

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1287**

State of Minnesota,
Respondent,

vs.

Dagan Michael Lasart, Jr.,
Appellant.

**Filed July 8, 2024
Affirmed
Worke, Judge**

Stearns County District Court
File No. 73-CR-21-8158

Keith Ellison, Attorney General, Jacob Campion, Assistant Attorney General, St. Paul, Minnesota; and

Janelle Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

Todd V. Peterson, Todd V. Peterson, P.A., Sauk Rapids, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Schmidt, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his conviction of third-degree criminal sexual conduct, arguing that the state presented insufficient evidence to prove beyond a reasonable doubt

that the claimant was physically helpless when the offense occurred. Appellant also argues that the district court abused its discretion when it denied his motion for a downward dispositional departure. We affirm.

FACTS

The facts as referenced are taken from the trial testimony. On July 30, 2021, appellant Dagan Michael Lasart, Jr., A.F., and some friends spent the night at a hotel. A.F. had just turned 18 years old. A.F. arrived at the hotel around 10:00 p.m. and “started drinking because [A.F.] wanted to catch up with everyone because everyone else was already a little buzzed.”

A.F. remembered that one of her friends “kind of warn[ed] everyone that [A.F.] wasn’t doing too well.” A.F. did not remember going into the bathroom. She did have “flash memories of kneeling over the toilet throwing up.” She did not remember there being anyone else in the bathroom with her when she was throwing up. A.F. recalled that she “was leaning over the side of the bathtub because [she] didn’t feel good.” She remembered “being really cold and shaking” and not “hav[ing] any clothes on.” During a “couple seconds” of consciousness, A.F. “looked back and then [Lasart] was behind [her].” Lasart was penetrating A.F.’s vagina with his penis while he held A.F. by the waist and “was moving [her] back and forth.” A.F. could not remember how the penetration began or ended.

A.F. called police to report the sexual assault. Investigators spoke with some of the people who were at the hotel on July 30. Several individuals confirmed to investigators that A.F. was intoxicated that night and that Lasart was at the hotel. Respondent State of

Minnesota charged Lasart with third-degree criminal sexual conduct—claimant physically helpless.

At Lasart’s jury trial, the state called eight witnesses, including A.F., others present at the hotel on July 30, and investigators. The jury found Lasart guilty as charged.

Lasart moved the district court for a downward dispositional departure. At sentencing, the district court considered the *Trog*¹ factors and determined that Lasart failed to meet his burden in demonstrating that he was particularly amenable to probation. The district court imposed and executed a presumptive sentence of 41 months in prison. This appeal followed.

DECISION

Sufficiency of the evidence

Lasart does not challenge whether the state presented sufficient evidence that he sexually penetrated A.F., only whether the state met its burden of proof beyond a reasonable doubt that she was “physically helpless” pursuant to Minn. Stat. § 609.344, subd. 1(d) (2020).

“When evaluating the sufficiency of the evidence, appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation

¹ *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982) (stating that “defendant’s age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family” are all factors relevant to determining whether dispositional departure is justified).

omitted). Appellate courts must view the evidence “in the light most favorable to the verdict” and must assume “that the fact-finder disbelieved any evidence that conflicted with the verdict.” *Id.*

The state bears the burden “of proving beyond a reasonable doubt every element of a charged offense in a criminal trial.” *State v. Pakhnyuk*, 926 N.W.2d 914, 919 (Minn. 2019). To be found guilty of third-degree criminal sexual conduct, the state must prove beyond a reasonable doubt two elements—that Lasart: (1) “engage[d] in sexual penetration with another person;” and (2) knew or had reason to know that the claimant was “physically helpless.” *See* Minn. Stat. § 609.344, subd. 1(d). Someone is “[p]hysically helpless” for the purposes of section 609.344, subdivision 1(d), when that “person is (a) asleep or not conscious, (b) unable to withhold consent or to withdraw consent because of a physical condition, or (c) unable to communicate nonconsent and the condition is known or reasonably should have been known to the actor.” Minn. Stat. § 609.341, subd. 9 (2020). “Consent” is defined as “words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor.” *Id.*, subd. 4(a) (2020). And consent “does not mean . . . that the [claimant] failed to resist a particular act.” *Id.* “A person who is . . . physically helpless as defined by this section cannot consent to a sexual act.” *Id.*, subd. 4(b) (2020).

Whether a conviction is based on sufficient evidence requires a determination of whether the challenged element is proved by direct evidence or circumstantial evidence. *State v. Harris*, 895 N.W.2d 592, 597-98 (Minn. 2017). Direct evidence is “based on personal knowledge or observation and . . . if true, proves a fact without inference or

presumption.” *Id.* at 599 (quotation omitted). Circumstantial evidence is “evidence from which the fact[-]finder can infer whether the facts in dispute existed or did not exist” and “always requires an inferential step to prove a fact that is not required with direct evidence.” *Id.* (quotation omitted).

When a conviction is based on direct evidence, the reviewing court undertakes a “painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the [fact-finder] to reach the verdict which they did.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quotation omitted). We “will not disturb a guilty verdict if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could have reasonably concluded that the state proved the defendant’s guilt.” *State v. Olson*, 982 N.W.2d 491, 495 (Minn. App. 2022).

“When the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict,” this court applies the circumstantial-evidence standard of review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). Appellate courts apply a two-step analysis when reviewing the sufficiency of circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013).

First, this court must “identify the circumstances proved.” *Id.* In doing so, we “defer to the [fact-finder]’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *Id.* at 598-99 (quotations omitted). Second, a determination of “whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that

of guilt” must be made. *Id.* at 599 (quotations omitted). We “review the circumstantial evidence not as isolated facts, but as a whole,” and “examine independently the reasonableness of all inferences that might be drawn from the circumstances proved.” *Id.* (quotations omitted).

Lasart contends that the state presented insufficient evidence to prove beyond a reasonable doubt that he knew or should have known that A.F. was “physically helpless” when the criminal sexual conduct occurred. “[W]hen a disputed element is sufficiently proved by direct evidence alone . . . it is the traditional standard, rather than the circumstantial-evidence standard, that governs.” *Horst*, 880 N.W.2d at 39. Viewing the evidence in the light most favorable to the verdict and with due regard for the presumption of innocence and the burden of proof beyond a reasonable doubt, the direct evidence presented by the state is consistent with the jury verdict.

At trial, the state called multiple witnesses, including A.F., to testify about her level of intoxication on the night of July 30. A.F. testified that: she was drinking alcohol with some friends at a hotel, she began to feel intoxicated, someone at the hotel “warn[ed] everyone that [she] wasn’t doing too well,” she had “flash memories of kneeling over the toilet throwing up,” she “was leaning over the side of the bathtub because [she] didn’t feel good,” she was conscious for a “couple seconds” and “looked back and then [Lasart] was behind her,” Lasart was penetrating her vagina with his penis and holding her by the waist while “[Lasart] was moving [her] back and forth,” and she could not remember how the penetration began or ended. Further, A.F.’s intoxication testimony was corroborated by multiple witnesses present at the hotel on July 30. Generally, “a conviction can rest on the

uncorroborated testimony of a single credible witness.” *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (quotation omitted). Pursuant to Minn. Stat. § 609.347, subd. 1 (2022), in the context of a prosecution for a criminal-sexual-conduct offense, “the testimony of a [claimant] need not be corroborated.”

Because the state met its burden of proof beyond a reasonable doubt in showing that A.F. was “physically helpless” when the criminal sexual conduct occurred and that Lasart knew or should have known as such, we conclude that sufficient evidence was presented to support the jury verdict.

Lasart also contends that this case is analogous to *State v. Khalil*, in which Khalil’s conviction of third-degree criminal sexual conduct involving a mentally incapacitated or physically helpless claimant was reversed. 956 N.W.2d 627, 627 (Minn. 2021). We disagree.

In *Khalil*, the supreme court held that a person is not “mentally incapacitated” under Minn. Stat. § 609.341, subd. 7 (2020), “unless the alcohol was administered to the person . . . without that person’s agreement.” *Id.* at 642. A new trial was required because the district court erroneously failed to instruct the jury that mental incapacity requires a showing that the claimant was involuntarily intoxicated and there was no way to determine on which alternative ground—mental incapacity or physical helplessness—the jury based its guilty verdict. *Id.* at 643. But we conclude that the facts in *Khalil* are distinguishable in that *Khalil* interpreted the statutory definition of “mentally incapacitated” and not the applicable statutory definition of “physically helpless.” Minn. Stat. §§ 609.341, subd. 7; .344, subd. 1(d).

Downward dispositional departure

A district court has great discretion in its sentencing decision, and appellate courts will reverse only when a district court abused that discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). A district court abuses its discretion if its decision “is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Bustos*, 861 N.W.2d 655, 666 (Minn. 2015).

The district court imposed and executed a presumptive sentence at the bottom of the box. The Minnesota Sentencing Guidelines establish presumptive sentences for felony offenses. Minn. Stat. § 244.09, subd. 5 (2020). A district court must pronounce a sentence within the applicable guidelines’ range unless it finds “identifiable, substantial, and compelling circumstances” to support a departure. *Id.* A guidelines sentence is presumed to be appropriate. Minn. Sent’g Guidelines 2.D.1 (Supp. 2022). We will affirm a presumptive sentence when the record shows that a district court “carefully evaluated all the testimony and information presented before making a determination.” *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2013).

“A dispositional departure places the offender in a different setting than that called for by the presumptive guidelines sentence.” *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). “A dispositional departure typically focuses on characteristics of the defendant that show whether the defendant is particularly suitable for individualized treatment in a probationary setting.” *Id.* (quotation omitted).

Lasart requested a downward dispositional departure. The district court considered that Lasart's age and the lack of criminal history favored probation. The district court determined that Lasart's family support and his general cooperative attitude throughout the proceedings were neutral factors. The district court noted its "concerns with regard to the quality of the support that [Lasart] has." And that Lasart did not express remorse for his criminal sexual conduct until the sentencing hearing. The district court concluded that Lasart was not "particularly amenable to probation" and sentenced him to 41 months in prison. Even when a mitigating factor justifies departure, appellate courts will not ordinarily interfere with the imposition of a presumptive sentence. *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). Moreover, when the record shows that a district court carefully evaluated the testimony and information presented, this court "may not interfere" with a district court's sentencing decision. *State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985). Refusals to depart will be reversed only in "rare" cases. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Our review of the record shows that the district court carefully evaluated the testimony and information presented at sentencing and imposed and executed a presumptive sentence. *See Van Ruler*, 378 N.W.2d at 80-81. We conclude that this is not such a "rare" case to require a reversal. *Kindem*, 313 N.W.2d at 7. Thus, the district court did not abuse its discretion when it denied Lasart's motion for a downward dispositional departure and imposed and executed the presumptive sentence for the conviction of third-degree criminal sexual conduct.

Affirmed.