

IN THE COURT OF APPEALS OF IOWA

No. 7-056 / 06-0145
Filed March 14, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CORA JEAN MAASKE,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Michael S. Walsh, Judge.

Cora Jean Maaske appeals from the judgment and sentence entered following her convictions of possession of crack cocaine with intent to deliver, drug tax stamp violation, and child endangerment. **AFFIRMED.**

Patricia Reynolds, Acting Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Mark A. Campbell, Assistant County Attorney, for appellee.

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

EISENHAUER, J.

Cora Jean Maaske appeals from the judgment and sentence entered following her convictions of possession of crack cocaine with intent to deliver pursuant to Iowa Code section 124.401(1)(b)(3) (2005), drug tax stamp violation pursuant to section 453B.12, and child endangerment pursuant to section 726.6(1)(a). She contends there is insufficient evidence to support her convictions. If this court finds she has not preserved error on this issue, she contends her trial counsel was ineffective.

Maaske was arrested on February 26, 2005, following a complaint of loud music and the odor of marijuana emanating from her apartment. Officers Terry Ivener and John Hooks of the Sioux City Police Department heard a female voice asking who was there when they knocked on the door. After announcing their presence, the officers heard movement inside the apartment. Approximately twenty to thirty seconds later, Maaske opened the door.

The officers entered the apartment and smelled the odor of marijuana. They observed razor blades, scissors, a utility knife, spent marijuana cigarettes, and plastic baggies on the kitchen table. Baking soda, a necessary ingredient in converting cocaine to crack cocaine, was on the kitchen counter. Glad-brand sandwich bags were also discovered in a kitchen closet and in Maaske's bedroom. Several loose rocks of cocaine were found in a laundry basket, along with a storage container and plastic bags containing marijuana and crack cocaine. A total of eighty-seven grams of crack cocaine was found in the apartment.

When the officers entered the apartment, they observed Sampson England emerge from Maaske's bedroom, and Jermaine Howard from the bathroom. Angela Johnson was in the kitchen. Two toddlers for whom Maaske babysat were in the living room.

In the bathroom was a small digital scale, a tube with plastic bags attached, and drug residue. The only identifiable fingerprints on the plastic bags belonged to Howard.

Maaske initially denied living at the apartment, despite evidence to the contrary. She testified at trial that she lied because she was frightened. She testified that England and Howard came to her apartment and went to the kitchen with Johnson. She claimed she knew they were smoking marijuana, but denied knowledge of any other activities. She testified the children arrived after they had smoked marijuana.

Following trial, a jury convicted Maaske of possession of crack cocaine with intent to deliver, possession of marijuana, a drug tax stamp violation, and child endangerment. Maaske appeals her convictions of all but the possession of marijuana charge. She contends there is insufficient evidence to prove she jointly possessed the crack cocaine, she conspired to possess the crack cocaine, or endangered the children.

We review claims of insufficient evidence 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.*

We conclude there is sufficient evidence for the jury to find Maaske guilty of possession of crack cocaine with intent to deliver. In order for the jury to find her guilty, the State had to prove beyond a reasonable doubt Maaske knew of the presence of crack cocaine on premises occupied and controlled by her and the nature of the material. *State v. Reeves*, 209 N.W.2d 18, 23 (Iowa 1973).

[W]here the accused has not been in exclusive possession of the premises but only in joint possession, knowledge of the presence of the substances on the premises and the ability to maintain control over them by the accused will not be inferred but must be established by proof. Such proof may consist either of evidence establishing actual knowledge by the accused, or evidence of incriminating statements or circumstances from which a jury might lawfully infer knowledge by the accused of the presence of the substances on the premises. In any event, the question of scienter or knowledge is one which must be resolved by the jury under the evidence in the case and upon proper instruction by the court embodying the principles discussed above.

Id. The following evidence, when viewed in the light most favorable to the State, supports the jury's finding that Maaske knowingly possessed the crack cocaine: her delay in answering the door after the officers identified themselves while the officers heard "scurrying" noises from inside; Maaske's lying about living in the apartment; the presence of materials used to manufacture crack cocaine on the kitchen table; and the presence of other items related to the distribution of crack cocaine around the apartment. A jury could infer that Maaske was either aware of the activities of the other three people in the apartment or was assisting them. There was substantial evidence to convict Maaske of knowingly possessing the crack cocaine or conspiring with others to possess the crack cocaine. Accordingly, we affirm on this issue.

We likewise conclude there is sufficient evidence by which the jury could find Maaske guilty of child endangerment. In order to convict her, the State was

required to prove beyond a reasonable doubt that Maaske knowingly acted in a manner that created a substantial risk to a child or minor's physical, mental or emotional health or safety. Iowa Code § 726.6(1)(a). Allowing two toddlers to be in the presence of crack cocaine and marijuana creates a substantial risk to their safety. The evidence shows Maaske knew of the presence of these drugs in the apartment. We affirm.

Because these issues were properly presented for our review, we need not address Maaske's ineffective assistance of counsel claims.

AFFIRMED.