IN THE COURT OF APPEALS OF IOWA

No. 6-635 / 95-2200

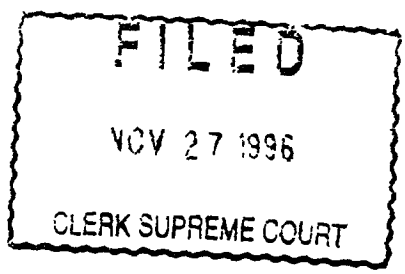
STATE OF IOWA,

Plaintiff-Appellee,

vs.

LYNN LEWIS, III,

Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.

Defendant appeals from his conviction for robbery in the second degree. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, John P. Sarcone, County Attorney, and Mary Pat Hofmann, Assistant County Attorney, for appellee.

Considered by Habhab, P.J., and Huitink and Vogel, JJ.

PER CURIAM

This is an appeal by a defendant claiming the district court should have granted his motion for new trial. Defendant was convicted of second-degree robbery, in violation of Iowa Code section 711.3. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On June 16, 1995, Cory Lewis was driving in Des Moines when someone came through the passenger window and grabbed a necklace he was wearing. Cory jumped out of the car and ran to telephone the police. Cory gave officers a description of the person. Within a few minutes, officers picked up Lynn Lewis III, who matched the description and was walking in the area. At that time Cory identified Lynn as the person who had grabbed his necklace. At the criminal trial, however, Cory was unable to identify Lynn. A jury found defendant guilty of robbery in the second degree.

Defendant filed a motion for a new trial based on alleged newly discovered evidence. Cory testified at the motion hearing he could not identify the defendant. The district court denied the motion for new trial. Defendant now appeals.

Defendant contends the district court abused its discretion in refusing to grant a new trial when there was newly discovered evidence the victim was unable to identify him. He points out that at the motion hearing Cory testified he had never seen the defendant before.

Our review of a district court's ruling denying a motion for new trial is for abuse of discretion. *State v. Jefferson*, 545 N.W.2d 248, 249 (Iowa 1996). A district court is given unusually broad discretion in ruling on a motion for a new trial based on newly discovered evidence. *State v. Carter*, 480 N.W.2d 850, 852 (Iowa 1992).

We find no abuse of discretion in the district court's decision here denying the motion for new trial. At the motion hearing Cory admitted his testimony was the same as his testimony at the trial. Lynn's alleged newly discovered evidence, that Cory could not identify him, was the same evidence that was presented at the criminal trial. We affirm the district court's conclusion that Lynn was not entitled to a new trial based on newly discovered evidence.

We affirm Lynn Lewis' conviction for robbery in the second degree. Costs of this appeal are assessed to defendant.

AFFIRMED.