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ATTORNEY FOR APPELLANT:

JOHN PINNOW
Greenwood, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

IAN MCLEAN
Deputy Attorney General
Indianapolis, Indiana

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IN THE
COURT OF APPEALS OF INDIANA

MAURICE DEW,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0902-CR-62
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
Cause No. 49G03-0803-FB-69581

August 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Maurice Dew appeals his convictions for Rape,[1] a class B felony, and Intimidation,[2] a class D felony. On appeal, Dew presents the following issue for review: Is the evidence sufficient to support Dew's convictions?

We affirm.

The facts favorable to the convictions are that on March 28, 2008, N.L. spoke on the phone with Dew, who was "like an uncle" to N.L. *Transcript* at 35-36. During the conversation, N.L. told Dew that she was upset with her cousin, Davina Franklin, with whom she was living. N.L. did not like the fact that Franklin had so many rules in her house that N.L. had to abide by. Dew suggested that N.L. go out with him, and N.L. agreed. Dew arrived at Franklin's house at approximately 8:00 p.m. Once Dew picked up N.L., they left to purchase alcohol and cigarettes. Dew then drove N.L. to a motel so that she could relax, smoke, and temporarily escape from Franklin's rules. While in the motel's parking lot, Dew showed N.L. a knife that he used to defend himself. At some point, N.L. put the knife in her coat pocket. Dew checked into the motel and paid for the room. Dew then suggested that he purchase some marijuana, which he did. When they arrived back at the motel room, Dew and N.L. talked while N.L. smoked cigarettes, drank beer mixed with gin, and smoked marijuana. Dew told N.L. that he was not going to take her home because it was dark. N.L. then fell asleep while watching television.

N.L. awoke when she felt Dew pressing against her. Dew had an erection. N.L. told

[1] Ind. Code Ann. § 35-42-4-1 (West, PREMISE through Public Laws approved and effective through 4/20/2009).
[2] Ind. Code Ann. § 35-45-2-1 (West, PREMISE through Public Laws approved and effective through 4/20/2009).

Dew that she was not going to have sex with him. Dew responded by forcefully straddling N.L. Dew then held her down as he choked her and had sexual intercourse with her. When Dew finished, he told N.L. that if she told anyone, he would kill her. When Dew finally fell asleep, N.L. left the room.

At approximately 5:00 a.m. on March 29, 2008, Michael Robertson was standing at the reception desk at the motel and saw N.L. enter the lobby. Robertson reported that N.L. was shaking and trying to hide. N.L. told Robertson that she had been raped, and asked him to call the police and her cousin, Franklin. Upon her arrival, Franklin noticed that N.L.'s eyes were bloodshot and her neck was bruised. A responding officer, Bruce Smith, also noticed the red marks on N.L.'s neck. Officer Smith then went to Dew's room, where he took Dew into custody.

N.L. reported to Wishard Health Services hospital where Laura Maloy, a registered nurse examiner, examined her. Maloy found "generalized erythema," which means deep, dark red, bloody-looking tissue all around the opening of N.L.'s vagina. Maloy also found hemorrhaging in N.L.'s eyes and broken blood vessels on N.L.'s left cheek, which are consistent with hard, forceful strangulation.

On March 31, 2008, Dew was charged with Count 1, rape, a class B felony, Count 2, strangulation, a class D felony, and Count 3, intimidation, a class D felony. On April 25, 2008, the State alleged Dew to be a habitual offender. On December 1 and 2, 2008, the case was tried by a jury, which found Dew guilty as charged. The jury also determined Dew to be a habitual offender. On January 9, 2009, the court vacated the conviction of Count 2, finding

that it merged with Count 1 and sentenced Dew to concurrent terms of forty years for rape and two years for intimidation. Dew now appeals, challenging the sufficiency of the evidence and arguing that N.L.'s testimony was incredibly dubious.

Under the incredible dubiosity rule, a defendant's conviction may be reversed "if a sole witness presents improbable testimony and there is a complete lack of circumstantial evidence." *Hicks v. State*, 884 N.E.2d 951, 953 (Ind. Ct. App. 2008). "Application of this rule is rare and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." *Id*. As with other sufficiency matters, we will not reweigh the evidence or judge the credibility of witnesses. *Dowdell v. State*, 888 N.E.2d 874 (Ind. Ct. App. 2008). We only consider the evidence most favorable to the judgment and the reasonable inferences that can be drawn therefrom. *Id.*

Dew argues that his sexual intercourse with N.L. was consensual because 1) N.L. agreed to enter a motel room with him that had only one bed, and 2) Dew handed N.L. his knife before the intercourse. Dew also claims that since the chain lock to his room was being utilized when the police arrived, his version of events, i.e., that he made N.L. leave the room because she was going through his pants pockets, was more credible than N.L.'s claim that she escaped when Dew fell asleep.

Dew is essentially asking this court to reweigh evidence and judge the credibility of the witnesses. This we will not do. Contrary to Dew's claims, accompanying an individual (who is considered an uncle) to a motel room to relax and get away from a cousin's rules does not imply a willingness to have sexual relations with that individual. Moreover,

surrendering a knife earlier in the evening does not preclude the existence of any present or future intention to commit rape. Finally, the fact that the chain lock to the motel room was in use when police arrived is of no significance. It does not negate any possibility that a rape occurred before the chain lock was put in use. On the other hand, the events as testified to by N.L. were corroborated by the injuries she received. The blood in N.L.'s eyes and bruising on her neck were indicative of forceful strangulation. The generalized erythema around N.L.'s vaginal opening supported N.L.'s testimony of non-consensual, rough intercourse. The incredible dubiosity rule is inapplicable here, where circumstantial evidence supports N.L.'s testimony. *Hicks v. State*, 884 N.E. 2d 951. There was sufficient evidence to support Dew's convictions for rape and intimidation.

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.