In the Missouri Court of Appeals
Eastern District
DIVISION TWO

STATE OF MISSOURI,	)	No. ED107414
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of St. Charles County
vs.	)	
	)	Honorable Richard Zerr
CARLTON JAMES DICKERSON,	)	
	)	
Appellant.	)	FILED: July 21, 2020

Carlton James Dickerson ("Dickerson") appeals from the trial court's judgment following jury convictions for one count of attempted rape in the first degree and two counts of sodomy in the first degree. Dickerson raises three points on appeal challenging the sufficiency of the State's evidence. In Points One and Two, Dickerson argues there was insufficient evidence to sustain his convictions on first-degree sodomy because the State did not prove Victim was incapable of consent due to intoxication in that Victim testified she pretended to be asleep and was capable of giving consent. In Point Three, Dickerson maintains there was insufficient evidence to sustain his conviction on attempted first-degree rape because the State did not prove he committed a substantial step towards and had the purpose of having intercourse with Victim.

AFFIRMED.

DIVISION TWO HOLDS: Because the State adduced evidence that Victim was incapable of consenting to Dickerson's sexual advances due to her severely intoxicated state after drinking a large quantity of alcohol and passing out, and the jury was free to disbelieve contrary evidence that Victim was cognizant of the harmfulness of the act and capable of giving or denying consent, the jury could have reasonably found that Victim was incapable of consent due to intoxication sufficient to sustain the convictions on first-degree sodomy in Counts I and II. We deny Points One and Two. Because the State presented evidence at trial that Victim was severely intoxicated and incapable of consent when Dickerson locked her in a bedroom with him, removed her clothes, and tried to have intercourse with her, sufficient evidence supports the jury's determination that Dickerson took a substantial step to commit first-degree rape with the intent to have intercourse with Victim while she was incapable of consent so as to sustain the conviction on attempted first-degree rape in Count III. We deny Point Three. Accordingly, we affirm the judgment of the trial court.

Opinion by: Kurt S. Odenwald, Judge
Philip M. Hess, P.J., and Lisa P. Page, J., concur.

Attorney for Appellant: Dominic R. Cicerelli

Attorney for Respondent: Julia E. Rives

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