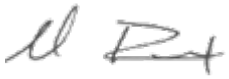
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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 11/4/2026 7:17 AM



Mark Reynolds

Opinion Number: _____

Filing Date: November 4, 2026

No. A-1-CA-41219

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

JERRY CORDOVA,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Joseph Montano, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Emily Bowen, Assistant Solicitor General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Joelle N. Gonzales, Assistant Appellate Defender
Santa Fe, NM

for Appellant

OPINION

DUFFY, Judge.

{1} A jury convicted Defendant Jerry Cordova on two counts of criminal sexual penetration (CSP) in the third degree, contrary to NMSA 1978, Section 30-9-11(F) (2009), and one count of criminal sexual contact (CSC), contrary to NMSA 1978, Section 30-9-12(D) (1993), based on a sexual encounter he had with a twenty-three-year-old woman with Down syndrome (Victim). The State's theory underlying all of the charges was that Victim was unable to consent as a matter of law because she "suffers from a mental condition that renders [her] incapable of understanding the nature or consequences of the act." NMSA 1978, § 30-9-10(A)(4) (2005); *see State v. Apodaca*, 2025-NMSC-015, ¶ 26, 572 P.3d 913 (holding that if the predicate circumstances existed, "the victim was not capable of consenting as a matter of law"). On appeal, Defendant argues the State presented insufficient evidence to establish that (1) Victim suffered from a mental condition that rendered her incapable of understanding the nature or consequences of Defendant's acts; and (2) Defendant knew or had reason to know of Victim's condition. We affirm.

BACKGROUND

{2} Defendant was once related to Victim by marriage. Victim's mother married Defendant's brother David when Victim was three years old. David was Victim's

stepfather and Defendant was Victim's step-uncle. The marriage ended in divorce, but Victim maintained an ongoing relationship with her step-relatives.

{3} In 2019, when Victim was twenty-three years old, she spent the night at the home of her step-grandmother, Julie. Defendant, who is Julie's son, was also there. That night, Defendant and Victim watched a movie together and afterward Victim went to bed. At some point, Defendant went into Victim's bedroom, woke her up, and engaged in a variety of sexual conduct with Victim. According to Victim, Defendant took off her clothes and touched her breasts, buttocks, and vagina; she testified that she did not like it at all. Victim also testified that Defendant put his fingers inside her vagina and it hurt, and that he also touched her with "his thingy." Victim said that during the encounter, Julie came into the bedroom and Defendant hid behind the door and was quiet.

{4} Several weeks later, Victim reported the incident to her mother, who contacted the police. The police conducted a recorded interview with Defendant at his home. Defendant initially denied having any sexual contact with Victim but later admitted to receiving oral sex from Victim that lasted for only "seconds" and that he felt "guilty" during the encounter because, in his words, Victim is "not totally well." Defendant also admitted during the interview that he was aware Victim had Down syndrome.

{5} Defendant was charged with four counts of CSP and one count of CSC. At trial, the jury heard testimony from Victim, Victim's mother, the detective that conducted the recorded interview with Defendant, Defendant's sister-in-law, and Victim's former special education teacher. The jury also watched Defendant's recorded interview with police. The jury returned a verdict finding Defendant guilty of two counts of CSP in the third degree and one count of CSC. Defendant now appeals.

DISCUSSION

{6} The State prosecuted Defendant under the theory that the evidence showed Victim to be incapable of consenting to sexual activity as a matter of law. *See Apodaca*, 2025-NMSC-015, ¶ 24 (stating that "[w]hether a person consents" to sexual contact is "the touchstone of the analysis"); *cf. State v. Stevens*, 2014-NMSC-011, ¶ 27, 323 P.3d 901 (noting that "[i]n the century and a half of New Mexico's existence as a territory and a state, the Legislature . . . has never deviated from the common law approach of criminalizing only those sex acts that are perpetrated on persons without their consent, either as a matter of fact or, in the case of . . . vulnerable victims, as a matter of law," including those with "mental disability"). In particular, the CSP and CSC charges on which Defendant was convicted required the State to prove that Defendant committed the offenses through "the use of force or coercion," which "correlate[s] to a lack of consent." *Apodaca*,

2025-NMSC-015, ¶¶ 22, 25; *see also* § 30-9-11(F) ("Criminal sexual penetration in the third degree consists of all criminal sexual penetration perpetrated through the use of force or coercion not otherwise specified in this section."); § 30-9-12(D) ("Criminal sexual contact is a misdemeanor when perpetrated with the use of force or coercion."). The Legislature has defined "force or coercion" to include "the perpetration of [CSP] or [CSC] when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless *or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act*." Section 30-9-10(A)(4) (emphasis added). Our Supreme Court has described this as an "incapacity theory," and stated that "if the predicate circumstances existed[,] the victim was not capable of consenting *as a matter of law*." *Apodaca*, 2025-NMSC-015, ¶ 26 (emphasis added). "Under such a circumstance, actual consent is irrelevant, even if the victim's conduct appeared to manifest consent." *Id.*; *see* UJI 14-904 NMRA comm. cmt. (stating that in cases involving vulnerable adults, "'force or coercion' is supplied by the inability of the victim to consent").

{7} Defendant argues that the State failed to present sufficient evidence to support two elements of its incapacity theory, specifically that (1) Victim "was suffering from a mental condition so as to be incapable of understanding the nature or consequences of what the defendant was doing"; and (2) "[t]he defendant knew or

had reason to know of the condition of [the victim]." *See* UJI 14-943 NMRA; UJI 14-904. To address the sufficiency issue, we first address Defendant's arguments concerning what it means to be "incapable of understanding the nature or consequences" of sexual conduct and what evidence is relevant to the issue. *See State v. Chavez*, 2009-NMSC-035, ¶ 10, 146 N.M. 434, 211 P.3d 891 (stating that to the extent the defendant's argument asks us to interpret the language of a statute, our review is de novo). After discussing the statutory standard, we turn to Defendant's arguments concerning the sufficiency of the evidence and conclude the evidence at trial was sufficient to allow a rational jury to find the essential facts required for a conviction beyond a reasonable doubt. *See State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829.

I. Statutory Standard and Evidence Relevant to the State's Burden

{8} This Court has observed that there are two elements wrapped up in the statutory standard of whether a victim "suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act." *See* § 30-9-10(A)(4); *State v. Leiding*, 1991-NMCA-043, ¶ 13, 112 N.M. 143, 812 P.2d 797 (discussing Section 30-9-10(A)(4)). "First is the 'mental condition'; next is the 'understanding the nature or consequences' of the act." *Leiding*, 1991-NMCA-043, ¶ 13; *see* Jasmine E. Harris, *Sexual Consent and Disability*, 93 N.Y.U. L. Rev. 480, 530 (2018) (observing that most courts apply a "two-step legal inquiry for

establishing legal incapacity to consent to sex: (1) a threshold inquiry of the existence of a cognitive impairment . . . and (2) a causal analysis regarding the effect of that impairment on the victim's ability to meet the standard set forth in the statute" (footnote omitted)).[1] Defendant does not dispute that the mental condition element was satisfied in this case by evidence that Victim was born with Down syndrome. His argument on appeal is limited to the second element: whether the evidence at trial established that Victim's mental condition rendered her "incapable of understanding the nature or consequences" of the sexual conduct at issue. We begin by considering the meaning of the "nature or consequences" of sex under the statute before turning to what evidence is relevant to the State's burden of proof to establish the same. *See* § 30-9-10(A)(4).

{9} This Court has addressed cases involving a victim's inability to consent due to a mental condition only twice in published opinions, and has never meaningfully

[1]This approach correctly avoids making any categorical determinations that adults with particular mental conditions are prohibited from lawfully consenting to sexual activity, and thus avoids any sweeping generalizations that might tend to unduly restrict an individual's sexual freedom based on the existence of a mental condition. *See State v. Hamlin*, 324 P.3d 1006, 1014-15 (Idaho Ct. App. 2014) ("[A] person deemed to lack capacity in one area of functioning will not necessarily lack capacity in other areas. Thus, not all 'vulnerable adults' . . . are incapable of validly consenting to sexual behavior."); *State v. Mosbrucker*, 2008 ND 219, ¶ 10, 758 N.W.2d 663, 666 (recognizing "the tensions between the individual's right to sexual freedom and the society's interest in protecting the individual with a mental disease or defect"); *State v. Olivio*, 589 A.2d 597, 604 (N.J. 1991) (expressing concern about "unenlightened attitudes toward mental impairment and about the importance of according the mentally handicapped their fundamental rights").

examined what it means to be incapable of understanding the nature or consequences of a sexual act. *See State v. Hueglin*, 2000-NMCA-106, ¶¶ 15-16, 21, 25, 130 N.M. 54, 16 P.3d 1113 (addressing the district court's evidentiary rulings on the propriety of expert testimony concerning the effect of Down syndrome on the victim's ability to consent, whether the victim was competent to testify, and limiting inquiry into the victim's past sexual and relationship history); *Leiding*, 1991-NMCA-043, ¶¶ 10-13 (concluding as a matter of law, under the version of Section 30-9-10(A)(4) in effect at the time, that the nature of the relationship between a therapist and patient does not alone establish incapacity to consent on the part of the patient). Other jurisdictions have considered similar statutory language, and the majority have concluded that the language has a straightforward, commonsense meaning—"that the person does not know either the physiological aspects of sex or the possible consequences of sexual activity, such as pregnancy and the contraction of sexually transmitted diseases." *State v. Mosbrucker*, 2008 ND 219, ¶¶ 11, 14, 758 N.W.2d 663, 667; *see also Jackson v. State*, 890 P.2d 587, 592 (Alaska Ct. App. 1995) ("To appreciate the nature and consequences of engaging in an act of sexual penetration, the victim must have the capacity to understand the full range of ordinary and foreseeable social, medical, and practical consequences that the act entails."); *Adkins v. Commonwealth*, 457 S.E.2d 382, 388 (Va. Ct. App. 1995) (concluding that a person is capable of giving consent if they "have the mental capacity to have a basic

understanding of the elementary and rudimentary nature and consequences of sexual intercourse," even if their "mental impairment or handicap may prevent them from comprehending the more complex aspects of the nature or consequences of sexual intercourse").

{10} Some jurisdictions go further and, "in addition to [an] understanding of the sexual act involved and its consequences, also require that the person must appreciate the moral dimensions of the decision to engage in sexual conduct although the person is free to act contrary to those societal ideas." *Mosbrucker*, 2008 ND 219, ¶¶ 11-12; *see People v. Easley*, 364 N.E.2d 1328, 1333 (N.Y. 1977) (stating that "in its determination of [the victim]'s capacity to appraise the sexual act, its significance and its consequences, the jury may very well have been required to consider the 'moral quality' of the act as it would be measured by society and to assess as well [their] ability to appreciate that fact"); *People v. McMullen*, 414 N.E.2d 214, 217 (Ill. App. Ct. 1980) (holding that a person's understanding of the physical nature of sexual activity, that intercourse could result in pregnancy and venereal disease, and "the moral reprehensibility of illicit intercourse" were all relevant to whether a person is incapable of consent); *People v. Breck*, 584 N.W.2d 602, 605 (Mich. Ct. App. 1998) (concluding that "an understanding of the physical act [and] also an appreciation of the nonphysical factors, including the moral quality of the act" are relevant to determining whether a person is incapable of consenting

to the sexual act); *see also Leiding*, 1991-NMCA-043, ¶ 39 (Bivins, J., specially concurring) ("In my view, in talking about the mental condition of the victim and [their] ability to understand, the proper inquiry should be more immediate and focus on that person's ability to make a moral judgment as to whether [they] should allow this to be done."). In *State v. Ortega-Martinez*, for example, the Supreme Court of Washington concluded that even where a person has "knowledge of the basic mechanics of sexual intercourse, [they may lack any] real understanding of either the encompassing nature of sexual intercourse or the consequences which may follow." 881 P.2d 231, 237 (Wash. 1994) (en banc). The court described a meaningful understanding of the nature or consequences of sexual intercourse to "necessarily include[] an understanding of the physical mechanics of sexual intercourse," but also "an understanding of a wide range of other particulars":

> For example, the nature and consequences of sexual intercourse often include the development of emotional intimacy between sexual partners; it may under some circumstances result in a disruption in one's established relationships; and, it is associated with the possibility of pregnancy with its accompanying decisions and consequences as well as the specter of disease and even death. While the law does not require an alleged victim to understand any or all of these particulars before a defendant can be considered insulated from liability . . . for having had sexual intercourse with a mentally incapacitated individual, all of the above are elements of a meaningful understanding of the nature and consequences of sexual intercourse and are important for a trier-of-fact to bear in mind when it is evaluating whether a person had a condition which prevented [them] from having a meaningful understanding of the nature or consequences of the act of sexual intercourse.

Id. (citation omitted).

{11} These differing approaches highlight the difficulties courts have faced in determining how to evaluate, in a consistent and predictable manner, whether an adult's mental condition prevents them from consenting as a matter of law. We appreciate the Supreme Court of Washington's concern that a person may understand the "basic mechanics" of sexual conduct but still lack any real understanding of the nature of consent or the ability to make a voluntary and informed choice as to whether to engage in such conduct. Like the North Dakota Supreme Court, however, we are concerned that an interpretation that extends beyond a victim's understanding of the physical and biological aspects of the sexual act would lead to "an amorphous construction of the statutory language," given that views of the moral aspects of sexual relations are deeply personal, and therefore subjective. *Mosbrucker*, 2008 ND 219, ¶ 15. We believe that an objective approach is required to avoid rendering the statutory standard uncertain in its application. *See Leiding*, 1991-NMCA-043, ¶ 12 ("[P]enal statutes must be of sufficient certainty that a person will know that [their] act is criminal when [they] commit[] it."). Accordingly, we adopt the majority approach, which interprets the statutory language to mean that a victim is incapable of understanding the "nature"—meaning the physical and biological aspects—of the sexual act and the "consequences" of the

act—focusing predominantly on the medical consequences such as pregnancy or disease. *See Mosbrucker*, 2008 ND 219, ¶ 11.

{12} Turning to the State's burden of proof, Defendant maintains that the State was required to provide (1) evidence to establish Victim's level of knowledge or understanding of sexual activity, or (2) expert testimony concerning "[Victim]'s specific limitations" in order to meet its burden. The statutory standard, however, is not whether Victim actually understood the nature or consequences of sexual activity, but rather, whether Victim's mental condition rendered her incapable of understanding the nature or consequences of sexual activity. *See Jackson*, 890 P.2d at 592 (stating that the statutory standard "focuses on what the victim is capable of knowing rather than on the victim's actual knowledge"). Put differently, the focus is on the victim's specific impairment and the effect it has on the victim's ability to understand the nature and consequences of sexual conduct. This must be an individualized determination and generally cannot be based solely on the victim's diagnosis.

{13} Courts consider a range of evidence relevant to the jury's evaluation of a victim's mental condition and its effect on their understanding, including the victim's functional capacity, adaptive abilities, sexual knowledge and

comprehension, and the victim's testimony and demeanor.[2] For example, in *Ortega-Martinez*, the Supreme Court of Washington reasoned that "[i]n assessing whether the State has met its burden of showing that a victim had a condition which prevented [them] from understanding the nature or consequences of sexual intercourse,"

> the jury may evaluate, in addition to that person's testimony regarding [their] understanding, other relevant evidence such as the victim's demeanor, behavior, and clarity on the stand. It may also take into consideration a victim's IQ, mental age, ability to understand fundamental, nonsexual concepts, and mental faculties generally, as well as a victim's ability to translate information acquired in one situation to a new situation.

881 P.2d at 238; *see also Sanford v. Commonwealth*, 678 S.E.2d 842, 845 (Va. Ct. App. 2009) (stating that "the confluence of IQ (or mental age) *and* adaptive skills," which include "an individual's social skills, communication skills, daily living skills, personal independence, and self sufficiency," are relevant to an individual's capacity to consent (internal quotation marks and citation omitted)); *Jackson*, 890 P.2d at 591

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[2]In her law review article, Professor Harris included a table detailing examples of evidence proffered to show incapacity to consent, consisting of five overarching categories and a number of examples. These include: (1) testing results, such as IQ scores or development/mental age assessments; (2) the receipt of welfare benefits, such as supplemental security income or governmental disability service; (3) functional capacities, such as requiring a guardian or conservator, communication impairments, inability to read or write, inability to live independently or make financial decisions; (4) aesthetics or physical appearance, such as a victim's appearance while testifying before a fact-finder or expert witness's observations of a victim's physical appearance and adaptive abilities; and (5) sexual knowledge and understanding, such as the receipt of sex education, the ability to use biologically accurate terminology to describe sex or sexual organs, or understanding the physical risks of sex like pregnancy and sexually transmitted diseases. *Harris*, *supra*, at 540.

("Sufficient evidence of incapacity may be based on the jury's assessment of the victim's testimony and demeanor."). As these cases demonstrate, a victim's actual knowledge or understanding of sex is relevant information, but it is only part of a larger array of evidence the jury may take into consideration when evaluating the effect of a victim's mental condition on their ability to understand the nature and consequences of sexual conduct.

{14} Courts have also concluded that expert testimony is not required. *See, e.g.*, *People v. Thompson*, 48 Cal. Rptr. 3d 803, 810 (Ct. App. 2006) (stating there is "a nationwide consensus" that expert testimony is not required on the issue of whether a victim was capable of giving legal consent). While expert testimony may assist the trier of fact in evaluating the effects of Down syndrome on a victim's mental capacity, "including the relationship of Down [s]yndrome to [the v]ictim's ability to understand the consequences of sexual activity and consent to sexual activity," *Hueglin*, 2000-NMCA-106, ¶¶ 12, 15-18, New Mexico has never concluded that expert testimony is required to prove a victim was incapable of consent. Instead, we agree with the Kansas Court of Appeals that, "[d]epending on the facts of the case, . . . the victim's incapacity to give consent because of [a] mental [condition] may be established without expert testimony." *State v. Wallin*, 366 P.3d 651, 655 (Kan. Ct. App. 2016 (citations omitted)); *see id.* at 657 ("Medical, psychiatric, or psychological testimony may provide valuable expert evidence tending to prove—

or disprove—the victim's incapacity to consent to sexual acts. We have never found, however, that such expert testimony is necessarily required in order to prove the victim was incapable of consent." (emphasis omitted)).

{15} With this framework in mind, we turn to our evaluation of the sufficiency of the evidence supporting Defendant's convictions.

II. Sufficiency of the Evidence

{16} "The test for sufficiency of the evidence is whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilty beyond a reasonable doubt with respect to every element essential to a conviction." *State v. Montoya*, 2015-NMSC-010, ¶ 52, 345 P.3d 1056 (internal quotation marks and citation omitted). "Substantial evidence" is defined as "such relevant evidence that a reasonable mind would find adequate to support a conclusion." *State v. Groves*, 2018-NMSC-006, ¶ 25, 410 P.3d 193 (internal quotation marks and citation omitted). As the reviewing court, we "view the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict," *State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176, and "disregard all evidence and inferences to the contrary." *Rojo*, 1999-NMSC-001, ¶ 19.

A. The State Presented Sufficient Evidence to Establish That Victim's Mental Condition Rendered Her Incapable of Understanding the Nature or Consequences of Defendant's Acts

{17} Defendant first argues that the State failed to present sufficient evidence to establish that Victim "was incapable of consenting to sexual conduct *due to her mental condition*." Based on the substantial testimony provided by a number of witnesses concerning Victim's functional capacity, adaptive abilities, sexual knowledge and understanding, and the Victim's own testimony and demeanor, we conclude the State's evidence was sufficient.

{18} The jury was able to observe Victim testify at trial and draw conclusions about her mental condition and her ability to understand sex-related concepts from her testimony, demeanor, behavior, and clarity on the stand. While testifying, Victim generally spoke slowly in child-like terms and incomplete sentences, exhibited a delay in responding to questions, provided answers that were at times unclear or unresponsive to the questions, and needed to have questions repeated. Victim was asked about what happened with Defendant on the night at issue and her responses provided the jury with evidence of her understanding of sexual conduct. Victim was able to name her vagina and breasts and circle the parts of her body that Defendant touched and the parts of Defendant's body that she touched, but she referred to Defendant's penis as "his thingy" and her vagina as her "front part" or her "gina." Similarly, Victim was unable to describe with clarity the physical and sexual acts

that occurred. She could not state what Defendant did to her buttocks or whether Defendant put his penis in her mouth. Victim's testimony reflected an extremely limited understanding of the nature and consequences of sexual intercourse.

{19} Additionally, the jury heard testimony from other witnesses regarding Victim's approximate mental age, education level, functional capabilities, and adaptive skills. For example, Victim's mother testified that Victim was born with Down syndrome, and while Victim was twenty-six years old at the time of trial, Victim's mental age was that of a four-year-old. Mother stated that although Victim graduated high school, she had a second-grade education level and had to participate in summer school because she could not read well. Mother testified that Victim lives with her, and Victim is not able to prepare meals, use the stove, or shower by herself, but Victim can microwave food, change the laundry, and dress herself. As well, Mother is the legal guardian of Victim and makes all of Victim's medical, financial, and safety decisions.

{20} Mother also provided testimony regarding Victim's limited understanding of sexual conduct. Mother explained that she taught Victim about sex and stated that she told Victim to tell her if anyone touched her in "the wrong way." Mother also testified to Victim's limited understanding of romantic relationships, specifically that Victim "calls everybody her boyfriend" and does not understand dating or what it means to have a boyfriend. Mother further explained that Victim has never had a

boyfriend, but that if Victim were to have a boyfriend there would always be a parent or chaperone present with Victim and said boyfriend. From this, the jury could have inferred that Victim had a limited understanding of the physical intimacy that sexual partners can have and that Victim's immature grasp of relationships indicates a limited understanding of the nature or consequences of sexual conduct.

{21} Taking into account all of this testimony, the jury could rationally have found that Victim's mental condition rendered her incapable of understanding the nature or consequences of Defendant's acts. *See State v. Garcia*, 2011-NMSC-003, ¶ 5, 149 N.M. 185, 246 P.3d 1057 ("New Mexico appellate courts will not invade the jury's province as fact-finder by second-guessing the jury's decision concerning the credibility of witnesses, reweighing the evidence, or substituting its judgment for that of the jury." (alterations, internal quotation marks, and citation omitted)). The jury had an opportunity to draw its own conclusions about Victim's condition based on her testimony and demeanor. In substance, Victim's account of what transpired with Defendant reflected her limited sexual knowledge. Beyond that, based on the jury's observations of Victim while she testified, as well as the testimony of Mother, the jury could have determined that Victim's functional and adaptive skills were far lower than her actual age of twenty-six, and resembled that of a young child who could not understand the consequences of sexual activity. Indulging all reasonable inferences in support of the guilty verdict, the evidence presented by the State was

enough for the jury to infer that Victim's mental condition rendered her incapable of understanding the nature or consequences of what Defendant was doing.

B. The State Presented Sufficient Evidence to Establish That Defendant Knew or Had Reason to Know of Victim's Condition

{22} Defendant also contends the State failed to establish that he knew or had reason to know of Victim's mental condition. Having already concluded that there was sufficient evidence to establish that Victim had a mental condition that rendered her incapable of understanding the nature or consequences of the acts, we focus here on evidence tending to establish Defendant's knowledge of the same.

{23} Defendant did not testify at trial, but the jury was able to observe Defendant's recorded interview with law enforcement, during which he described his perception of Victim's mental condition. In the interview, Defendant acknowledged that Victim has Down syndrome. He also admitted that "[Victim] repeats a lot of things over and over . . . and she doesn't understand a lot." Additionally, Defendant stated that, during the incident with Victim, he felt "guilty" and wanted to leave the room because "[Victim's] not totally well, she's got a lot of major problems." When asked to clarify what he meant by "not totally well," Defendant explained that Victim was "messed up."

{24} As well, Mother's testimony established that Defendant has known Victim since she was approximately three years old and lived with Victim and her family for a time. At the time of the incident at issue, Defendant was still living with his

mother (Victim's step-grandmother), whom Victim would contact each night and would spend time with during the day. From this, the jury could reasonably infer that Defendant had enough regular contact with Victim over a long period of time to be aware of Victim's mental condition and its effect on her. *See Jackson*, 890 P.2d at 593 ("Under normal circumstances a mental incapacity to consent would be apparent in ordinary social intercourse." (internal quotation marks and citation omitted)); *see also Brown v. State*, 2019 WY 102, ¶¶ 30-33, 450 P.3d 208, 215-16 (Wyo. 2019) (acknowledging that a defendant's knowledge that a victim has a mental condition "is often proved by circumstantial evidence such as the victim's physical characteristics and mannerisms outwardly indicating [their] disability," and concluding that the victim's disability was made apparent by her physical characteristics and speech).

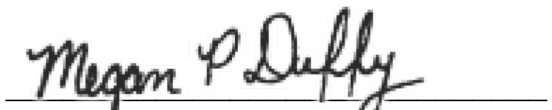
{25} Finally, during the encounter, Defendant hid behind the door of Victim's bedroom and remained there quietly when Julie came into the bedroom. Defendant's sister-in-law testified that Defendant stated to her, "I did it, I should go to jail" when later discussing what had happened that night with Victim. Defendant's conduct and admission could have allowed the jury to infer Defendant knew his actions were wrong based on his knowledge of Victim's mental condition and her inability to understand the conduct, and thus consent to it, at the time it occurred.

{26} Based on this evidence, the jury could rationally have found that Defendant knew or had reason to know of Victim's condition.

CONCLUSION

{27} For all of the above and foregoing reasons, we affirm.

{28} **IT IS SO ORDERED.**

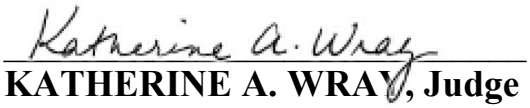


MEGAN P. DUFFY, Judge

WE CONCUR:



JANE B. YOHALEM, Judge



KATHERINE A. WRAY, Judge