

[REDACTED]

judge instructed the jury on the inference. At best, the prosecutor's line of questioning was merely an attempt to establish the prerequisite for invoking the missing witness inference; that is, that the missing witness is seemingly accessible to the other side. *See Ramos, supra* at 869, 435 A.2d at 1126. The prosecutor ascertained, through his questioning, that he could not establish that the witnesses were available to the defendant; thus he did not pursue the matter any further.

The defendant implies that the act of questioning itself developed the inference that the defendant failed to prove his innocence by failing to produce corroborating witnesses. This implication is not supported by the record. Following the questioning, the jury was clearly advised through a colloquy between the trial judge and the defense attorney that the defendant did not have to produce any evidence or any witnesses. Furthermore, at the close of the case, the court instructed the jury on the presumption of innocence and the burden of proof in criminal cases.

■ Thus, we conclude that reversible error did not occur in this case. Accordingly, we affirm.

Affirmed.

All concurred.

[REDACTED]

Merrimack
No. 86-431

THE STATE OF NEW HAMPSHIRE

v.

STEVEN E. MEANEY

June 8, 1987

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

repeatedly told her, "Turn off the light." She managed to turn off the hall light without releasing her grip on the hand holding the knife. Meaney then forced her into the bedroom. After she turned out the bedroom light, Smith began struggling again because she could not breathe. Both she and Meaney lost their grip on the knife, and it "flew across the room." Meaney then forced her onto the bed and strangled her almost to the point of unconsciousness.

When she felt herself on the verge of unconsciousness, Smith began kicking furiously. One kick hit the television that was on the side of the bed and the television came on full blast. Meaney continued to strangle Smith and then suddenly disengaged himself and ran out of the house.

The police later arrested Meaney at his home, and a search of his home and cars uncovered evidence linking him to the crime. The only issue raised by the defendant on appeal is whether the evidence was sufficient to support his conviction for attempted first degree assault.

■ ■ When a person "[p]urposely or knowingly causes bodily injury to another by means of a deadly weapon," he or she is guilty of first degree assault. RSA 631:1, II. Attempt is defined statutorily as follows:

"A person is guilty of an attempt to commit a crime if, with a purpose that a crime be committed, he does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step toward the commission of the crime."
RSA 629:1, I.

An act must be "strongly corroborative of the actor's criminal purpose" to constitute a substantial step toward committing the crime. RSA 629:1, II.

■ ■ The State correctly notes that on appeal the defendant has the burden to show that the evidence was insufficient to prove his guilt beyond a reasonable doubt. *State v. Smith*, 127 N.H. 433, 436, 503 A.2d 774, 776 (1985). When we review the sufficiency of the evidence to support a conviction, we view the evidence in the light most favorable to the State, and uphold the jury's verdict unless no rational trier of fact could have found proof of guilt beyond a reasonable doubt. *State v. Wright*, 128 N.H. 122, 123, 509 A.2d 1253, 1254 (1986); *State v. Smith supra*.

The defendant claims that the evidence at trial was insufficient to show that he acted with a specific purpose to commit bodily injury with a knife, which was required to support a conviction for attempt-

ed first degree assault under the indictment against him. He argues that his initial attack on Smith with a knife was not strongly corroborative of a purpose to cause bodily injury with a knife in light of the evidence that he made no attempt to free the knife from the victim's defensive grasp or recover it once it was dropped. This argument is completely without merit.

■ The essence of a jury's function is to determine the weight and credence to be given the evidence at trial. *State v. Sands*, 123 N.H. 570, 590, 467 A.2d 202, 214 (1983); see also *State v. Chapin*, 128 N.H. 355, 357, 513 A.2d 358, 359 (1986). The jury was free to reject the inferences urged by the defendant. Indeed, the jury could quite understandably have found that the reason the defendant did not free the knife from his victim's grasp was that, as Smith testified, she "was using every bit of strength [she] had not to let go of the knife." Furthermore, the fact that, after the defendant and his victim lost their hold on the knife, the defendant chose to strangle his victim almost to the point of unconsciousness, rather than retrieve the knife in order to stab her, does not negate the inference that he intended to cause her bodily injury when he initially came at her with the knife. It is simply incredible to suggest otherwise.

■ As the defendant notes, "Conduct illuminates intent." *State v. Wills*, 107 N.H. 107, 109, 218 A.2d 47, 48 (1966). Smith testified that the defendant "had the knife in his hand and came up like this (demonstrating) towards me . . . a lunge." Based on her testimony, a jury could rationally have concluded beyond a reasonable doubt that the defendant had intended to cause bodily injury to Smith when he came at her with a knife and that this act was a substantial step towards the commission of first degree assault. Therefore, we affirm the defendant's conviction.

Affirmed.

All concurred.