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FILED
JAN 26 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed January 26, 1983

vs.)

PHILLIP POSEY MATTHEWS,) 2-476
67968

Defendant-Appellant.)

Appeal from Polk District Court - Dale S. Missildine, Judge.

Defendant appeals from his conviction for robbery in the first degree in violation of Iowa Code sections 711.1 and 711.2. AFFIRMED.

Francis C. Hoyt, Jr., Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and John P. Messina, Assistant Attorney General, for plaintiff-appellee.

Considered en banc.

PER CURIAM

Defendant was convicted of robbery in the first degree in violation of Iowa Code sections 711.1 and 711.2. Because the jury found that a firearm was used during the commission of the offense, he was given a mandatory minimum sentence pursuant to Iowa Code section 902.7. On appeal defendant asserts that the evidence was insufficient to support the jury's verdict and that trial counsel was ineffective due to his failure to raise that issue by moving for judgment of acquittal at the close of the State's evidence. We affirm defendant's conviction.

I. In determining whether the evidence was sufficient to support a finding that defendant aided and abetted the commission of an armed robbery, 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). From the evidence introduced at trial, the jury could have found that defendant waited in a car and acted as the get-away driver while co-defendant Tommey committed the armed robbery of a convenience store. Although defendant testified that he thought Tommey merely intended to shortchange the attendant and that he was unaware that Tommey was armed, we find the evidence sufficient to convince a rational trier of fact that defendant knowingly aided and abetted the commission of an armed robbery. See State v. Robinson, 288 N.W.2d 337 (Iowa 1980).

II. 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). Concluding as we do that the issue which counsel failed to properly raise has no merit, it necessarily follows that counsel was not ineffective for failing to raise it and that no prejudice to defendant resulted from counsel's failure to move for judgment of acquittal.

AFFIRMED.