

**IN THE COURT OF APPEALS OF IOWA**

No. 9-097 / 08-0688  
Filed April 8, 2009

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

**vs.**

**ALYSSA SOMKHIT SIKHAM,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,  
Judge.

A defendant appeals a jury's findings of guilt on the charges of conspiracy to commit burglary and possession of burglar's tools, contending there was insufficient evidence to support these findings. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Adams, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon Hall, Assistant Attorney General, John P. Sarcone, County Attorney, and James P. Ward, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

**VAITHESWARAN, J.**

Alyssa Sikham, who was jointly tried for several crimes, appeals a jury's findings of guilt on the charges of conspiracy to commit burglary and possession of burglar's tools. She contends there was insufficient evidence to support these findings.

We will uphold a finding of guilt if there is substantial evidence to support it. *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984). In reviewing a sufficiency-of-the-evidence challenge, we examine the evidence in the light most favorable to the State. *Id.*

With respect to the conspiracy charge, the jury was instructed that the State would have to prove the following:

1. On or about the first day of October, 2007, the defendants agreed with one another:
  - a. That one or more of them would commit Burglary in the Third Degree or
  - b. That one or more of them would attempt to commit the crime of Burglary in the Third Degree.
2. Each defendant entered into the agreement with the intent to promote or facilitate the commission of Burglary in the Third Degree.
3. Each defendant committed an overt act toward the commission of Burglary in the Third Degree.

Sikham contends that the State did not prove the second element, an "agreement" to promote or facilitate the commission of third-degree burglary. Such an agreement need not be express. *State v. Speicher*, 625 N.W.2d 738, 742 (Iowa 2001). "A tacit understanding—one 'inherent in and inferred from the circumstances'—is sufficient to sustain a conspiracy conviction." *Id.* (quoting *State v. Mapp*, 585 N.W.2d 746, 748 (Iowa 1998)).

A reasonable juror could have found the following facts. After closing his Vietnamese restaurant near downtown Des Moines, Vincent Dinh headed to the restaurant's parking lot. Dinh sighted a white sport utility vehicle in the lot. He saw the vehicle follow him as he pulled out of the parking lot, proceeded to the interstate, drove several miles to West Des Moines, and turned off at the Jordan Creek exit. Dinh became concerned, called his wife to tell her of the suspicious behavior, and instructed her to call the police.

The West Des Moines Police Department had information linking a white SUV to several recent burglaries of Asian homes. After receiving a dispatch about Dinh's experience, officers located a white SUV and pulled it over for speeding. The driver mis-identified himself. The passenger identified herself as Alyssa Sikham. The SUV was registered to Sikham's mother.

Sikham, who was seated in the back, initially told officers that she did not know where the two were traveling because she had been asleep. She later said she and the driver were coming from Prairie Meadows Casino, and were going to pick up a friend "somewhere off of 63rd Street."

An inventory search of the SUV uncovered goods stolen in the prior burglaries of Asian homes. Stolen goods were also found on Sikham and in her mother's home, where Sikham had been staying.

Viewing the evidence in the light most favorable to the State, we find substantial evidence of a tacit understanding between Sikham and the driver to burglarize Dinh's home. See *State v. Weatherly*, 679 N.W.2d 13, 18 (Iowa 2004) (finding substantial evidence of defendant's knowledge of and participation in

methamphetamine manufacturing operation). Accordingly, we affirm the jury's finding of guilt on the conspiracy charge.

This brings us to the charge of possessing burglar's tools. The charge was based on the discovery of a duffel bag containing a crowbar and socks in the passenger compartment of the SUV.

The jury was instructed that the State would have to prove the following elements:

1. On or about the first of October, 2007, the defendant(s) had in his or her possession a crowbar and/or socks.
2. The defendant(s) intended to use the crowbar and/or socks to commit a burglary.

Sikham argues that the State did not prove she had the crowbar and socks in her "possession." She acknowledges that her attorney did not move for a directed verdict on this basis. Therefore, she raises this argument under an ineffective-assistance-of-counsel rubric. We find the record adequate to resolve this claim on direct appeal. *See State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004) ("A claim of ineffective assistance of trial counsel based on the failure of counsel to raise a claim of insufficient evidence to support a conviction is a matter that normally can be decided on direct appeal.").

Turning to the question of possession, the State does not contend Sikham had actual possession of the crowbar and socks. *See State v. Cashen*, 666 N.W.2d 566, 569 (Iowa 2003) (defining actual possession as "direct physical control" over an item). Instead, the State argues she constructively possessed these items. Constructive possession requires knowledge of the presence of the item and the authority or right to maintain control over it. *Id.* A reasonable juror

could have found that Sikham was seated “in the backseat directly behind the front passenger seat.” The duffel bag containing the crowbar and socks was “on the floorboard in front of the backseat,” visible from “the rear passenger-side door.” Jewelry Sikham was wearing came from the same burglarized home as jewelry found in the duffel bag. That home was reportedly burglarized on the same day Sikham was alleged to have possessed the burglar’s tools. These circumstantial but probative facts provide substantial evidence to support the finding of guilt on the possession of burglary tools charge. Accordingly, trial counsel did not render ineffective assistance in failing to move for a directed verdict on the possession element. *See Truesdell*, 679 N.W.2d at 616 (“[I]f the record reveals substantial evidence, counsel’s failure to raise the claim of error could not be prejudicial.”).

**AFFIRMED.**