when he saw a red Chevrolet Lumina pull into an area behind some apartment buildings. The location Richter was patrolling was known to be an area of “high drug trafficking” and he was aware that drugs were sold from apartments in the area. The officer watched the vehicle drive behind the apartment buildings at 1:09 a.m. The vehicle drove away at 1:11 a.m. This type of “short term traffic” is typical of those engaging in transactions to obtain crack cocaine.

When the vehicle drove off, Officer Richter followed it. He observed that the vehicle was occupied by one person, and he noticed it lacked license plates. After following the vehicle for approximately seven blocks, Officer Richter activated his emergency lights to initiate a traffic stop. After the stop, he noticed “a bunch of movement” by the driver of the car, including movements he considered to be suspicious.<sup>1</sup> The officer confirmed the driver was the only person in the vehicle.

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<sup>1</sup> The officer “could see a lot of move[ment] going up and down with the shoulders” by the driver.

As Officer Richter approached the Lumina, the driver, later identified as Bunch, started to get out. Officer Richter ordered Bunch to stay in the car. Further investigation revealed that Bunch did not have a valid driver's license or proof of insurance. The vehicle did not belong to Bunch.

When questioned by Officer Richter, Bunch was unresponsive, giving rambling answers. The officer observed that Bunch was very nervous. He testified,

She was unable to make eye contact or maintain eye contact with me. She was also—her stories kept changing back and forth. She also couldn't stand still. She kept moving back and forth, kept putting her hands forward, back.

Bunch consented to a search of her person by a female officer who had arrived on the scene. The search yielded no narcotics. Bunch refused to consent to a search of the vehicle, stating that it did not belong to her. Despite the fact she had just exited from the driver's side of the vehicle and no one else was inside, Bunch claimed she had not been driving the vehicle.

Officer Richter placed Bunch under arrest for failing to have a valid driver's license and proof of insurance. Upon searching the vehicle incident to the arrest, he found a number of facial tissues on the driver's seat, which he testified were used by those who smoke crack cocaine to keep from being burned by a crack pipe. The officer also located a glass pipe near the driver's seat. He described the location of the pipe as "inside a hole where the belt latch or buckle comes through the seat, the driver's seat, where you attach, . . . stuffed in-between there and the seat cushion . . . ." An analysis of the pipe determined that residue

inside it was crack cocaine. The pipe was not submitted for fingerprint or DNA testing. Bunch denied the pipe was hers.

On November 25, 2008, Bunch was charged with possession of a controlled substance. The charge was subsequently amended to allege that Bunch was a second offender. Trial was held on February 10, 2009. Bunch made a motion for judgment of acquittal, which the trial court denied. The jury returned a verdict finding Bunch guilty. Later, Bunch admitted she had a prior conviction of possession, and she was sentenced for possession of cocaine as a second offender.

***II. Scope and Standard of Review.*** We review sufficiency of the evidence claims for errors at law. Iowa R. App. P. 6.907. We uphold a verdict if substantial evidence supports it. *State v. Bash*, 670 N.W.2d 135, 137 (Iowa 2003). “Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt.” *State v. Biddle*, 652 N.W.2d 191, 197 (Iowa 2002). We consider all record evidence, not just the evidence supporting guilt, when making sufficiency of the evidence determinations. *State v. Quinn*, 691 N.W.2d 403, 407 (Iowa 2005). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 6.904(3)(p). We view the evidence in the light most favorable to the State, “including legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence.” *Biddle*, 652 N.W.2d at 197. “The State must prove every fact necessary to constitute the crime with which the defendant is charged.” *State v. Webb*, 648 N.W.2d 72, 76 (Iowa 2002).

**III. Analysis.** Bunch contends there is insufficient evidence to show she was in possession of the glass pipe. She claims the State failed to prove she was in constructive possession of the pipe.

Unlawful possession of a controlled substance requires proof that the defendant: (1) exercised dominion and control over the contraband, (2) had knowledge of its presence, and (3) had knowledge that the material was a controlled substance. *State v. Reeves*, 209 N.W.2d 18, 21 (Iowa 1973). Possession can be either actual or constructive. *State v. Maghee*, 573 N.W.2d 1, 10 (Iowa 1997). Actual possession occurs when the controlled substance is found on the defendant's person. *State v. Atkinson*, 620 N.W.2d 1, 3 (Iowa 2000). Constructive possession occurs when the defendant has knowledge of the presence of the controlled substance and has the authority or right to maintain control of it. *Webb*, 648 N.W.2d at 81. There is no dispute this case turns on whether Bunch constructively possessed the pipe.

In determining whether a defendant has constructive possession of a controlled substance, the court must consider the following factors, including:

(1) incriminating statements made by the person; (2) incriminating actions of the person upon the police's discovery of a controlled substance among or near the person's personal belongings; (3) the person's fingerprints on the packages containing the controlled substance; and (4) any other circumstances linking the person to the controlled substance.

*State v. Maxwell*, 743 N.W.2d 185, 194 (Iowa 2008). In constructive possession cases involving a vehicle, the court may also consider these additional factors:

(1) was the contraband in plain view; (2) was it with the person's personal effects; (3) was it found on the same side of the car or

immediately next to the person; (4) was the person the owner of the vehicle; and (5) was there suspicious activity by the person.

*Id.* We have stated that all of these factors merely act as a guide to determine whether the State has established constructive possession. *Id.* Even if some factors are present, the court is still required to determine whether all of the facts and circumstances create a reasonable inference that the person knew of the presence of the controlled substance and had control and dominion over it. *Id.*

We conclude there is sufficient evidence to allow a reasonable factfinder to conclude Bunch possessed a controlled substance. Although the vehicle in question was not hers, Bunch was driving it. The vehicle had just been observed making a brief stop in an area known for drug trafficking a little after 1:00 a.m. Bunch made furtive movements in the car immediately after she was stopped. The crack pipe was located in the area next to the driver's seat where the seat belt latched to its holder. This was the area where Bunch had been sitting. The officer also observed an unusual number of facial tissues on the front seat. Tissues are commonly used by crack cocaine users to avoid being burned while using a crack pipe. No one else was present in the vehicle with Bunch. She appeared nervous when talking to the officer and made rambling, incoherent statements in response to simple questions. Despite the fact that she was alone in the vehicle, Bunch claimed someone else had been driving the car. Although there is evidence to militate against a finding of possession, our standard of review requires us to view the evidence in the light most favorable to the State. In so doing, we affirm.

**AFFIRMED.**