

*This opinion is nonprecedential except as provided by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
A24-1724**

State of Minnesota,
Respondent,

vs.

Ethan Raymond Hardy,
Appellant.

**Filed October 6, 2025
Affirmed
Connolly, Judge**

Itasca County District Court
File No. 31-CR-22-2822

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Jacob Fauchald, Itasca County Attorney, Grand Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schmidt, Presiding Judge; Connolly, Judge; and Segal, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges his conviction for first-degree criminal sexual conduct, arguing that the evidence was insufficient to prove that he knew or should have known that the victim was mentally incapacitated at the time of the offense. We affirm.

FACTS

In 2020, appellant Ethan Raymond Hardy met the victim, A.G. Events on the night of September 7-8, 2022, resulted in appellant's being charged with first-, third-, and fifth-degree criminal sexual conduct.

At appellant's trial, seven people testified about those events: (1) A.G.; (2) Friend 1, who, with Friend 2, was with A.G. in her apartment when appellant arrived that night; (3) Friend 3, whom appellant awakened early in the morning of September 8, after the alleged offense; (4) the physician who examined appellant in the hospital; (5) the Minnesota Bureau of Criminal Apprehension (BCA) employee, who tested the swabs of A.G., (6) Officer C.P., who interviewed appellant; and (7) appellant himself.

A.G. testified that, on September 7, 2022, she, Friend 1, and Friend 2 were in A.G.'s apartment; she and Friend 2 were drinking and they were all posting on social media; A.G. and appellant exchanged messages; he asked if he could join them; and A.G. agreed. A.G. testified further that she was already drunk when appellant arrived and could not remember when he arrived, but did remember that Friend 1 was then the only other person in the apartment; that appellant's hands were close to A.G.'s mouth at one point; that A.G.'s mouth later burned; and that Friend 1 left A.G. and appellant alone in the living room and

went into A.G.'s bedroom. A.G. also remembered that appellant began groping her and that they wound up in A.G.'s bedroom, but she could not remember how they got there, and she felt as if her body was "frozen" and her mind was "shut down." A.G. did not remember appellant taking A.G.'s clothes off but did remember appellant telling her "what would feel good" and saying he wanted to have anal sex with her, but she said she "wasn't comfortable with that." A.G. did remember thinking that "it was done" when appellant left the bedroom and that she knew she had been penetrated, but could not explain how, before she blacked out. A.G. also testified that she later remembered feeling as if she was coming out of a blackout when Friend 2 came "busting into the room," and still later, when it was just getting light outside, waking up naked, alone, and shaking in her living room, then walking to the residence of Friend 3, and being really sore in her butt, vagina, and thighs. Finally, A.G. testified that she had a sexual-assault exam at the hospital.

Friend 1 testified that, before she left A.G. and appellant, she saw appellant offer A.G. a pill but did not see if A.G. took the pill; A.G. came into her bedroom and asked Friend 1 to move to the spare bedroom so A.G. could go to bed; Friend 1 saw appellant go into A.G.'s bedroom, at which time A.G. was happy. Friend 1 went on to testify that appellant later came into the spare bedroom, wearing only boxer shorts. When he asked Friend 1 if she "wanted to have fun," she asked what kind of fun; he approached the bed saying she knew what he was talking about, and she said she did not "do stuff like that"; appellant tried to get into bed and did not "seem okay" with Friend 1 telling him "no," she did not want to have sex. When Friend 2 returned to A.G.'s apartment, Friend 1 asked if they could leave together and said she thought A.G. was asleep because she wasn't talking.

They went to Friend 2's apartment, but Friend 1 convinced Friend 2 they should walk back to A.G.'s apartment building to make sure A.G. was all right because appellant would not take no for an answer and Friend 1 felt "like something was off." Between 2:30 and 3:00 a.m. on September 8, Friend 1 and Friend 2 went to A.G.'s apartment building, heard "screaming" that "wasn't a happy scream," and went to A.G.'s apartment. Friend 1 testified further that she and Friend 2 found appellant in bed with A.G. A.G. had "slurred speech," she "sounded really drunk," she seemed "a lot more drunk than she [usually] was,"¹ and "it was almost like it wasn't just drunkenness." Friend 1 and Friend 2 then left A.G.'s apartment. Later that day, after Friend 2 had texted Friend 1 to go back to A.G.'s apartment because "something had happened" the night before, Friend 1 did go back and found A.G. crying, heard her say that appellant had raped her, and took her to the hospital.

Friend 3 testified that A.G. was crying when she came into his apartment and woke him. He asked A.G. what was wrong and she could not tell him, and A.G. stayed for at least an hour while he tried to comfort her. A.G. told Friend 3 she had been drinking the night before, she suspected that she might have been drugged, and she wanted to get a rape test or a test for sexually transmitted diseases. Friend 3 took A.G. home to her apartment around noon to be sure it was safe.

The physician who examined A.G. at the hospital testified that A.G. cried throughout the examination and said she had pain around her rectum; the physician found

¹ Friend 1 had previously seen A.G. when she was drunk.

lacerations and swelling around A.G.'s rectum, and, based on the physician's training and experience, the physician believed A.G.'s injuries were consistent with a sexual assault.

BCA employee M.P. tested the swabs from A.G.'s sexual-assault examination. She testified that the vagina, rectal, and cervical swabs all contained a major profile that matched appellant's DNA and a minor profile that matched A.G.'s DNA, and the perineal swab contained a single-source male DNA profile that matched appellant's DNA.

Officer C.P. testified that he first interviewed appellant on September 21, 2022. Appellant told Officer C.P. that he did not know A.G. very well, appellant had last seen her about a year ago, and Officer C.P. was mistaken in thinking appellant might have been at A.G.'s apartment within the past two weeks. Appellant also said that it was "[i]mpossible" for three people to have said he was at A.G.'s apartment, and that appellant had never had sex with A.G. Officer C.P. testified that, at his second interview of appellant on September 24, 2022, the officer executed a search warrant for a buccal swab, and appellant told Officer C.P. that he had been at home with his children on September 7, 2022.

Appellant testified at trial that, during his interview with Officer C.P., he had confused the days and that, on September 7, 2022, he was actually not at home with his children but at the VFW to meet his uncle. Appellant testified that he stayed and drank with some friends after his uncle left, then went to another bar, played pool, and had some shots of alcohol. He testified further that he generally drank only beer and that the shots had left him "drunk, or maybe even beyond that." He did not remember leaving the bar or getting home, and his next memory was waking up in his own apartment the next morning.

Following trial, the jury found appellant guilty on all three counts. At the sentencing hearing, the district court denied appellant's motion for a downward dispositional departure and imposed the presumptive sentence—144 months in prison with 10 years of conditional release for first-degree criminal sexual conduct. The remaining counts were not adjudicated or sentenced.

Appellant challenges the jury's verdict that he knew or should have known that A.G. was mentally incapable of giving her consent to anal sex because the evidence was insufficient; he also raises other issues in a pro se brief, arguing that he is entitled to a reversal of his conviction.

DECISION

I. Sufficiency of the Evidence

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 of the offense of which he was convicted. The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the [jury] disbelieved any evidence that conflicted with the verdict. The verdict will not be overturned if the [jury], upon application of the presumption of innocence and the State's burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.

State v. Griffin, 887 N.W.2d 257, 263 (Minn. 2016) (quotation and citations omitted).

The three relevant elements of first-degree criminal sexual conduct are that the perpetrator sexually penetrated the victim, caused the victim personal injury, and knew or should have known that the victim was mentally incapacitated at the time. Minn. Stat.

§ 609.342, subd. 1 (2022). Appellant argues only that the state failed to prove he knew or should have known that A.G. was mentally incapacitated when he sexually penetrated her and injured her.

A person is mentally incapacitated if the person is under the influence of any substance “to a degree that renders [the person] incapable of consenting.” Minn. Stat. § 609.341, subd. 7 (2022). The evidence of a person’s mental state, *e.g.*, whether the person knew or should have known that another person was incapable of giving consent to anal sex, is circumstantial. *See State v. Williams*, 3 N.W.3d 68, 76 (Minn. App. 2024). “[T]he jury is in the best position to evaluate the credibility of the evidence even in cases based on circumstantial evidence.” *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). Therefore, an appellate court must first identify the circumstances proved, deferring to the jury’s acceptance of the proof of the circumstances and rejection of conflicting evidence and considering only those circumstances that are consistent with the verdict. *Id.* The appellate court then determines whether those circumstances are consistent with the defendant’s guilt and inconsistent with any rational hypothesis except that of guilt, reviewing not just isolated facts, but rather the circumstantial evidence as a whole. *Id.* at 599.

The circumstances proved include that: (1) A.G. had been drinking before appellant arrived at her apartment and continued drinking after he arrived; (2) A.G. was drunk when she went into her bedroom with appellant; (3) A.G. lost consciousness for periods of time while she was in the bedroom and could remember only parts of conversations; (4) A.G. remembered telling appellant that she did not want anal sex; (5) after appellant said he

wanted to “have fun” with Friend 1, Friend 1 and Friend 2 left A.G.’s apartment and appellant was not then talking and seemed to be asleep; (6) when Friend 1 and Friend 2 returned to A.G.’s apartment, A.G. was in bed with appellant; (7) A.G. remembered that, when they came into the bedroom, she felt numb and as if she were coming out of a blackout; (8) Friend 1, who had previously seen appellant drunk, said she seemed to be more than just drunk; (9) A.G. had no memory of appellant leaving her apartment and next remembered waking up alone and naked in her living room; (10) two weeks after this incident, appellant told a police officer that he had not seen A.G. for at least a year; (11) appellant said “impossible” when told that three witnesses remembered him being at A.G.’s apartment that night; (12) appellant denied that he ever had sex with A.G.; (13) appellant’s DNA was found inside A.G.; and (14) at the hospital, appellant was found to have injuries consistent with sexual assault.

A victim’s intermittent loss of consciousness has been held to indicate that a defendant knew or had reason to know of the victim’s incapacity. *See, e.g., Williams*, 3 N.W.3d at 76-77 (holding that, when victim was highly intoxicated, rejected defendant’s advances, passed out but woke up during sexual encounter, was partially unconscious during sexual encounter, and was therefore unable to verbalize consent, sufficient evidence supported the finding that the defendant “knew or should have known” victim was helpless); *State v. Berrios*, 788 N.W.2d 135, 143 (Minn. App. 2010) (holding that, when victim was extremely intoxicated, passed out after telling defendant “no,” and was unconscious when he penetrated her, “there was ample evidence for the jury to conclude

that [defendant] knew or had reason to know that [the victim] had been rendered physically helpless . . .”), *rev. denied* (Minn. Nov. 16, 2010).

Appellant relies on *Williams*, but his reliance is misplaced. In *Williams*, the victim, first withheld consent, then passed out, and then woke up during the sexual encounter. *Williams*, 3 N.W.3d at 76. This court concluded that the only reasonable inference was that the victim’s ceasing to resist during the assault would have let the defendant know that she was then unconscious. *Id.* Analogously, A.G. would have ceased resisting appellant when she lost consciousness, and appellant would or should have known then that she was mentally incapacitated. Appellant also relies on *State v. Blevins*, 757 N.W.2d 698, 701 (Minn. App. 2008) (holding that, when a victim was able to withhold and did withhold consent, the evidence did not prove that she was unable to withhold consent), but that case is distinguishable. In *Blevins*, the victim did not lose consciousness or fall asleep; she testified that she ““just let it happen”” and ““waited for it to be over.”” *Blevins*, 757 N.W.2d at 699. Here, appellant was intermittently unconscious throughout the sexual assault.

Particularly in light of the caselaw that this court must “defer to the jury’s acceptance of the proof of circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the state” and “consider only those circumstances that are consistent with the verdict,” *Silvernail*, 831 N.W.2d at 598-99, (quotation and citations omitted), these sets of circumstances support the fact that appellant knew or should have known A.G. was mentally incapable of consenting to anal sex when he penetrated her.

Appellant also lists conflicting evidence including testimony from two former girlfriends who testified that appellant respected women and from a psychiatrist who testified that those who cannot remember events may construct a narrative that fits what is best for them. The jury must be assumed to have disregarded if not rejected this evidence, and therefore it cannot be the basis of this court's decision. *See id.*

II. Appellant's Pro Se Brief

In his pro se brief, appellant reiterates his insufficient-evidence argument and raises an additional argument that he was denied a fair trial because no other Native Americans were in the courtroom. He offers no legal support for this argument, and it is therefore forfeited. *See State v. Fernandez Sorto*, 12 N.W.3d 207, 217 (Minn. App. 2024), *rev. denied* (Minn. Dec. 17, 2024).

Affirmed.