FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	Filed March 9, 1988
RICHARD BLUE KREHBIEL,	)	7-534
Defendant-Appellant.	)	86-1818

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Appeal from the Iowa District Court for Johnson County (No. 17749) - August F. Honsell, Judge.

Defendant appeals from his conviction for attempted murder. **AFFIRMED.**

Richard H. Zimmerman, of Mears, Zimmerman and Mears, Iowa City, for defendant-appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney General; J. Patrick White, County Attorney; and Dorothy Maher, Assstant County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, and Sackett, JJ.

SACKETT, J.

Defendant, Richard Blue Krehbiel, appeals from his conviction, after a jury trial, of attempted murder. See Iowa Code §707.11 (1985). Defendant argues there was insufficient evidence to support his conviction and the trial court erred in two of its instructions to the jury. We affirm.

On the afternoon of July 24, 1986, defendant appeared at the front door of an apartment where the victim was having his hair done. Five witnesses, who were present in the apartment, testified that defendant and the victim had a loud argument in the kitchen. The two men went out the back door of the second story apartment onto a balcony-type landing. The victim was discovered several minutes later in the street a block and a half away from the apartment building with a stab wound in his back. Police followed the trail of blood back to the second step down from the top of the second story landing.

I.

Defendant appeals from his conviction of attempted murder contending there was not substantial evidence to support the jury's determination he committed the crime. In determining the sufficiency of evidence to support a guilty verdict we consider the evidence in the light most favorable to the State. State v. Klindt, 389 N.W.2d 670, 676 (Iowa 1986); State v. Blair, 347 N.W.2d 416, 418 (Iowa 1984). Substantial evidence means evidence that would convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. Blair, 347 N.W.2d at 419. Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16).

In making his argument, defendant relies mainly on the following facts:

1. defendant was clothed only in a pair of cutoff shorts when he came to the apartment,
2. no weapon was found, and
3. at trial, the victim did not testify that defendant stabbed him.

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Defendant's cutoff shorts were admitted into evidence and are part of the record before us. Considering the evidence in the light most favorable to the State, we believe the jury could find defendant concealed a knife in his clothing and later disposed of it.

After the stabbing, the victim made statements implicating defendant to the police. He also identified defendant in a photographic lineup. The officers who questioned the victim at the hospital testified he was "excited, mad, and wanted revenge" and that he apparently "wanted to take care of the situation himself."

At trial the victim repudiated his prior statements to the police, testifying that they were coerced.

> Q. And what is your statement today as to who stabbed you? A. I don't know who stabbed me.
>
> Q. Do you recall talking with Detective Sueppel and Mr. Edwards in the hospital on July 24th about 5:15 in the afternoon after you were stabbed? A. You're giving me dates and times. I mean, they don't mean nothing to me, okay.
>
> Q. The date that you were stabbed—A. Okay. Yes, I recall.
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> ***
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> Q. And then Sueppel said, "can you tell me who that was? And you said, "It was a gentleman—rather, an animal by the name of Blue." Do you remember saying that? A. No. I don't. I could have said it because I was pretty well sedated.
>
> Q. You could have said it? A. I could have. I don't know.
>
> ***
>
> Q. And do you recall telling Officer Sueppel, referring to your conversation in the kitchen, "He said no, let's go right now, so I walked out the door in front of him like a fool. And when I hit the first step, I felt something deep in my back and I looked around and I looked into his face and I called him a son of a bitch and I said you won't get away with this one. And then I ran, I ran." Do you recall that statement? A. Not particularly. I might have said it though.

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Q. Did Todd McDermott come to visit you when you were in the hospital? A. I think—Yes, he did.

Q. And didn't you ask him while you were in the hospital who set you up on this? A. I might have.

Q. And didn't you ask Todd, "Did you tell Blue where I was?" A. I might have said that.

The determination of credibility of witnesses and weight to be given their testimony is a matter for the trier of fact. Blair, 347 N.W.2d at 420. Among the relevant factors in deciding credibility are the frankness, or lack thereof, and the general demeanor of the witness. See In re Marriage of Moffatt, 279 N.W.2d 15, 17-18 (Iowa 1979).

We find the circumstances surrounding the stabbing and the victim's contemporaneous statements implicating defendant constitute substantial evidence to support defendant's conviction.

II.

Defendant urges it was reversible error to fail to include in the instructions a requirement that the jury make a finding of specific criminal intent in order to return a verdict of guilty. No objection was lodged to the giving of the trial court's instructions on the basis they failed to require a finding of specific criminal intent. Failure to object to jury instructions is a waiver of any right to assert instructional error as a ground of appeal. State v. Blackford, 335 N.W.2d 173, 177 (Iowa 1983). Thus, we do not reach the merits of defendant's argument.

III.

Defendant also contends the trial court erred by giving, over defendant's objection, Instruction 16, which stated in part:

> When a person intentionally uses a dangerous weapon against another, you may, but are not required to, infer that the act was with malice aforethought.

Defendant asserts this language impermissibly shifts the burden of proof and violates his constitutional rights. The Iowa Supreme Court has rejected this argument, holding that a similar instruction did not unconstitutionally shift the burden of proof to the defendant. See State v. Elam, 328 N.W.2d 314, 317-18 (Iowa 1982).

Finding no error, we affirm defendant's conviction.

AFFIRMED.