

IN THE COURT OF APPEALS OF IOWA

No. 7-298 / 96-1023

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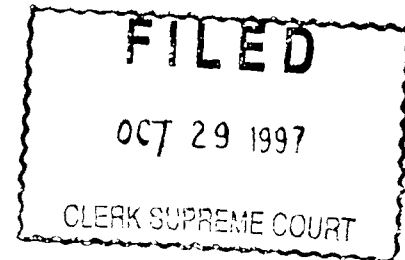
STATE OF IOWA,

Plaintiff-Appellee,

vs.

JAMEY STEWART MOREHOUSE,

Defendant-Appellant.



Appeal from the Iowa District Court for Johnson County, Kristin L. Hibbs,
Judge.

Jamey Morehouse appeals from his conviction, following a jury trial, for
second-degree robbery. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, J. Patrick White, County Attorney, and Janet M. Lyness and Jan
Waterhouse, Assistant County Attorneys, for appellee.

Considered by Cady, C.J., and Sackett, and Mahan, JJ.

CADY, C.J.

Defendant appeals his conviction for robbery in the second degree, in violation of Iowa Code section 711.1 (1995). We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On April 29, 1995, Jamey Morehouse, Donyeal Galbreath, Joseph Mendez, and Andy Ratchford were at a party in Iowa City. Two other men, Robert Truitt and James Tharp, agreed to give them a ride home. When they arrived, Galbreath began to beat Tharp and asked for his wallet. Morehouse put Truitt in a headlock, and demanded his wallet. Truitt and Tharp surrendered their wallets, then drove away and contacted the police.

Morehouse was charged with second-degree robbery. At the trial, Morehouse, Mendez, and Ratchford all testified Galbreath had taken the wallets, and they were not involved. In rebuttal, the State presented the testimony of Amy Martin, who was Galbreath's girlfriend. She testified Morehouse had told her he was disappointed because the wallet he had taken only had change in it. Morehouse was convicted of the crime charged. He now appeals.

Morehouse contends the trial court abused its discretion by admitting the testimony of Martin. Martin was not listed in the original minutes of testimony. Morehouse asserts he should have been permitted to depose Martin before she testified. He also contends her testimony went outside the scope of proper rebuttal.

He believes this testimony was prejudicial because she presented a sympathetic picture as the unwed mother of Galbreath's children.

Challenges to the admission of evidence are reviewed for the abuse of discretion. *State v. Bayles*, 551 N.W.2d 600, 604 (Iowa 1996). We find no abuse of discretion in the district court's decision to allow Martin to testify on rebuttal, even though she had not been identified in the minutes of testimony. Under Iowa Rule of Criminal Procedure 18(3), the State does not have an obligation to identify rebuttal witnesses. *Greiman v. State*, 471 N.W.2d 811, 813 (Iowa 1991). Trial courts have considerable discretion in admitting rebuttal evidence. *State v. Johnson*, 539 N.W.2d 160, 163 (Iowa 1995).

At the trial, Morehouse failed to object to Martin's testimony on the ground that it exceeded the proper scope of rebuttal. We determine he has not preserved error on this issue. Additionally, if we were to address this issue on the merits, we would find Martin's statement that she was the mother of Galbreath's children was not prejudicial to Morehouse.

We affirm Morehouse's conviction for robbery in the second degree. Costs of this appeal are assessed to Morehouse.

AFFIRMED.

Mahan, J., concurs; Sackett, J., concurs specially without opinion.