

**FILED**

JAN 26 1983

CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA****STATE OF IOWA,** )

Plaintiff-Appellee, )

Filed January 26, 1983

vs. )

**GEORGE ELMER TEMPLETON,** )2-373

Defendant-Appellant. )

67632

Appeal from Polk District Court - Van Wifvat, Judge.

Defendant appeals from his conviction for burglary in the first degree in violation of Iowa Code sections 713.1 and 713.2 and possession of burglar's tools in violation of Iowa Code section 713.4. **AFFIRMED.**

Francis C. Hoyt, Jr., Appellate Defender, and Patrick R. Grady, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Steven M. Foritano, Assistant Attorney General, for plaintiff-appellee.

Considered en banc.

**PER CURIAM**

Defendant was convicted of burglary in the first degree in violation of Iowa Code sections 713.1 and 713.2 and possession of burglar's tools in violation of Iowa Code section 713.4. The jury found that he used a firearm during the commission of those offenses and he was accordingly given a mandatory minimum sentence pursuant to Iowa Code section 902.7. On appeal, he asserts that he was denied his constitutional right to effective assistance of trial counsel and that the evidence was insufficient to support the jury's finding that he used a firearm during the commission of the burglary. We affirm defendant's conviction.

I. Defendant has the burden of proof to establish by a preponderance of the evidence that, under the entire record and totality of the circumstances, trial counsel's performance was not within the range of normal competency. Snethen v. State, 308 N.W.2d 11, 14 (Iowa 1981). We find the record inadequate to demonstrate that trial counsel's performance denied defendant effective representation.

II. In determining whether the evidence was sufficient to support the jury's finding with regard to use of a firearm, we review all of the evidence in a light most favorable to the State, accepting all legitimate inferences which may fairly and reasonably be deducted therefrom. State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981). Although defendant did not display a firearm until after he was chased from the scene of the burglary, we find the evidence sufficient to convince a rational trier of fact beyond a reasonable doubt that defendant was in possession and control of a firearm during the commission of the burglary. See State v. Robinson, 288 N.W.2d 337 (Iowa 1980).

**AFFIRMED.**