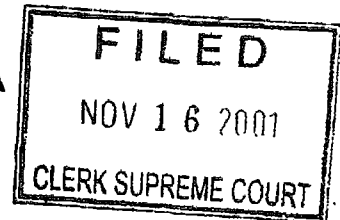


IN THE COURT OF APPEALS OF IOWA

No. 1-445 / 00-1286
Filed November 16, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

DANIEL LAWRENCE FISHER,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Thomas A. Renda,
Judge.

Daniel L. Fisher appeals the district court's judgment and sentence,
entered upon the jury's verdict finding him guilty of four counts of assault causing
bodily injury in violation of Iowa Code sections 708.1(1) or (2) and 708.2(2)
(1999). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Martha J. Lucey, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, John P. Sarcone, County Attorney, and Susan Cox, Assistant County
Attorney, for appellee.

Considered by Huitink, P.J., and Miller and Hecht, JJ.

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MILLER, J.

Daniel Lawrence Fisher appeals from the district court's judgments and sentences, entered upon the jury's verdict finding him guilty of four counts of assault causing bodily injury in violation of Iowa Code sections 708.1(1) or (2) and 708.2(2) (1999). He contends the trial court erred in (1) denying his request for jury instructions to specify the alleged assaults, (2) admitting evidence of his prior assault of his aunt who was one of the victims, (3) excluding defense witnesses and denying him the opportunity to present an offer of proof, and (4) ruling that his prior convictions were admissible under Iowa Rule of Evidence 609. He also claims his trial counsel provided ineffective assistance of counsel. We affirm.

I. BACKGROUND FACTS

Beryl Susan Fisher (Susan) is the defendant, Lawrence Fisher's (Fisher), aunt. Susan lives in a house with her roommate of twenty years, Marsha Fullerton. Fisher, who was thirty-two years of age, lived with his mother, Judy Fisher, who is Susan's sister, in the house across the street from Susan and Marsha. Fisher had moved in with his mother in December of 1998.

Based on the evidence admitted at trial the following facts could have been found by a reasonable jury. On February 22, 2000 Susan arrived home from work shortly before 4:00 p.m. Fisher soon arrived at her house. He had just returned from the doctor and appeared upset and concerned about possible health problems. Fisher then left Susan and Marsha's house. Susan however, felt Fisher needed to get a second medical opinion so she went across the street to his home to speak with him.

As Susan entered the house Fisher was on the telephone yelling profanities at someone. When he got off the phone Susan attempted to speak with him about his possible health problems. However, Fisher responded with profanity and began slamming the coat in his hand on the floor. Susan then stated she was leaving and began to head towards the door when Fisher grabbed her around the throat and "twisted" her to the ground. As he was pushing her to the ground she felt her knee "pop" and pain shot up through her leg and thigh. Fisher then left the house.

Susan could not get up off the floor and asked Judy to call 911 because she thought her leg was broken. Judy instead called Marsha who immediately came across the street to see what was wrong. As Marsha crouched down on the floor to attempt to see what was wrong with Susan, Fisher came running back into the house. He kicked Susan in her kidney area about five or six times. Marsha told Fisher to stop and attempted to "walk him back," telling him to leave. Fisher started backing up but then suddenly grabbed Marsha around the throat and threw her across the room. Marsha fell and landed on Susan's other knee. Fisher then left the house again and Judy finally called 911.

Susan suffered injuries to both knees, her foot, and had several bruises. Marsha testified that Fisher's attack on her caused complications to her prior back injury and also fractured her hip and rib. Both Susan and Marsha suffered from health problems prior to the incident. Susan suffered from Lyme's disease and cartilage problems in her knees, while Marsha suffered from fibromyalgia, asthma, and osteoporosis. Some of the medications Marsha takes for her health

problems cause her to have spontaneous fractures. Fisher testified at trial and disputed some of the State's evidence concerning the events of February 22.

The State charged Fisher in a four-count trial information. Counts I and III charged him with assault with intent to inflict serious injury, in violation of Iowa Code sections 708.1(1) or (2) and 708.2(1) (1999), against Susan and Marsha respectively. Counts II and IV charged him with assault causing bodily injury, in violation of Iowa Code sections 708.1(1) or (2) and 708.2(2), against Susan and Marshal respectively. Fisher filed notice he intended to rely on self-defense. He also filed a motion in limine seeking to prohibit the State from introducing evidence regarding his alleged assault on Susan while he was a minor. The trial court ruled that Susan could testify to Fisher's earlier assault on her. The jury found Fisher guilty of four counts of assault causing bodily injury, two counts as to each victim. The trial court subsequently sentenced him to one year on each count to be served consecutively.

Fisher contends the trial court erred in denying his request that the jury instructions specify the alleged assaults. He argues it is not clear whether the jury determined there were two separate assaults on each victim or one assault resulting in bodily injury to each victim. He asserts this is important because he cannot be convicted of violating both Iowa Code sections 708.2(1) and 708.2(2) for a single assault and the jury should have been so instructed. He claims the court erred in admitting evidence of his prior assault on his Aunt Susan because it was irrelevant and prejudicial. He also claims the court erred in excluding defense witnesses, denying him the opportunity to present an offer of proof, and in ruling his prior convictions were admissible under Iowa Rule of Evidence 609.

Finally, Fisher claims his trial counsel provided ineffective assistance in several respects.

The State argues one of Fisher's two alternative requests for jury instructions would result in impermissible comment on the evidence by the trial court. It further argues Fisher did not object to the State's proposed resolution, that the State would in its closing argument delineate which act constituted the assault in each count, and the record does not show by objection or otherwise the State did not do so. The State appears to conclude that either no error has been shown or error has not been preserved on this issue.

The State argues the trial court properly admitted evidence of Fisher's earlier assault on his aunt, because Fisher "opened the door" to such evidence by implying Susan's testimony contained certain fabrications and the evidence was relevant to rebut the assertion of fabrication. The State asserts the trial court properly exercised its discretion to exclude defense witnesses, some of whom were disclosed on an untimely basis, because the excluded witnesses failed to appear for depositions scheduled by the State, and the court did not err in denying Fisher the right to make an offer of proof as to the testimony of one witness as that witness had been excluded for not appearing for a deposition. The State argues Fisher did not preserve error concerning admission for impeachment purposes of his theft conviction and evidence of Fisher's other four convictions was properly admitted for impeachment. Finally, the State agrees with Fisher's alternative request that Fisher's claims of ineffective assistance of counsel be preserved for a possible postconviction relief hearing.

II. MERITS

A. Denial of Requested Jury Instructions

We review district court determinations regarding jury instructions for corrections of errors at law. *State v. Mesch*, 574 N.W.2d 10, 12 (Iowa 1997); *State v. Kellogg*, 542 N.W.2d 514, 516 (Iowa 1996). Our task on review is to determine whether the instructions correctly state the law. *Mesch*, 574 N.W.2d at 12. Error in giving or refusing jury instructions does not merit reversal unless it results in prejudice to the defendant. *Kellogg*, 542 N.W.2d at 516.

Fisher requested an additional jury instruction which in relevant part would inform the jury that if it should determine only one incident or assault occurred between him and a victim then he could not be found guilty of both assault with intent to inflict serious injury and assault causing bodily injury with respect to that victim. He requested that in the alternative the trial court set out in its marshalling instructions what the State alleged constituted the assaults. The trial court denied his requests, expressing the view the issue was a question of fact for the jury to decide.

We can uphold the district court's ruling on any basis existing in the record, even though different from the reason relied on by that court. *State v. Green*, 540 N.W.2d 649, 655 (Iowa 1995); *State v. Howard*, 509 N.W.2d 764, 768 (Iowa 1993). Fisher's express reason for both his requests was that the decision in *State v. McKettrick*, 480 N.W.2d 52 (Iowa 1992) held a defendant could not be convicted of both assault with intent to inflict serious injury in violation of Iowa Code section 708.2(1) and assault causing bodily injury in violation of section 708.2(2) for a single incident or assault. Fisher correctly

characterizes a holding of *McKettrick*. However, based on the supreme court's reasoning in *McKettrick* together with a subsequent amendment to section 708.2(2) we conclude that Fisher's continued reliance on *McKettrick* is misplaced.

At the time of the incident giving rise to the charges in *McKettrick*, Iowa Code section 708.2(1) (1989), which defined the crime of assault with intent to inflict serious injury, provided, in relevant part:

A person who commits an assault, . . . *with the intent to inflict a serious injury upon another*, is guilty of an aggravated misdemeanor.

(Emphasis added.) At that time Iowa Code section 708.2(2), which defined the crime of assault causing bodily injury, provided, in relevant part:

A person who commits an assault, . . . *without the intent to inflict a serious injury upon another*, and who causes bodily injury . . . , is guilty of a serious misdemeanor.

(Emphasis added.)

A defendant can presumptively be convicted of and punished for two offenses that are not the same because each requires proof of an additional fact which the other does not. *McKettrick*, 480 N.W.2d at 57. To convict Fisher under section 708.2(1) the State was required to prove he had an "intent to inflict a serious injury." Iowa Code § 708.2(1) (1999). No such proof was required for a conviction under section 708.2(2). To convict Fisher under section 708.2(2) the State was required to prove he "cause[d] bodily injury." Iowa Code § 708.2(2) (1999). No such proof was required for a conviction under section 708.2(1). The two crimes are therefore not the same crime and there is a presumption Fisher can be convicted and punished for both. *McKettrick*, 480 N.W.2d at 57-58.

B. Other Wrongs or Acts - Iowa R. Evid. 404(b)

Fisher moved to exclude testimony concerning an alleged assault by him on Susan when he was a teenager. The State resisted, arguing the manner of the earlier assault was similar to the attack in the present case. The trial court overruled Fisher's motion.

Iowa Rule of Evidence 404(b) reads as follows:

Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

In determining whether challenged evidence of a defendant's other crimes, wrongs or acts falls within the rule's "other purposes" exception we must employ a two-step analysis. *State v. Castaneda*, 621 N.W. 2d 435, 440 (Iowa 2001); *State v. Plaster*, 424 N.W.2d 226, 229 (Iowa 1988). We first determine whether the evidence is relevant for a purpose other than to show the defendant acted in conformity with a propensity to commit the wrongful act. *State v. Brown*, 569 N.W.2d 113, 116 (Iowa 1997). There is a presupposition that relevant evidence is admissible. Iowa R. Evid. 402; *State v. Anderson*, 565 N.W.2d 340, 342 (Iowa 1997). If it is determined the evidence is relevant for a legitimate purpose, we move to the second step and decide whether the evidence's probative value is substantially outweighed by the danger of unfair prejudice. Iowa R. Evid. 403; *Castaneda*, 621 N.W.2d at 440; *Plaster*, 424 N.W.2d at 229. An affirmative finding on this second prong "precludes admissibility of even relevant evidence." *Plaster*, 424 N.W.2d at 231.

In employing this two-step analysis, the district court must exercise its discretion. In reviewing the court's ruling, we reverse only if we

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find a clear abuse of discretion. We find the district court has abused its discretion only when the district court has exercised its discretion on grounds or for reasons clearly untenable, or to an extent clearly unreasonable.

State v. Bayles, 551 N.W.2d 600, 604 (Iowa 1996) (citations omitted). “Even if an abuse of discretion is found, reversal is warranted only when the abuse is prejudicial.” *State v. Greene*, 592 N.W.2d 24, 27 (Iowa 1999).

During its direct examination of Susan the State did not offer any evidence concerning the earlier assault. Then on cross-examination Fisher asked the following questions and received the following answers:

Q. You testified that it's your opinion that the defendant can be a very dangerous person. Yes or no. A. Yes. Q. You had this opinion prior to February 22? A. Yes. Q. And you've also testified that you have Lyme's disease, you've had back problems, you've had some knee problems; is that correct? A. Yes. Q. With all that in mind, you decided to follow an upset person who, in your opinion, can be dangerous[,] over to his home. Yes or no. A. Yes. I went over there –

On redirect examination the State asked Susan for the basis of her opinion Fisher was a violent person and elicited testimony from her, some over objection, indicating Fisher had assaulted her when he was fifteen years of age.

We need not decide whether the trial court's ruling would constitute error if the challenged evidence had been elicited by the State on direct examination. What would otherwise be inadmissible evidence may be introduced when an opponent has “opened the door.” *State v. Jones*, 471 N.W.2d 833, 835 (Iowa 1991). The party who has opened the door is estopped to complain about evidence admitted to rebut or explain his evidence. *State v. Munro*, 295 N.W.2d 437, 446 (Iowa 1980) (citing 24A C.J.S. *Criminal Law* § 1843, 589-92 (1962)). Further, a party may present evidence that is relevant to dispel an adverse

inference created by cross-examination which presents only part of the facts. *Id.* The implication of Fisher's cross-examination was that Susan's acts were inconsistent with any fear of Fisher's violent nature. The obvious inference Fisher wished the jury to draw was that Susan's stated opinion was a fabrication. Susan's testimony concerning the prior assault provided a basis for her opinion and was therefore relevant to rebut or dispel the inference suggested by cross-examination.

Susan's testimony concerning Fisher's prior assault was limited and succinct. It came very shortly after the portion of the cross-examination quoted above. Its purpose, to rebut or dispel the inference created by the cross-examination, was apparent. Given its limited and apparent purpose it did not have an undue tendency to suggest decisions on an improper basis. See *Plaster*, 424 N.W.2d at 226 (approving definition of "unfair prejudice" as "an undue tendency to suggest decisions on an improper basis, commonly though not necessarily, an emotional one."). We conclude the probative value of the evidence of the prior assault was not substantially outweighed by the danger of unfair prejudice.

The trial court did not err in admitting the challenged evidence.

C. Exclusion of Witnesses and Denial of Offer of Proof

The trial information was filed March 9, 2000, and Fisher's attorney entered his appearance on March 15. On April 13 Fisher served and filed a notice of his intent to depose the State's witnesses, and such depositions were taken on May 26. Our rules of criminal procedure provide, in relevant part:

At or before the time of the taking of a deposition by a defendant . . . the defendant shall file a written list of the names and

addresses of all witnesses expected to be called for the defense . . . and the defendant shall have a continuing duty before and throughout trial promptly to disclose additional defense witnesses. Such witnesses shall be subject to being deposed by the state.

Iowa R. Crim. P. 12(3).

If the defendant has taken depositions . . . and does not disclose to the prosecuting attorney all of the defense witnesses . . . at least nine days before trial, the court may order the defendant to permit the discovery of such witnesses, grant a continuance, or enter such other order as it deems just under the circumstances. It may, if it finds that no less severe remedy is adequate to protect the state from undue prejudice, order the exclusion of the testimony of any such witnesses.

Iowa R. Crim. P. 12(4).

Fisher did not identify any defense witnesses at or before the time he took depositions on May 26, as required by rule 12(3). On June 2 he served and filed a list of fourteen defense witnesses. Even then he provided no addresses for seven of the fourteen. On June 8, the Thursday before trial was to commence on Monday, June 12, he served and filed a list of three additional witnesses, providing no address for one of the three. On June 8 the State served and filed a notice that it intended to depose six of the defense witnesses on Friday, June 9. Only two of the six appeared for the scheduled depositions.

On the morning of trial the State moved to exclude the testimony of the four defense witnesses who did not appear for depositions. Fisher resisted, arguing exclusion was a harsh remedy and any defense witnesses he called could still be deposed by the State, and asserting he could not get some of the four witnesses to attend the depositions because they had doctor appointments, others because they had work, and yet others because he could not get them

subpoenaed in such a short time.¹ Fisher did not identify which witness or witnesses the various reasons applied to. The trial court sustained the State's motion, ordering that the testimony of the four defense witnesses whom the State gave notice to depose but failed to appear would be excluded.

Although it is good practice to do so, the trial court is not required to make a specific finding that a sanction short of exclusion will not protect the State from undue prejudice before excluding defense witnesses. *State v. Babers*, 514 N.W.2d 79, 82 (Iowa 1992). The trial court may exercise its discretion in fashioning an appropriate sanction under the circumstances of the case. *Id.* We review the record to determine if the trial court abused its discretion in excluding the testimony of witnesses. *Id.*

This case had been pending for over three months when reached for trial. Defense counsel had been in the case from its inception. The trial date had been set for several weeks. Neither of Fisher's two lists of witnesses was filed at or before the time he took depositions, as required by rule 12(3). The second of the two lists was filed only two working days before trial. Fisher provided no reason for the late filing of the first list and no substantial reason for the late filing of the second list. As of the time of trial he had still not provided addresses for eight of the twenty witnesses he had listed, including two of the four the State had sought

¹ We are unaware of any authority that would require a defendant, rather than the State, to secure the attendance of witnesses at depositions the State wishes to take. However, the parties may well have had an agreement or understanding that the State would secure the attendance of its witnesses for depositions by Fisher and Fisher would secure the attendance of his witnesses for deposition by the State. The parties' actions and arguments in the trial court, and their briefs on appeal, assume it was Fisher's obligation to secure the attendance of his witnesses and thus suggest the existence of such an agreement or understanding. Because the parties have at all times placed that obligation on Fisher we need not address or decide whose obligation it in fact would be absent such an agreement or understanding.

but been unable to depose. It was no longer possible for the State to depose any of those four witnesses before trial. The record before the trial court indicated that the prosecuting attorney had rescheduled other hearings and trials to accommodate this trial, and had issued numerous subpoenas for witnesses.

These facts, together with the fact the court had obviously set aside time for the trial, raised a legitimate concern for sound judicial administration. The foregoing facts also implicate the State's right to a fair and speedy trial. In resisting the State's motion Fisher made no claim or showing that the testimony of any one or more of the four witnesses would not be solely for impeachment purposes or merely cumulative to the testimony of the other sixteen defense witnesses and the defendant himself. We conclude that under these facts and circumstances the trial court did not abuse its discretion in excluding the testimony of four of the twenty witnesses belatedly listed by the defense.

During trial Fisher sought to make an offer of proof concerning the testimony of one person listed as a witness by the defense on June 2. The State pointed out that it had not received the list until June 7, just three working days before trial, and Fisher had not provided an address for the witness. It noted that despite the State's attempt to depose the witness it had still been unable to do so as defense counsel remained unable to provide an address. The trial court overruled Fisher's request to make an offer of proof, noting that the witness had not been excluded because of the nature of the evidence the witness might provide but rather for the reasons previously noted in this opinion.

As Fisher points out, our supreme court has stated that a trial court's refusal to permit a party to make an offer of proof is usually error. *See State v.*

Harrington, 349 N.W.2d 758, 760 (Iowa 1984). This, however, is because the purpose of an offer of proof

is to give the trial court a more adequate basis for its *evidentiary ruling* and to make a meaningful record for appellate review since a reviewing court cannot predicate error upon speculation as to answers which would have been given to questions had objections thereto not been sustained.

Id. (emphasis added) (quoting *State v. Ritchison*, 223 N.W.2d 207, 212-13 (Iowa 1974)).

As shown by the facts and reasoning of *Harrington* and the cases cited therein, an offer of proof should not be denied where, as in most cases, an *evidentiary ruling* is involved, that is when the issue is whether certain evidence is admissible. In that situation the substance of the proposed testimony must ordinarily be known for the purposes stated in *Ritchison* and *Harrington* and quoted above. However, the substance of a witness's testimony has little or no relevance in determining whether a trial court has abused its discretion in excluding the testimony under Iowa Rule of Criminal Procedure 12(4). Further, no issue arises concerning whether such an exclusion was prejudicial unless the exclusion constituted an abuse of discretion. We have already determined that the trial court did not abuse its discretion in excluding the testimony of the witness in question. We therefore conclude the trial court did not commit reversible error by denying Fisher the opportunity to present an offer of proof as to the substance of that witness's testimony.

D. Admissibility of Prior Convictions – Iowa R. Evid. 609

Fisher filed a motion in limine. In relevant part it requested an order prohibiting the State from offering evidence of other crimes he had committed. At

a hearing on the motion Fisher acknowledged he had a record of felony convictions which he characterized as "possession of a firearm." He acknowledged that he understood the State intended to use them "under Rule 609." He argued the convictions had nothing to do with truth or false statements, had no similarity to the current charge of assault, had no relevance to the assault charge, and the prejudicial effect of such evidence outweighed any probative value.

The court expressed the view that any felony conviction was relevant to credibility of a witness. It indicated Fisher could be asked if he had ever been convicted of a felony, if he answered, "yes," he could then be asked what the felony was, and the State could then inquire no further.

Fisher testified on his own behalf. On direct examination he was asked if he had been convicted of felonies and responded that he had. When he was then asked if he remembered what the felonies were he did not answer the question but rather volunteered that he had been convicted of second degree theft and felon in possession of firearms. He was then asked how many convictions he had for possession of a firearm and answered "four." He was then asked, "These would all be before 1995; is that correct?" He answered, "Yeah."

Fisher asserts he did not waive error by introducing evidence of his prior felony convictions, citing *State v. Daly*, 623 N.W.2d 799, 801 (Iowa 2001). The State concedes that error was preserved as to the four convictions for felon in possession of a firearm. It asserts that error was not preserved as to the theft conviction.

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In the hearing on the motion in limine Fisher expressly, specifically and narrowly focused on his prior convictions for possession of a firearm as a felon. Neither he, the State, nor the trial court stated or suggested that any other conviction was involved or being considered. Further, the motion and discussion raised no issue or concern regarding Iowa Rule of Criminal Procedure 609(b)'s presumption that convictions more than ten years old are inadmissible. Therefore, to the extent the trial court's comments may be seen as a final and conclusive ruling, they must be seen as relating solely to the convictions that were being discussed, Fisher's convictions for possession of a firearm by a felon.

Although Fisher correctly characterizes *Daly* as holding a defendant does not waive error by introducing evidence a court has determined to be admissible, that holding has no application to Fisher's theft conviction as it was not considered or ruled on by the trial court in dealing with his motion in limine. Fisher's testimony concerning his theft conviction is therefore not protected by the holding in *Daly*. We conclude Fisher has not preserved error concerning his volunteered testimony that he was previously convicted of theft.

Our review of Fisher's claim of error concerning his four convictions for possession of a firearm by a felon is for an abuse of discretion. *State v. Poppe*, 499 N.W.2d 315, 318-19 (Iowa Ct. App. 1993). Iowa Rule of Evidence 609 and cases interpreting and applying that rule contemplate an assessment by the trial court of the probative value of evidence of prior convictions in relation to their likely prejudice. *Daly*, 623 N.W.2d at 802. The trial court did not expressly conduct such an assessment in this case. We conclude that we therefore must do so in order to determine whether the trial court abused its discretion in

allowing the challenged evidence.² See e.g., *Daly*, 623 N.W.2d at 802-03 (applying, where the trial court failed to engage in the weighing process at all, the four factors set forth in *State v. Axiotis*, 569 N.W.2d 813 (Iowa 1997), and finding the trial court abused its discretion in admitting the challenged evidence).

In determining whether the probative value of evidence of a prior conviction outweighs its prejudicial effect, the trial court should consider such factors as: (1) the nature of the conviction; (2) the conviction's bearing on veracity; (3) the age of the conviction; and (4) its tendency to improperly influence the jury.

State v. Axiotis, 569 N.W.2d 813, 816 (Iowa 1997).

Fisher's prior convictions were for significantly different crimes than those involved in the present case. Although the convictions do not directly bear on veracity, we no longer require that a conviction bear on truth or veracity in order to be admissible for attacking credibility of either a witness other than the accused or the accused himself. See Iowa R. Evid. 609. Contrary to Fisher's testimony, his four convictions did not all occur before 1995. One occurred in 1996, one in late 1995, and two in 1992, all well within the presumptive ten-year limit of rule 609. The convictions did not involve crimes against a person or violence, were for crimes substantially different than the crimes in the present case, and would therefore have very little tendency to improperly influence the jury, whether through misuse as substantive proof of guilt or otherwise. After considering the four factors set forth in *Axiotis* we conclude the trial court did not abuse its discretion in admitting the evidence of the four convictions.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

² The four convictions are for felonies, are thus punishable by imprisonment in excess of one year, and all occurred within the last ten years.

Fisher raises four claims of ineffective assistance of trial counsel. He requests that if we find the record insufficient to rule on these claims on direct appeal we preserve them for a possible postconviction relief proceeding. The State asserts the claims should be preserved. Ordinarily such claims are preserved for postconviction proceedings. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994). The record in this case is insufficient for us to address these claims on direct appeal. In order to allow Fisher's trial counsel to explain his trial decisions we preserve the claims for a possible postconviction relief action.

IV. DISPOSITION

We affirm Fisher's convictions. We preserve his four claims of ineffective assistance of trial counsel for a possible postconviction relief action.

AFFIRMED.

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