**IN THE COURT OF APPEALS OF IOWA**

No. 3-011 / 11-0823
Filed April 10, 2013

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

**vs.**

**TYLOR RICHARD MEYERS,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Guthrie County, Paul R. Huscher, Judge.

Appeal from convictions of two drug-related offenses. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellant.

Tylor Meyers, Coon Rapids, pro se.

Thomas J. Miller, Attorney General, Teresa Baustian, Assistant Attorney General, and Mary Benton, County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

**EISENHAUER, C.J.**

Tylor Meyers appeals from his convictions of two drug-related offenses. He contends the trial court abused its discretion (1) in denying him the opportunity to impeach a witness with the witness's prior felony convictions and (2) in overruling his chain-of-custody objection to certain physical evidence. We affirm.

Meyers was found guilty by a jury of possession of precursors with the intent to manufacture methamphetamine and conspiracy to manufacture methamphetamine.

On January 15 a hiker came upon Meyers and his uncle in some trees about twenty-five or thirty feet up a hill off the hiking trail. Besides smelling an acidic, chemical smell, the hiker saw some items lying in the snow in front of their snowmobile. The hiker returned the next day, climbed to where he had seen the two men in the trees off the trail, and photographed the items he found there. They included a towel, a plastic bottle labeled "muriatic acid," wire cutters, lithium batteries and dismantled batteries, and paper coffee filters. He left the items where he found them. On February 14 the hiker took a deputy to the location of the evidence, which the deputy recovered. At trial, the deputy testified each item appeared to be the item depicted in the January 16 photos. The court overruled the defense's chain-of-custody objection to the evidence.

In addition to the items found in the woods, the State presented the testimony of Jesse Kirk. Prior to trial, the court had granted the State's motion in limine to prohibit mention of the criminal history of any of its witnesses "except as to any specifically impeachable offense(s) pursuant to Iowa Rule of Criminal

Procedure, Rule 5.609(2)(b)." When Kirk testified, the State asked him if he had "a couple of felony convictions" and from what year. He agreed he had two felony convictions from 2006. On cross-examination the defense asked Kirk "what felonies" he had been convicted of. The court sustained the State's objection.

We review a trial court's rulings on the admissibility of evidence for an abuse of discretion. *State v. Redmond*, 803 N.W.2d 112, 117 (Iowa 2011); *State v. Biddle*, 652 N.W.2d 191, 196 (Iowa 2002). "A court abuses its discretion when its discretion is based upon erroneous application of the law or not supported by substantial evidence." *State v. Harrington*, 800 N.W.2d 46, 48 (Iowa 2011).

*Impeachment.* Meyers contends the court abused its discretion in not allowing him to inquire about Kirk's felony convictions under rule 5.609(a)(1) in order to impeach the witness. Rule 5.609(a) provides, in relevant part:

> a. General rule. For the purpose of attacking the credibility of a witness:
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> (1) Evidence that a witness other than the accused has been convicted of a crime shall be admitted, subject to rule 5.403, if the crime was punishable by death or imprisonment in excess of one year pursuant to the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and
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> (2) Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

The State introduced evidence Kirk had two felony convictions. On cross-examination defense counsel asked what the felonies were. The court sustained the State's objection to the question and no record was made concerning whether the crimes involved dishonesty or false statement, and if they did not,

whether the evidence was more prejudicial than probative. *See* Iowa R. Evid. 5.609(a)(1). With no evidence of the identity or nature of the crimes we determine the record is inadequate to make any determination of prejudice. We preserve this claim for possible postconviction relief proceedings.

Meyers alternatively contends, if we determine the record is inadequate, his attorney was ineffective in failing to make an adequate record. We prefer to preserve such claims for development of the record and to allow a trial attorney to defend against the charge. *State v. Tate*, 710 N.W.2d 237, 240 (Iowa 2006). If the record is inadequate to address the claim on direct appeal, we must preserve the claim for possible postconviction relief proceedings, regardless of the potential viability of the claim. *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010). Because the record is inadequate for us to make any determination whether the attorney's conduct resulted in prejudice, we preserve this claim. *See id.*

*Chain of Custody.* Meyers contends the court abused its discretion in admitting physical evidence not seized until a month after its discovery. A trial court has considerable discretion in determining whether the State has demonstrated the necessary chain of custody for admission of physical evidence. *State v. Barger*, 511 N.W.2d 632, 636 (Iowa Ct. App. 1993). To establish an adequate chain of custody to justify admission of physical evidence, the State must show only "circumstances making it reasonably probable that tampering, substitution or alteration of evidence did not occur. Absolute certainty is not required." *State v. Bakker*, 262 N.W.2d 538, 542-43 (Iowa 1978). Once a trial court has determined the State has established a sufficient foundation for the

admission of the physical evidence, any speculation to the contrary affects the weight, not the admissibility of the evidence. *State v. Orozco*, 290 N.W.2d 6, 10 (Iowa 1980).

The location of the physical evidence here was about a mile from the nearest trail entrance, up a hill twenty-five or thirty feet off the trail in some trees. The hiker who saw Meyers and his uncle returned the next day and photographed the evidence where it lay in the snow. At trial he testified when he returned a month later with the deputy the only difference in the evidence was the depth of the snow covering it. The deputy uncovered the items and bagged them as evidence. At trial he testified each item he found was as it appeared in the earlier photograph. The remote location of the evidence, its location well off the trail, the snow covering the evidence, the nature of the items themselves, and the testimony the items recovered were found as they appeared in the earlier photographs make it reasonably probable there was no tampering, substitution or alteration of the evidence. We conclude the trial court did not abuse its discretion in overruling Meyers's chain-of-custody objection to the evidence.

The record is inadequate for us to address Meyers's rule 5.609 claim, and we preserve it for possible postconviction relief proceedings. The trial court did not abuse its discretion in overruling Meyers's chain-of-custody objection. We affirm Meyers's convictions.

**AFFIRMED.**