

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,)	
)	
Plaintiff-Appellee,)	
)	
v.)	S.CT. NO. 18-1999
)	
BRENNA FOLKERS,)	
)	
Defendant-Appellant.)	

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
HONORABLE BROOK K. JACOBSEN, JUDGE

APPELLANT'S APPLICATION FOR FURTHER REVIEW
OF THE DECISION OF THE IOWA COURT OF APPEALS
FILED SEPTEMBER 11, 2019

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CERTIFICATE OF SERVICE

On the 30th day of September, 2019, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Brenna Folkers, 3307 Kipling Rd, Waterloo, IA 50701.

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QUESTION PRESENTED FOR REVIEW

**WHETHER THERE IS INSUFFICIENT EVIDENCE TO
CONVICT THE DEFENDANT OF CHILD ENDANGERMENT?**

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STATEMENT IN SUPPORT OF FURTHER REVIEW

COMES NOW the Defendant-Appellant and, pursuant to Iowa Rule of Appellate Procedure 6.1103 (2019), hereby makes application for further review of the September 11, 2019, decision of the Iowa Court of Appeals in State of Iowa v. Brenna Folkers, Supreme Court number 18-1999. In support thereof, Appellant states

1. The Iowa Court of Appeals erred when it found that there was sufficient evidence to convict the defendant.

(Opinion).

2. Iowa Code section 726.6(1)(a) (2017) states that “[a] person who is the parent, guardian, or person having custody or control over a child . . . commits child endangerment when the person . . . [k]nowingly acts in a manner that creates a substantial risk to a child or minor’s physical, mental, or emotional health or safety.” In this case, the State failed to present substantial evidence that the defendant, Brenna Folkers, acted in a manner that created a substantial risk to

her son's physical, mental, or emotional health or safety.

3. There was no evidence presented about when she smoked marijuana or hash in the residence or whether her child was present at the time. There was no evidence presented that the child had access to the marijuana and hash kept in the home.

STATEMENT OF THE CASE

Nature of the Case: This is an appeal following a bench trial from a conviction and sentence for child endangerment in Black Hawk Country case number AGCR217639.

Course of Proceedings: On February 15, 2017, the State charged the defendant, Brenna Folkers, with child endangerment under Iowa Code section 726.6(7) (2017), an aggravated misdemeanor. (Trial Information) (App. pp. 4-5). Folkers waived her right to a trial by jury and the case was tried to the court on April 25, 2018. (Trial tr. p. 1, 1-25; p. 3, L. 8 – p. 6, L. 10). On July 10, 2018, the court found Folkers guilty. (Findings of Fact, Conclusions of Law, Decision and Order) (App. pp. 14-18). On October 26, 2018, the court sentenced Folkers to a two year suspended sentence and placed her on probation. (Judgment and Sentence) (App. pp. 19-22). Folkers filed a notice to appeal on November 19, 2018. (Notice of Appeal) (App. p. 23). The Iowa Court of

Appeals affirmed the conviction on September 11, 2019.

(Opinion).

Facts: On January 16, 2017, at 6:00 a.m. police officers were dispatched to a house fire at the residence of the defendant, Brenna Folkers. The residence was a trailer home where Folkers lived with her husband, Richard Wilson, and their 2-year-old son. (Trial tr. p. 8, 1-9; p. 9, L. 11-13; p. 53, L. 15 – p. 54, L. 4). Folkers was in the residence when Officer Roberts arrived. He went into the home and told her she needed to get out. The home was smoky and hazy. (Trial tr. p. 8, L. 19 – p. 10, L. 25). Folkers, Wilson, and their son went to the hospital to be treated for smoke inhalation. (Trial tr. p. 13, L. 6-13). While in the hospital Folkers and Wilson stated that they woke that morning to the smoke alarm going off. They saw smoke in the trailer and they tried to put out the fire with a fire extinguisher. The fire was near the front door to the home. (Trial tr. p. 14, L. 17-25). Folkers told the police that Wilson had smoked hash oil the night before. (Trial tr. p.

14, L. 17-25; State's Ex. A, Roberts Vid. 7:38:25). Wilson testified that he smoked the hash oil the night before at midnight alone in the bathroom. (Trial tr. p. 62, L. 25 – p. 63, L. 5). He also stated that he used a butane torch to smoke a cigarette before he went to bed around 2:00 a.m. (Trial tr. p. 63, L. 25 – p. 64, L. 5).

During the search of the home, police discovered marijuana, hash oil, and paraphernalia in a cabinet in the bathroom. (Trial tr. p. 18, L. 21 – p. 19, L. 3). Wilson and Folkers stated that the bathroom is located off of their bedroom, and they keep the cabinet containing the contraband locked. (Trial tr. p. 63, L. 15-25; State's Ex. A, Roberts Vid. 7:38:25). Their son was not allowed in the bedroom, and that area of the home was blocked with a baby gate. (Trial tr. p. 64, L. 11 – p. 65, L. 8). Wilson was charged with child endangerment and reckless use of fire and pled guilty to both charged. (Trial tr. p. 63, L. 9-14). Folkers was

charged with child endangerment. (Trial Information) (App. p. 4).

Further relevant facts will be discussed below.

ARGUMENT

THERE IS INSUFFICIENT EVIDENCE TO CONVICT THE DEFENDANT OF CHILD ENDANGERMENT

Preservation of Error and Standard of Review: The court reviews sufficiency of the evidence challenges for corrections of errors at law. State v. Thomas, 561 N.W.2d 37, 39 (Iowa 1997). Although counsel did make a motion in arrest of judgment at the trial and that motion was overruled, no such motion was necessary since this case was tried to the bench. (Trial tr. p. 65, L. 19 – p. 66, L. 12; p. 69, L. 5-15). State v. Abbas, 561 N.W.2d 72, 73-74 (Iowa 1997).

Discussion: In its ruling, the court found that the defendant was guilty of child endangerment under Iowa Code section 726.6(1)(a) (2017) because her “acts of permitting illegal drugs to be present and repeatedly used in the residence shared with [her son] created a substantial risk to his physical, mental, or

emotional health or safety.” (Findings of Fact, Conclusions of Law, Decision and Order.) (App. p. 17). Iowa Code section 726.6(1)(a) (2017) states that “[a] person who is the parent, guardian, or person having custody or control over a child . . . commits child endangerment when the person . . . [k]nowingly acts in a manner that creates a substantial risk to a child or minor’s physical, mental, or emotional health or safety.” In this case, the State failed to present substantial evidence that the defendant, Brenna Folkers, acted in a manner that created a substantial risk to her son’s physical, mental, or emotional health or safety.

In reviewing challenges to the sufficiency of evidence, the court considers all of the evidence viewed “in the light most favorable to the State, including all reasonable inferences that may be fairly drawn from the evidence.” State v. Williams, 695 N.W.2d 23, 27-28 (Iowa 2005). A verdict will be upheld only if substantial evidence in the record supports it. State v. Nitcher, 720 N.W.2d 547, 556 (Iowa 2006). The court

considers all the evidence presented, not only inculpatory evidence. State v. Keopasaeth, 645 N.W.2d 637, 640 (Iowa 2002). Evidence is considered substantial if it can convince a rational jury that the defendant is guilty beyond a reasonable doubt. Williams, 695 N.W.2d at 27-28. In reviewing a challenge to the sufficiency of the evidence, the relevant question is whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See State v. Turner, 345 N.W.2d 553, 555-556 (Iowa 1983); State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980). The evidence presented “must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture.” State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981).

The State presented evidence that the defendant had, in the past, smoked hash and marijuana in the residence. (Findings of Fact, Conclusions of Law, Decision and Order) (App. pp. 14-15). There was no evidence presented about when she smoked marijuana or hash in the residence or

whether her child was present at the time. There was no evidence presented that the child had access to the marijuana and hash kept in the home. There was evidence to the contrary. Both parents made statements that the contraband was locked in the cabinet. Wilson stated that the child was not allowed into the bathroom where the cabinet was located. He stated a baby gate was in place to keep the child away from that part of the home. (Trial tr. p. 63, L. 15-25; p. 64, L. 11 – p. 65, L. 8; State’s Ex. A, Roberts Vid. 7:38:25).

There was no evidence that the defendant caused the fire and the court’s verdict was not based on the fire, but on the drugs that were in the home. The defendant, however, did not expose the child to drugs or smoke from the use of the drugs. There was evidence that Wilson smoked in the home, but there was no evidence of whether the child was exposed to that smoke, nor was there evidence that the defendant had prior knowledge or was able to prevent him from smoking the marijuana and hash oil. There was no evidence that the

defendant acted in a way that created a substantial risk to the health or safety of her son. The evidence in this case is far from substantial and amounts to mere innuendo and speculation. The defendant is entitled to a judgment of acquittal.

CONCLUSION

For the foregoing reasons, the Appellant requests the Court vacate the conviction and remand the case for dismissal.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Application for Further Review was \$ 2.08, and that amount has been paid in full by the Office of the Appellate Defender.

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR
FURTHER REVIEWS**

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

[X] this application has been prepared in a proportionally spaced typeface using Bookman Old Style, font 14 point and contains 1,538 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).



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Dated: 9/26/19

IN THE COURT OF APPEALS OF IOWA

No. 18-1999
Filed September 11, 2019

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRENNA FOLKERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Brook K. Jacobsen, District Associate Judge.

The defendant challenges the sufficiency of the evidence to support her conviction of child endangerment. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, (until withdrawal) and Maria Ruhtenberg, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, and Sharon K. Hall, Assistant Attorney General, for appellee.

Considered by Potterfield, P.J., and Tabor and Greer, JJ.

POTTERFIELD, Presiding Judge.

Brenna Folkers challenges the sufficiency of the evidence supporting her conviction of child endangerment following a trial to the bench. The State had the burden to prove beyond a reasonable doubt (1) Folkers was the parent having custody or control over V.W., (2) V.W. was under the age of fourteen, and (3) Folkers knowingly acted in a manner that created a substantial risk to V.W.'s physical, mental, or emotional health or safety. See Iowa Code § 726.6(1)(a) (2017); see also *State v. Millsap*, 704 N.W.2d 426, 436 (Iowa 2005) (providing “child,” as used in the statute, refers to a minors under the age of fourteen). Folkers challenges only the third element.

We review sufficiency-of-the-evidence claims for correction of errors at law. *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). We “consider all of the record evidence viewed ‘in the light most favorable to the State, including all reasonable inferences that may be fairly drawn from the evidence.’” *Id.* (citation omitted).

Here, the court concluded Folkers’s “acts of permitting illegal drugs to be present and repeatedly used in the residence shared with V.W. created a substantial risk to his physical, mental, or emotional health or safety.” Folkers does not dispute that she aware there was marijuana and hash oil kept in the home or that she had used both in the home before. She maintains there was not enough evidence to support a determination she acted in a way that created a substantial risk to V.W. because there was no evidence he was in the home or that she was parenting him at the times when she used the illegal drugs.

Additionally, she maintains the evidence at trial established the drugs were kept in a secured place that V.W. could not access.

We agree that the State did not present any evidence that V.W. was in the home or that Folkers was parenting him when she used the drugs. But the district court concluded the more credible evidence established the drugs were kept in an unlocked cabinet in the bathroom, which V.W.—who was almost two and a half years old at the time—could access. Although Folkers told the police and her husband testified at trial that the cabinet was kept locked, video footage from an officer’s body camera admitted at trial showed the husband opening the cabinet without first unlocking it. Additionally, the husband testified a baby gate was used to keep V.W. from being able to access the bathroom area, but no gate appeared in the body camera footage. Keeping marijuana and hash oil in the home where a toddler can access it creates a substantial risk to the child’s safety. See *State v. Maaske*, No. 06-0145, 2007 WL 750632, at *2 (Iowa Ct. App. Mar. 14, 2007) (affirming babysitter’s conviction for child endangerment when she was aware of the presence of crack cocaine and marijuana in the apartment and allowed the children to be there); see also *State v. Bailey*, No. 18-0736, 2019 WL 1933996, at *5 (Iowa Ct. App. May 1, 2019) (finding a factual basis supported the grandmother’s guilty plea to child endangerment when the grandmother placed her purse, which she knew contained several controlled substances, on the floor where the children could access it).

Because substantial evidence supports Folkers’s conviction, we affirm.

AFFIRMED.



IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	Case Title
18-1999	State v. Folkers

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