FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 5-041 / 94-389

STATE OF IOWA,

Appellee,

vs.

RICHARD MARTIN MEDINA,

Appellant.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge.

Richard Martin Medina appeals the judgment and sentence entered upon his convictions, following a jury trial, of going armed with intent (habitual offender) and attempted murder in violation of Iowa Code sections 708.8, 702.7, 902.8, 902.9 and 707.11 (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Angelina M. Smith, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Jill Pitsenbarger, Assistant County Attorney, for appellee.

Considered by Donielson, C.J., and Sackett and Habhab, JJ.

DONIELSON, C.J.

The defendant, Richard Medina, appeals the judgment and sentence entered upon his convictions for going armed with intent and attempted murder. He claims the trial court erred in failing to grant his motion for judgment of acquittal based on the insufficiency of the evidence to support the convictions. Upon our review of the parties' arguments, the record and the applicable law, we affirm the trial court's denial of the defendant's motion.

I. STANDARD OF REVIEW.

In our review of motions for judgment of acquittal based on the sufficiency of the evidence, we view the evidence in the light most favorable to the State. We draw all fair and reasonable inferences from the evidence, taking all of the evidence into consideration. State v. Rojas-Cardona, 503 N.W.2d 591, 594 (Iowa 1993). We uphold a district court's refusal to grant a motion for judgment of acquittal if there is substantial record evidence to support the charge. Id. Evidence is substantial if it could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. Id.

II. INTOXICATION.

On August 30, 1993, the defendant had initiated a bar fight with the victim and was forced to leave the bar.

Approximately an hour later the defendant returned to the bar with a knife. He walked directly over to the victim who was seated on a bar stool with his back to the defendant. The defendant restrained the victim and attempted to slit his throat. After cutting the victim's cheek and hand, the defendant fled the bar. Law enforcement authorities used a dog to track the defendant and arrested him shortly thereafter.

Pursuant to Iowa R. Crim. P. 10(11)(c), the defendant filed a written notice of his intention to rely upon the defense of intoxication. A defendant's intoxication is evidence to be considered on the issue of intent. State v. Caldwell, 385 N.W.2d 553, 557 (Iowa 1986); State v. Collins, 305 N.W.2d 434, 437 (Iowa 1981). A defendant's intoxication may negate criminal intent if such intent is an element of the crime charged. Caldwell, 385 N.W.2d at 557.

The defendant was charged with going armed with intent and attempted murder, both of which are specific intent crimes. Iowa Code §§ 707.11, 708.8. He argues that due to his intoxicated state there was insufficient evidence to establish he specifically intended to use a dangerous weapon against another and specifically intended to cause the death of the victim. There was conflicting evidence as to the defendant's state of intoxication when he entered the bar and attempted to cut the victim's throat. Witnesses in the bar and law enforcement officers who

pursued, arrested, transported and booked the defendant testified about their observations of the defendant and their impressions that he was not intoxicated.

The defendant's intent to use a dangerous weapon against another is inferable from his actual use of the knife against the victim. See State v. Mayberry, 411 N.W.2d 677, 682 (Iowa 1987) (defendants will ordinarily be viewed as intending the natural and probable consequences which ordinarily follow from their voluntary acts). The defendant restrained the victim and applied pressure to the victim's neck with the knife. The ordinary consequence of such an action is a cut. There was substantial evidence from which to find the defendant had an intent to use a dangerous weapon and that his purported intoxication did not negate that specific intent.

There was also substantial evidence of the defendant's intent to kill the victim. The defendant had previously instigated a fight with the victim and was forcibly removed from the bar. He returned with a knife and immediately attacked the victim. An intent to kill may be inferred from the use of a deadly weapon in a deadly manner. State v. Mart, 237 Iowa 181, 186, 20 N.W.2d 63, 66 (1945); see also State v. Mulder, 313 N.W.2d 885, 888 (Iowa 1981) (use of a deadly weapon accompanied by opportunity to deliberate is evidence of an intent to kill), cert. denied, 459 U.S. 841 (1982). Such intent may be inferred though the wound inflicted does not prove fatal. Mart, 237 Iowa at 186, 20

N.W.2d at 66. There was substantial evidence of the defendant's intent to kill, and the defendant's evidence regarding his alleged state of intoxication did not negate the element of specific intent.

AFFIRMED.