This opinion is nonprecedential except as provided by Minn.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
A22-1141

State of Minnesota,
Respondent,

vs.

Kaleffa Steven Mann,
Appellant.

Filed June 12, 2023
Affirmed
Johnson, Judge

Stearns County District Court
File No. 73-CR-21-9005

Keith Ellison, Attorney General, Lisa Lodin Peralta, Assistant Attorney General, St. Paul, Minnesota; and

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

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Gaïtas, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Stearns County jury found Kaleffa Steven Mann guilty of third-degree criminal sexual conduct based on evidence that he sexually penetrated a woman who was physically

helpless because she was asleep. We conclude that the evidence is sufficient to support the conviction. Therefore, we affirm.

FACTS

In December 2021, the state charged Mann with third-degree criminal sexual conduct, in violation of Minn. Stat. § 609.344, subd. 1(b) (Supp. 2021). The case was tried to a jury on two days in February 2022. The state's primary witness was the complainant, D.W. She testified to the following facts.

D.W. met Mann in October 2021 at a Halloween party. In the following weeks, she and Mann sporadically exchanged messages on a social-media application. On December 4, 2021, Mann sent her a message saying, "let's throw a party." They agreed to do so that evening. Mann agreed to host the party at his apartment, and D.W. agreed to recruit guests.

D.W. went to Mann's apartment at approximately 11:00 p.m. Mann and a few other people were present. D.W. drank multiple shots of liquor before going to downtown St. Cloud to tell friends about the party. She continued drinking while downtown.

D.W. returned to Mann's apartment a few hours later. Guests began arriving at approximately 2:00 a.m. D.W. continued drinking and also smoked marijuana until approximately 4:00 a.m., when police officers responded to a noise complaint and broke up the party.

After guests left, four persons remained at Mann's apartment: D.W., Mann, another man whom D.W. knew only by a nickname with the initials M.M., and a third man whose name is unknown. The group of four went to a nearby convenience store. On their way

back, D.W. stopped at a female friend's nearby apartment, where she had planned to sleep, but the friend's apartment was locked and D.W. was unable to contact her. D.W. returned to Mann's apartment, where she, Mann, M.M., and the unnamed man talked and smoked marijuana.

D.W. eventually fell asleep on a couch, covering herself with a blanket that Mann had provided to her. Mann later woke her and asked whether she wanted to use his bed. D.W. agreed, walked to Mann's bedroom, lay on top of a comforter on one side of the bed, covered herself with the blanket that Mann had provided her, and fell asleep.

D.W. later awoke and realized that Mann was on top of her while she was lying on her stomach and that he was penetrating her vagina with his penis. She testified, "He was . . . already having sex with me when I woke up." She pretended to still be asleep and did not move. Mann stopped penetrating her shortly thereafter. She heard a sound like a rubber band, which she believed was the sound of Mann removing a condom.

After Mann lay down on the bed next to D.W., she got up and left the bedroom. She asked M.M. to go into Mann's bedroom to retrieve her shorts and her cell phone. M.M. went into Mann's bedroom and talked to him. Mann walked out of the bedroom and gave D.W. her belongings. Mann asked her what was wrong and assured her that "nothing happened." After she told him that she had been "awake," Mann changed his tone. He asked her whether she was going to call the police. D.W. was afraid because Mann was "starting to get a little aggressive." D.W. used her cell phone to surreptitiously record a portion of her conversation with Mann, and the audio-recording was played for the jury. During the conversation, Mann said numerous times that he was "not that type" of person.

He also said, "I thought you was up," and "Maybe you was asleep, I didn't know you were asleep."

At D.W.'s request, M.M. drove her to her mother's home. D.W. told her mother about the incident with Mann. D.W.'s mother called the police.

The state called five other witnesses. Officer Musielewicz testified that he responded to the report made by D.W.'s mother and interviewed D.W. that afternoon at her mother's home. He drove D.W. to a local hospital for a sexual-assault examination. A forensic nurse examiner testified that D.W. said that she had "vaginal tenderness and pain." The nurse conducted a sexual-assault examination, which revealed a bleeding cervix, which could be attributable to either sexual activity or other causes. A forensic analyst employed by the bureau of criminal apprehension testified about DNA testing of swabs taken from D.W.'s body, which were inconclusive. Another police officer testified that investigators obtained and executed a warrant for a search of Mann's apartment, where they found some items belonging to D.W. that she had left behind.

Mann did not testify or present any other evidence. The jury found him guilty. The district court imposed a sentence of 48 months of imprisonment. Mann appeals.

DECISION

Mann argues that the state's evidence is insufficient to prove beyond a reasonable doubt that he committed the offense of third-degree criminal sexual conduct.

In analyzing an argument that the evidence is insufficient to support a conviction, this 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." *State*

v. Horst, 880 N.W.2d 24, 40 (Minn. 2016) (quotation omitted). We "carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the [factfinder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (alteration in original) (quotation omitted). "We assume that the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Friese*, 959 N.W.2d 205, 214 (Minn. 2021) (quotation omitted).

A person is guilty of third-degree criminal sexual conduct if he "engages in sexual penetration with another person" and "knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless." Minn. Stat. § 609.344, subd. 1(b). In this case, the state sought to prove only the third alternative: that D.W. was physically helpless. The term "physically helpless" is defined by statute to mean "that a 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). In this case, the prosecutor argued to the jury that D.W. was physically helpless because she was asleep.

Mann contends that the state's evidence is insufficient on the ground that there are reasons to question D.W.'s credibility and a lack of corroborating evidence. He acknowledges that, in any criminal prosecution, the credibility of a witness is a matter for the jury. He also acknowledges that, in a prosecution for criminal sexual conduct, "the testimony of a victim need not be corroborated." *See* Minn. Stat. § 609.347, subd. 1 (Supp.

2021). But he relies on caselaw that, he asserts, requires corroborating evidence if there are reasons to question a complainant's testimony.

First, Mann cites *State v. Gluff*, 172 N.W.2d 63 (Minn. 1969), a case of aggravated robbery in which the supreme court reversed and remanded for a new trial because the victim "had a limited opportunity to observe the robber briefly during a time when her attention was concentrated on a gun pointed at her" and there was "no corroboration of the identification" of the defendant. *Id.* at 65. Second, Mann cites *State v. Langteau*, 268 N.W.2d 76 (Minn. 1978), a case of aggravated robbery in which the supreme court reversed a guilty verdict because the state's evidence did not explain defendant's presence at the scene of the crime or his motive. *Id.* at 77. Third, Mann cites *State v. Ani*, 257 N.W.2d 699 (Minn. 1977) (*per curiam*), a criminal-sexual-conduct case in which the supreme court affirmed the conviction. *Id.* at 700. Fourth, Mann cites *State v. Huss*, 506 N.W.2d 290 (Minn. 1993), a case of criminal sexual conduct in which the supreme court reversed a guilty verdict because it was based solely on the testimony of a three-year-old child, which was "contradictory as to whether any abuse occurred at all, and was inconsistent with her prior statements and other verifiable facts." *Id.* at 292. In addition, the child had reported sexual abuse only after her mother had repeatedly exposed her to a "highly suggestive book" and a related audiotape, which "may have improperly influenced the child's subsequent report." *Id.* at 293.

We begin by noting that two of the opinions Mann cites—*Gluff* and *Langteau*—do not apply to this case because they concern convictions of aggravated robbery, not criminal sexual conduct. *See Langteau*, 268 N.W.2d at 77; *Gluff*, 172 N.W.2d at 65. Consequently,

in both cases, the supreme court had no need to consider the statute that expressly states that, in a prosecution for criminal sexual conduct, "the testimony of a victim need not be corroborated." *See* Minn. Stat. § 609.347, subd. 1.

We also note that, even though *Huss* concerned a conviction of criminal sexual conduct, the supreme court did not mention section 609.347, subdivision 1. 506 N.W.2d at 292-93. The supreme court apparently determined that the statute was not implicated because the evidence was insufficient for a reason other than a lack of corroboration. *Id.*

That leaves *Ani*, which *does* concern criminal sexual conduct and *does* mention section 609.347, subdivision 1. 257 N.W.2d at 700. The appellant in *Ani* argued that the statute was unconstitutional on the ground that corroboration is constitutionally required. *Id.* The supreme court rejected that argument, reasoning that there was no such requirement at common law and no such requirement in the text of the United States Constitution. *Id.* But the supreme court stated that, in a particular case, the "'absence of corroboration . . . may well call for a holding that there is insufficient evidence upon which a jury could find the defendant guilty beyond a reasonable doubt.'" *Id.* (quoting Note, *The Rape Corroboration Requirement: Repeal Not Reform*, 81 Yale L.J. 1365, 1391 (1972)). While allowing for the possibility that corroboration might be constitutionally required in a particular case, the supreme court stated that the case before it was "not such a case" because "the victim's testimony was positive and not contradicted, and was strongly corroborated by other evidence." *Id.*

The same can be said of the evidence in this case. D.W. testified without equivocation that Mann sexually penetrated her while she was asleep. She testified, "He

was . . . already having sex with me when I woke up." That testimony was not contradicted by any other evidence. Thus, this case is not the hypothetical case described in *Ani*, in which corroborating evidence is constitutionally required despite the statute providing that the testimony of a victim of criminal sexual conduct need not be corroborated. *See id.*

In addition, D.W.'s testimony was corroborated by other evidence. D.W. gave a statement to Officer Musielewicz only a few hours after the incident that was very similar to her trial testimony. A forensic nurse examiner testified that D.W.'s cervix was bleeding in a manner that is consistent with a sexual assault. When police officers searched Mann's home, they found items that D.W. had described (such as marijuana roaches, a blue and gray flower-printed comforter, and a bottle of a particular brand of liquor) and also found some of D.W.'s belongings (including a pair of leggings that she wore earlier in the evening, the drawstring of her shorts, and her second cell phone). In addition, the state introduced an audio-recording of statements Mann made shortly after D.W. awoke, including the statement, "Maybe you was asleep, I didn't know you were asleep." That evidence allows an inference that Mann impliedly admitted to D.W. that he sexually penetrated her, leaving only the question whether Mann knew or had reason to know that she was asleep. *See* Minn. Stat. § 609.344, subd. 1(b). If corroboration of D.W.'s testimony were necessary for the reasons stated in *Ani*, it would be present.

Mann also relies on *State v. Foreman*, 680 N.W.2d 536 (Minn. 2004), in which the supreme court cited *Gluff*, *Langteau*, *Huss*, and *Ani* in the course of affirming a conviction of domestic assault. *Id.* at 538-39. The state introduced evidence that, during an argument, the appellant pointed a rifle at his wife and threatened to kill her. *Id.* at 537. The victim

recanted her accusation before trial but apparently testified at trial consistently with her initial report. *Id.* at 537-38. In analyzing the appellant's argument that the state's evidence was insufficient, the supreme court reasoned that "there were no other reasons to question [the victim]'s credibility and her testimony at trial was not contradicted." *Id.* at 539.

The *Foreman* opinion does not apply to this case because, like *Gluff* and *Langteau*, it does not concern a conviction of criminal sexual conduct and, thus, does not consider section 609.347, subdivision 1. Even if we were to apply *Foreman*, we would conclude that there are "no other reasons to question [D.W.'s] credibility." *See id.* D.W. never wavered from her initial statement that Mann penetrated her vagina with his penis while she was asleep. Mann identifies some facts that could be used to raise doubt about her testimony, such as the fact that D.W. had been drinking alcoholic beverages and smoking marijuana and the fact that she did not immediately call police. Mann asserts that D.W. might have "falsely accused Mann of sexual misconduct" or might have been "too impaired to remember what really happened in the bed with Mann." Mann's argument is unconvincing. The reasons he identifies for doubting D.W.'s credibility are far less significant than the attempted recantation in *Foreman*. Accordingly, *Foreman* does not support Mann's argument that there are special reasons to doubt D.W.'s testimony such that corroborating evidence is required.

Before concluding, we note that Mann filed a *pro se* supplemental brief, which mostly reiterates the arguments made by his appellate attorney. His *pro se* supplemental brief alludes to two other potential arguments: that he was not convicted by a jury of his peers and that his trial attorney provided him with ineffective assistance of counsel. But

we do not construe Mann's *pro se* supplemental brief to actually make such arguments or to request reversal on those grounds.

In sum, the evidence is sufficient to support Mann's conviction of third-degree criminal sexual conduct.

Affirmed.