

**IN THE COURT OF APPEALS OF IOWA**

No. 6-895 / 05-1319  
Filed December 13, 2006

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

**vs.**

**CRYSTLE CAROLE CHRISTNER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Washington County, Daniel Morrison, Judge.

Defendant appeals from the judgment and convictions entered following guilty verdicts on the counts of child endangerment, second-offense possession of methamphetamine, neglect of a dependent person, and possession of drug paraphernalia. **AFFIRMED IN PART; REVERSED IN PART.**

Linda Del Gallo, State Appellate Defender, and David Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, and Barbara A. Edmondson, County Attorney, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

**EISENHAUER, J.**

Crystle Christner appeals from the judgment and convictions entered following guilty verdicts on the counts of child endangerment in violation of Iowa Code sections 726.6(1)(g) (2003) and 726.6(5), second-offense possession of methamphetamine in violation of section 124.401(5), neglect of a dependent person in violation of section 726.3, and possession of drug paraphernalia in violation of section 124.414. She contends there is insufficient evidence to support the convictions of child endangerment and neglect of a dependent person. She also contends the court erred in considering her prior deferred judgment as a previous drug conviction pursuant to section 124.401(5). Finally, she contends the court erred in permitting the State to dismiss the trial information without prejudice and in failing to dismiss the same charges filed in a new trial information.

We review Christner's claim the evidence was insufficient for errors at law. *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000). We will uphold a finding of guilt if substantial evidence supports the verdict. *Id.* "Substantial evidence is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt." *Id.*

Christner argues the evidence was insufficient to support a conviction of child endangerment and neglect of a dependent person because the State failed to prove her two minor children were present in the home at the same time as the drugs, paraphenelia, or precursors were. We disagree. Although the children were not in the home at the time the search warrant was executed, Christner told Officer Ron See that her children lived with her. Barbie dolls were found in the

garage along with methamphetamine and its precursors. Hair testing showed both children had been exposed to methamphetamine sometime in the three months leading up to the testing. Substantial evidence supports the jury's verdict.

We also reject Christner's claim that the trial court erred in permitting the State to dismiss the original trial information without prejudice and refile the charges in a new trial information. She contends this was done to avoid a speedy trial deadline. One day prior to the scheduled trial and ten days before the speedy trial deadline, the county attorney was notified that a key witness for the State was diagnosed with viral meningitis and was unable to testify. Another key witness was unavailable to testify if the trial was continued to the following week. The court then allowed the State to dismiss the case without prejudice and refile. It found good cause in the illness of the key witness. This was permissible as the delay was in furtherance of justice. See *State v. Fisher*, 351 N.W.2d 798, 801 (Iowa 1984) (holding the State is not precluded from refiling previously dismissed charges when the dismissal was granted to facilitate the State in gathering evidence, procuring witnesses, or plea bargaining).

However, we reverse Christner's convictions for possession of methamphetamine and possession of drug paraphernalia. The State concedes counsel was ineffective for failing to object to the use of Christner's previous deferred judgment for possession of a controlled substance to enhance the possession of methamphetamine charge. Had trial counsel objected, the charge would have had to be refiled as a serious misdemeanor. The State also concedes it would have been error to allow refiling of this charge as it would be

barred by Iowa Rule of Criminal Procedure 2.33(1). Although neither party raises the issue, the possession of drug paraphernalia charge is a simple misdemeanor, and accordingly should not have been refiled either. Counsel breached an essential duty in not raising these issues and the convictions must be reversed.

We affirm the convictions for child endangerment and neglect of a dependent person in violation of section 726.3, and reverse the convictions for possession of drug paraphernalia and possession of methamphetamine.

**AFFIRMED IN PART; REVERSED IN PART.**