

**IN THE COURT OF APPEALS OF IOWA**

No. 8-662 / 07-1783  
Filed October 15, 2008

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

**vs.**

**DOMINIQUE JUAREZ BUROW,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell,  
and Duane E. Hoffmeyer, Judges.

Defendant appeals her judgment and sentence for conspiracy to possess  
with intent to deliver marijuana. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau,  
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney  
General, Patrick Jennings, County Attorney, and Lisa Krigsten, Amy Ellis, and  
Britt Barnes, Assistant County Attorneys, for appellee.

Considered by Mahan, P.J., and Vaitheswaran and Doyle, JJ.

**MAHAN, P.J.**

Dominique Burow appeals her judgment and sentence for conspiracy to possess with intent to deliver marijuana. She argues the trial court erred in failing to suppress evidence and statements seized pursuant to a nonconsensual search of her residence. She also contends the conviction is not supported by sufficient evidence. We affirm.

**I. Background Facts and Proceedings.**

Sioux City police officers had information that Terrance Frazier sold marijuana and frequented an address on 17th Street. On March 2, 2006, officers had a warrant for collection of hair sample and buccal swabs from Frazier and conducted surveillance at the 17th Street address. Officers saw Frazier stick his head out the door. A vehicle pulled up, and Frazier left the apartment and got into the vehicle.

Burow was driving the car Frazier entered. The car was stopped to serve the warrant on Frazier. Officers detected the odor of fresh marijuana coming from Frazier. Burow was asked for her license and registration. She told officers she resided at 803 Nebraska. Frazier had previously informed police he resided on the 800 block of Nebraska, but having recently moved in, he did not know the exact address. At the time of the vehicle stop, Frazier was found to have several small plastic bags of marijuana on his person. Frazier was arrested and taken to the police department.

An officer asked Burow if there was anything in her apartment about which officers should be concerned. She said there was not. Officers asked if she would give consent to them to search her residence. Burow did consent, drove

with an officer to her apartment, and unlocked the door. When officers entered, they detected an overwhelming odor of marijuana and found other persons at the residence. The officers then obtained a search warrant before searching further.

Officers found a plastic bag containing marijuana stems and seeds. A purse containing marijuana and a scale were found in the south bedroom. In the north bedroom, officers found a letter addressed to Burow and Burow's driver's license. And in the closet of that room, officers found men's and women's clothing and a plastic bag containing marijuana in an amount, and packaged in a manner, consistent with drug dealing.

Burow was arrested and interviewed following a waiver of her *Miranda* rights. She claimed not to know whether Frazier sold marijuana. She did, however, know: that Frazier frequented a house on 17th and Jones; that at that house he obtained marijuana in small plastic bags like those police found in his possession; that after he obtained marijuana at 17th and Jones, Frazier would visit another house on Virginia and leave that house with enough marijuana left to smoke himself, but not more; and that on at least one occasion someone had called Frazier looking for marijuana.

Burow was charged with conspiracy to possess with the intent to deliver a controlled substance—marijuana. Burow moved to suppress evidence obtained and statements made following the search of her residence. She argued that any consent obtained was induced by a threat by officers to seek a search warrant.

A hearing was held, and the district court found that Burow was stopped because there was a search warrant for her passenger who was known to law

enforcement as a drug dealer. The court found that after the vehicle was stopped, and when law enforcement continued to question Burow, they had reasonable, articulable suspicion that Burow was aiding and abetting the distribution of marijuana. The court further found there was no undue pressure, threats, or improper inducements for Burow's consent to search her residence. Burow's motion to suppress was denied.

A jury found Burow guilty of conspiracy to possess with the intent to deliver a controlled substance—marijuana. Judgment was entered and Burow appeals.

## **II. Consent**

Burow argues the trial court erred in failing to suppress evidence and statements where her consent was coerced by the threat of the officers obtaining a warrant to search her residence. She contends the search violated the Iowa and United States constitutions.

It is well settled under the Fourth and Fourteenth Amendments that a search conducted without a warrant issued upon probable cause is per se unreasonable . . . subject only to a few specifically established and well-delineated exceptions. It is equally well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent. The constitutional question in the present case concerns the definition of 'consent' in this Fourth and Fourteenth Amendment context.

*Schneckloth v. Bustomonte*, 412 U.S. 218, 219, 93 S. Ct. 2041, 2043-44, 36 L. Ed.2d 854, 858 (1973) (internal citations and quotations omitted). The question presented is whether Burow's consent was given voluntarily, and it is the State's burden to prove the consent was voluntary. *Lane*, 726 N.W.2d 371, 378 (Iowa 2007). Voluntariness is "question of fact to be determined from the

totality of all the circumstances.” *Id.*, *Schneckloth*, 412 U.S. at 226, 93 S. Ct. at 2047, 36 L. Ed. 2d at 862.

We have reviewed the entire record and, like the district court, conclude Burow’s consent to the search of her residence was voluntarily given. We do not think the alleged threat to get a search warrant vitiated her consent to the search. *Accord State v. Owen* 418 N.W.2d 340, 344 (Iowa 1988) (finding law enforcement officers’ statement that they will attempt to obtain or are getting a warrant does not serve to invalidate an otherwise voluntary consent to testing).

### **III. Sufficiency of the Evidence.**

The record provides ample evidence from which the jury could conclude Burow explicitly or tacitly agreed with Frazier that he would possess marijuana with the intent to deliver it and that Burow knowingly and actively facilitated Frazier’s drug sales by transporting or accompanying him to the locations where he bought and sold marijuana, and provided a place where he could store and package the drug. The conviction of conspiracy to possess with intent to deliver a controlled substance is supported by substantial evidence.

**AFFIRMED.**