

IN THE COURT OF APPEALS OF IOWA

No. 7-758 / 07-0037
Filed November 15, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTINA LOUISE FISHER,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Richard G. Blane,
Judge.

Defendant appeals following her conviction of possession of marijuana
with intent to deliver and failure to affix a tax stamp. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney
General, John P. Sarcone, County Attorney, and Celene Gogerty, Assistant
County Attorney, for appellee State.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

VOGEL, P.J.

Christina Fisher appeals from her convictions of possession of marijuana with intent to deliver and failure to affix a tax stamp. She asserts that the district court erred in finding there was sufficient evidence to support her convictions. Because we agree with the district court that there was sufficient evidence to support the jury finding of constructive possession, we affirm¹.

On June 21, 2006, police officers responded to a domestic disturbance call at an apartment. They were met at the door by a woman and after being allowed in the apartment, observed a man walking out of the back bedroom. To keep the two separated, one officer escorted the man back into the bedroom, where the smell of marijuana was detected. After discovering an outstanding warrant for his arrest, the man was placed in handcuffs. He then gave verbal permission to search the room and drug paraphernalia and marijuana were found.

Meanwhile, Fisher had arrived at the apartment. Officers determined Fisher lived in the apartment and more specifically, that the back bedroom was Fisher's. Fisher consented to a search of the bedroom and signed a consent to search form, indicating the apartment's address was her residence. The back bedroom of the apartment was fully searched and drug paraphernalia was found strewn around the room in plain view and in a dresser. Officers also found a closed but unlocked safe containing marijuana, Fisher's social security card, her child's social security card, along with another person's social security card.

¹ The appeal is from the ruling on the motion for judgment of acquittal, but the same appears in the ruling on a motion for new trial.

After a jury trial, Fisher was convicted of possession of a controlled substance with intent to deliver in violation of Iowa Code section 124.401(1)(d) (2005) and failure to affix a tax stamp in violation of Iowa Code sections 453B.3 and 453B.12. Fisher argues that there is not sufficient evidence to support her convictions.

We review sufficiency of the evidence challenges for corrections of errors at law. Iowa R. App. P. 6.4; *State v. Bash*, 670 N.W.2d 135, 137 (Iowa 2003). A jury verdict is upheld if it is supported by substantial record evidence, which is evidence that could convince a rational jury that the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Nitchee*, 720 N.W.2d 547, 556 (Iowa 2006). Substantial evidence must do more than raise suspicion or speculation; it must raise a fair inference of guilt. *Bash*, 670 N.W.2d at 137. When reviewing the sufficiency of the evidence, we review the entire record in the light most favorable to the State, including all legitimate inferences that may be reasonably deduced from the record. *State v. Henderson*, 696 N.W.2d 5, 7 (Iowa 2005). “Inherent in our standard of review of jury verdicts in criminal cases is the recognition that the jury was free to reject certain evidence, and credit other evidence.” *Nitchee*, 720 N.W.2d at 556 (quoting *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994)). “Constructive possession occurs when the defendant has knowledge of the presence of controlled substance and has the authority or right to maintain control of it.” *Henderson*, 696 N.W.2d at 9.

The district court determined that there was sufficient evidence to establish constructive possession of the marijuana based upon evidence that Fisher acknowledged the back bedroom was hers and that she kept valuable

items with the marijuana. Fisher denied that the marijuana was hers, but did not deny the bedroom was hers. An officer testified that through conversation with the persons present in the apartment he determined the back bedroom was Fisher's bedroom, although he could not remember exactly what was stated. The officer further testified that he "obtained permission from [Fisher] to do a consent search of that rear bedroom that she had designated as hers." Although Fisher's name was not on the apartment lease, she signed a form consenting to the search of her "residence," which was also identified by the apartment's address. *Cf. State v. Nickens*, 644 N.W.2d 38, 40 (Iowa Ct. App. 2002) (finding insufficient evidence to establish constructive possession when contraband was discovered in a common area of an apartment). Along with the marijuana, Fisher's social security card and her children's social security cards were found in the safe. *Cf. Bash*, 670 N.W.2d at 139 (finding constructive possession was not established where there was no "evidence that the defendant shared any ownership in the box" where the marijuana was found). We agree with the district court there was sufficient evidence to establish Fisher's constructive possession of the marijuana and thereby support Fisher's convictions; therefore, we affirm.

AFFIRMED.