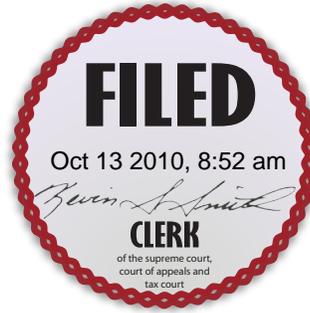


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ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

MARK SMALL
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

BRIAN REITZ
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JASON AKEMON,)

Appellant-Defendant,)

vs.)

No. 38A02-1003-CR-307

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE JAY CIRCUIT COURT
The Honorable Brian D. Hutchison, Judge
Cause No. 38C01-0906-FB-17

October 13, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Jason Akemon appeals his conviction for Class B felony rape. We affirm.

Issues

Akemon raises two issues, which we restate as:

- I. whether the trial court properly admitted his statement to the police; and
- II. whether the evidence is sufficient to sustain his conviction.

Facts

On June 7, 2009, seventeen-year-old N.B. went to Akemon's residence with her friend, Takara Sallee. N.B., Sallee, Sallee's brother, and Sallee's cousin spent the night with Akemon, his wife, and his daughter. The next day, Sallee's brother and cousin and Akemon's wife left, leaving N.B., Sallee, Akemon, and Akemon's daughter at the residence. During the afternoon, Sallee went into Akemon's bedroom to take a nap and asked N.B. to go with her. Akemon's daughter was also taking a nap in the house. Akemon came into the bedroom and sat on the bed, and they talked for a few minutes. Sallee said that she had to use the restroom and left the room.

After Sallee left, Akemon grabbed N.B.'s arms and held them over her head. With his other arm, Akemon pulled down N.B.'s shorts and underwear and pushed her knees up to her chest. N.B. struggled with Akemon, but he had sexual intercourse with her. Akemon then got up, told N.B. "this would be our secret," pulled up his pants, and left. Tr. p. 35. N.B., who was crying, found Sallee using the computer. Eventually, N.B. went on a walk with Sallee and told Sallee that Akemon had touched her. N.B. and

Sallee left Akemon's residence, and N.B. told her boyfriend what happened. N.B.'s boyfriend told his father, who is a police officer, and he took N.B. to the police station.

That night, Redkey Town Marshall Donnie James interviewed N.B. and Sallee. N.B. then went to the hospital where she was examined by Lori Wilson, who is a registered nurse with formal, specialized training in the care of patients who have been sexually assaulted. Wilson found that N.B. had a dark purple bruise below her right knee, a one centimeter laceration from the hymenal tissue up to the posterior fourchette, an abrasion to the hymenal tissue, and a small hemorrhagic area on the cervix. Wilson said that the injuries were consistent with N.B.'s explanation of the events, although Wilson could not say that the injuries were inconsistent with consensual sex.

Marshall James requested and received a search warrant for Akemon's residence, and he executed the search warrant at 6:48 a.m. the next morning. The officers found Akemon asleep in bed, and they finished their search of the residence at approximately 8:45 a.m. An officer advised Akemon of his Miranda rights and transported him to the police station. According to Marshall James, Akemon was in custody at that time. Akemon agreed to talk to Marshall James. The interview lasted from approximately 9:00 a.m. until 11:30 a.m. During the interview, Akemon was given a break to smoke a cigarette and was provided with food. Akemon initially denied N.B.'s accusations, but Marshall James told Akemon that, according to a nurse, N.B. had injuries "consistent with her story." Id. at 105. Akemon then wrote a six-page statement in which he admitted that he pushed N.B.'s arms away, pushed her legs up, and had sexual intercourse with her. Akemon admitted that N.B. said no, but he "wasn't listening to

her.” State’s Exhibit 1 at 5-6. Akemon wrote that he had sexual intercourse with her “while she was telling [him] no that what [he] was doing was not ok and she didn’t want it to happen at all but [he] had one thing on [his] mind and that was sex.” *Id.* at 6. Akemon left the police station at approximately 12:00 or 12:30 p.m.

The State charged Akemon with Class B felony rape. Akemon filed a motion to suppress his statement to the police, which the trial court denied. At the jury trial, the State admitted Akemon’s statement to the police, and Akemon objected. Akemon testified at the jury trial that he had consensual sexual intercourse with N.B. and that he was coerced into giving the confession. The jury found Akemon guilty as charged, and the trial court sentenced him to eighteen years in the Department of Correction.

Analysis

I. Akemon’s Statement

Akemon argues that the trial court abused its discretion by denying his motion to suppress. Although Akemon frames his issue as whether the trial court properly denied his motion to suppress, we note that the issue is more appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial. *See Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003).

Akemon argues that the trial court abused its discretion because his statement was involuntary and coerced. The decision to admit the defendant’s statement is a matter of discretion of the trial court after considering the totality of the circumstances. *Miller v. State*, 770 N.E.2d 763, 767 (Ind. 2002). “When reviewing a challenge to the trial court’s decision, we do not reweigh the evidence but instead examine the record for substantial,

probative evidence of voluntariness.” Id. It is the State’s burden to prove “beyond a reasonable doubt that the defendant voluntarily waived his rights, and that the defendant’s confession was voluntarily given.” Id. In looking at the totality of the circumstances from all the evidence, many factors may be considered including the crucial element of police coercion, the length, location, and continuity of the interrogation, and the defendant’s maturity, education, physical condition, and mental health. Id. We must determine, in light of the totality of circumstances, whether the police conduct overbore the defendant’s will, thus rendering his statement involuntary. Id. at 767-68.

According to Akemon, his statement was involuntary based on the length of the interrogation, his emotional and mental state, threats by the police that his daughter would be taken away, and statements by the police regarding N.B.’s injuries. Akemon emphasizes that he was in police custody from 6:48 a.m. until 12:00 or 12:30 p.m. However, we note that his interrogation by the police did not begin until 9:00 a.m. and lasted until approximately 11:30 a.m., at which time Akemon wrote out his six-page statement. Akemon left the police station between 12:00 and 12:30 p.m. During the interview, Akemon was given a break to smoke a cigarette and was provided with food. Akemon initially denied N.B.’s accusations, but after Marshall James told Akemon that, according to a nurse, N.B. had injuries “consistent with her story,” Akemon confessed. Tr. p. 105. Marshall James denied threatening to have Akemon’s daughter taken away or coercing Akemon.

We conclude that Akemon's interrogation was not particularly lengthy, and the circumstances of Akemon's interrogation do not support his allegation of coercion. Akemon's argument is merely a request that we reweigh the evidence, which we will not do. The totality of the circumstances do not show that Akemon's free will was overcome by any inducement, threats, violence, or other improper influences. The trial court did not abuse its discretion by admitting Akemon's written statement. See, e.g., Miller, 770 N.E.2d at 770 (holding that the trial court did not err by admitting the defendant's statements to the police).

II. Sufficiency of the Evidence

The next issue is whether the evidence is sufficient to sustain Akemon's convictions. When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." Id. We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. Id. It is well established that "circumstantial evidence will be deemed sufficient if inferences may reasonably be drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt." Pratt v. State, 744 N.E.2d 434, 437 (Ind. 2001).

Akemon first argues that N.B.'s testimony was incredibly dubious because she said that she screamed during the attack but Sallee testified that she did not hear N.B. Appellate courts may apply the "incredible dubiousity" rule to impinge upon a jury's

function to judge the credibility of a witness. Love v. State, 761 N.E.2d 806, 810 (Ind. 2002). “If a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant’s conviction may be reversed.” Id. “This is appropriate only where the court has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity.” Id. “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. The incredible dubiousity rule simply does not apply here. N.B.’s testimony was not inherently improbable, and the State presented direct and circumstantial evidence that Akemon raped N.B.

Akemon also argues that the evidence is insufficient because the sexual assault nurse could not say that N.B.’s injuries were inconsistent with consensual sexual intercourse. The State presented evidence that, after Sallee left the bedroom, Akemon grabbed N.B.’s arms and held them over her head. With his other arm, Akemon pulled down N.B.’s shorts and underwear and pushed her knees up to her chest. N.B. struggled with Akemon, but he had sexual intercourse with her. Akemon admitted in his written statement to the police that N.B. said no, but he “wasn’t listening to her.” State’s Exhibit 1 at 5-6. Akemon wrote that he had sexual intercourse “while she was telling [him] no that what [he] was doing was not ok and she didn’t want it to happen at all but [he] had one thing on [his] mind and that was sex.” Id. at 6. Regardless of the sexual assault nurse’s findings, the evidence is sufficient to sustain Akemon’s conviction for Class B felony rape.

Conclusion

The trial court did not abuse its discretion by admitting Akemon's written statement, and the evidence is sufficient to sustain Akemon's conviction for Class B felony rape. We affirm.

Affirmed.

FRIEDLANDER, J., and CRONE, J., concur.