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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. HENISH HENRY LODHIA, Defendant and Appellant.	B155137 (Los Angeles County Super. Ct. No. GA044913)

APPEAL from a judgment of the Superior Court of Los Angeles County. Terry L. Smerling, Judge. Affirmed.

Ronald S. Smith for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Linda C. Johnson and James William Bilderback II, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Henish Henry Lodhia appeals from the judgment following his conviction of multiple sexual offenses against Karen K. After review, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Henish Henry Lodhia, who lived in the San Fernando Valley, and Karen K., who lived in Torrance, met in "California Flirts," an internet chat room. After communicating online, appellant e-mailed his personal 1-800 number to Karen and she called him. As they spoke on the phone, the conversation moved to their sexual histories. Appellant asked Karen the number of her past sexual partners; exaggerating, she answered three when in truth she had only one. Appellant told her most of his partners had been one-night stands. Feeling uncomfortable with their conversation's sexual tenor, Karen changed the subject. At the end of the phone call, appellant gave Karen his work number and asked her to call him the next day.

The following day, Karen called appellant, but he was out to lunch. She called again after lunch and reached him. As they talked, appellant asked, "What's up, horn dog." Karen, who equated being a "horn dog" with being "horny," denied she was a "horn dog." Appellant asked whether they could meet that evening. Karen replied she could not because she planned to see a children's play at her friend's church. Appellant asked that she call him before she left for the play. Karen agreed and called appellant later in the day. Finding herself increasingly interested in appellant as they spoke, Karen chose not to go to the play. Instead, she agreed to drive to appellant's Pasadena office to go out for the evening.

Karen arrived at appellant's work between 7:30 and 8:00 p.m. Upon seeing Karen arrive, appellant walked outside to greet her, locking the office front door behind him. He got into her car and directed her to the secure underground parking structure. They then returned to his office, ostensibly to validate her parking ticket. Once inside his office, he relocked the front door and they engaged in small talk, during which appellant

twice asked Karen what she wanted to do. Both times she said she did not care. After her second noncommittal response, appellant said, "Well, you know me; I'm having bad thoughts," by which he meant sexual thoughts. Karen told him "nothing's going to happen" and tried to divert his attention by asking about the Christmas tree in the office reception area.

Appellant walked up to Karen and squeezed her buttocks. She pushed his hands away, saying "I don't have a butt." Appellant replied "let me see" and returned his hands to her backside. He then "shoved his hand up [her] crotch." Karen told him, "I don't want to do this." He removed his hand and "shushed" her. Looking into his "angry" eyes, Karen for the first time felt scared because she believed "something bad was going to happen."

Holding Karen's forearm, appellant led her to an adjoining conference room. Once there, he pulled her pants and underwear down to mid-thigh and inserted a finger in her vagina. As he did so, Karen said "no" or "I don't want to do this." Holding her arms, appellant with a "slight shove" pushed her back to a sitting position in a chair. Afraid appellant might hurt her, Karen removed her jacket and kicked off her boots to make it easier for him to take off her pants. He pulled her legs out from under her and placed his mouth on her vagina. Grabbing the chair's armrests to try to sit up, Karen said "Oh, my God" out of disbelief at what was happening.

After a couple of seconds, appellant stood Karen up and switched places with her. With his pants already down, he "yanked" her down toward him in the chair and asked for oral sex, saying "Come on. Go down." She declined to perform oral sex, saying she had gum in her mouth. He stuck his hand out for her to spit out her gum but she refused. He then took her hand and placed it on his penis, but she pulled back saying "I don't want to do this."

Appellant stood up and turned Karen toward a table next to the chair. He pushed her against the table, leaned her back, and pulled her legs out, making her lie back. Karen repeated "I don't want to do this." He inserted his penis inside her vagina. Karen pulled herself up onto her elbows and asked whether he had a condom. As she did so, his

penis slipped out from her. He said he did not, but that "he could control it." He then reinserted himself, asking whether she "liked it." She replied, "No, you're hurting me" and in response he slowed down. Asking where she wanted him to ejaculate, she said not inside her. He asked whether he should ejaculate on her stomach. She said yes and he did so when he climaxed.

Upon finishing, appellant pulled his pants up and left the room to get Karen a napkin to clean herself. After giving her a napkin, he again left the room for a couple of minutes. Wanting to leave, Karen quickly dressed. She then sat down in a chair and started shaking "because [she] couldn't believe what had happened." She waited for appellant to return so she could ask him why he had done what he did. When he came back to the room, she covered her face because she felt she was about to cry. He asked whether she was ashamed of what she did. She answered she felt ashamed because "I should have never went there." Saying "I want to go home," she moved toward leaving the room. Appellant said he wanted to take her out for the evening, but she instead excused herself to go to the bathroom.

In the bathroom, Karen noticed her vagina was bleeding. When she rejoined appellant, she told him he had made her bleed. He replied it must have been his finger. She asked him why he had done what he did, to which he said "because I was horny." He then asked whether she wanted to have sex again. Knowing he had no condom, she said only if he had a condom, hoping he would leave to retrieve one thus permitting her to leave, too. Appellant dropped his suggestion and instead validated her parking ticket before they returned to their cars. As they left the office, Karen surreptitiously took appellant's business card because she did not know his last name. They went to the parking garage and appellant called a security supervisor to let them out. They drove out of the parking structure and went their separate ways.

That evening and the following day, Karen recounted the night's events for several friends and acquaintances, one of whom was a police detective. Learning from them that she had been date-raped, she decided to report the incident to the police.

The next day, Pasadena police officers went to appellant's office. He agreed to go with them for questioning at the station house. During his interview, he admitted he had date-raped Karen. At the suggestion of police, he wrote two letters, one to Karen and the second "To Whom It May Concern," to express his remorse. Karen's letter stated, "This statement is given freely and voluntarily by Henish Lodhia. [¶] To Karen: What happen the night of December 14 at my office is why I'm writing you this letter. I'm very sorry if was forceful and did something you didn't want to. [¶] I'm sorry I had sex with you after you said no. I truly want to be your friend and I'm sorry from the bottom of my heart." The second letter stated, "This statement is given freely and voluntarily by Henish Lodhia. [¶] To Whom It May Concern: I'm writing you this letter because what happened on the night of December 14, 2000, I am truly sorry for. I am a man who will admit what I did was wrong and should have walked away. My life may change because of this, but at least I'm wording up and saying I had sex after I was told no. [¶] Thank you and I hope you can forgive me." After appellant wrote his letters, the police arrested him.

The People charged appellant with sexual penetration by a foreign object (Pen. Code, § 289, subd. (a)(1)),[1] forcible oral copulation (§ 288a, subd. (c)(2)), and forcible rape (§ 261, subd. (a)(2)). He pleaded not guilty. His first trial ended in a mistrial after the jury twice declared itself hopelessly deadlocked. Upon retrial, a second jury convicted appellant as charged. The court sentenced him to three years in state prison. This appeal followed.

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[1] All further undesignated section references are to the Penal Code.

DISCUSSION

Failure to "Mirandize" Appellant[2]

The day after Karen told police she had been raped, uniformed Pasadena police officers went to appellant's office to investigate. When appellant arrived for work, officer James Martin told him he was not in custody or under arrest, but Martin needed to question him about Karen's accusations. Officer Martin told appellant they could talk at appellant's work or at the police station, and appellant chose the station. To emphasize he was not in custody, Martin agreed to let appellant drive himself there.

Upon arriving at the station, officer Martin told appellant he remained free to leave, a point he repeated several times that morning. They went to the interview room in the basement, a windowless 10-foot-by-10-foot room next to the station's holding cell. Martin again reminded appellant he was free to leave. Martin was lying to appellant, however, because by this point, if not sooner, Martin believed he had probable cause to arrest appellant and did not intend to let him go.

Officer Martin questioned appellant for 60 to 90 minutes. As appellant described his encounter with Karen, Martin repeatedly contradicted him with Karen's different description of events until appellant adopted her version. During the questioning, appellant wrote two letters, which we have already quoted in full. At the end of the interview, Martin arrested appellant. At no point before arresting him, did Martin "Mirandize" appellant. (*Miranda v. Arizona* (1966) 384 U.S. 436, 444.)

Appellant moved to exclude his pre-arrest statements and letters. He argued he had been in custody during the interview and therefore officer Martin had been obligated

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[2] The facts we recite in this portion of our opinion come from the hearing on appellant's motion to suppress his pre-arrest statements to police, instead of the trial itself. (*People v. Fiscalini* (1991) 228 Cal.App.3d 1639, 1644, fn. 5 [review of motion to suppress looks to facts introduced at the hearing on the motion].) In reviewing the motion, we view those facts in the light most favorable to the trial court's ruling and defer to those express or implied findings of fact supported by substantial evidence. (*People v. Jenkins* (2000) 22 Cal.4th 900, 969.) We independently review, however, the trial court's application of the law to those facts. (*Ibid*.; *People v. Stansbury* (1995) 9 Cal.4th 824, 831.)

to advise him of his *Miranda* rights. Because officer Martin did not so advise him, appellant contends his statements to Martin, and in particular his two letters, were inadmissible. The court denied the motion to suppress. The court ruled correctly.

Police must advise a person of his *Miranda* rights when they take the person into custody. Interviews in a police station, however, are not necessarily custodial. (*Oregon v. Mathiason* (1977) 429 U.S. 492, 495; *People v. Stansbury, supra,* 9 Cal.4th at p. 833.) An objective test determines whether someone is in custody: Would a reasonable person think he was free to leave? (*Stansbury v. California* (1994) 511 U.S. 318, 323; *Berkemer v. McCarty* (1984) 468 U.S. 420, 442.) In determining what a reasonable person would think, one must consider all the circumstances. (*People v. Aguilera* (1996) 51 Cal.App.4th 1151, 1162.)

Here, officer Martin did not physically restrain appellant by, for example, placing him in handcuffs. To the contrary, he permitted appellant to drive himself to the station. Moreover, he repeatedly told appellant he was not under arrest and could leave at any time. A reasonable person would take such assurances at face value because nothing indicated officer Martin did not mean what he said. A reasonable person would thus believe he was free to leave. (See *People v. Stansbury, supra,* 9 Cal.4th at pp. 831-832 ["A reasonable person who is asked if he or she would come to the police station to answer questions, and who is offered the choice of finding his or her own transportation or accepting a ride from the police, would not feel that he or she had been taken into custody."]; *United States v. Hayden* (9th Cir. 2001) 260 F.3d 1062, 1066-1067 [person not in custody when "she was told explicitly that she was free to leave at anytime and would not be arrested on that occasion"].)

The result does not change merely because officer Martin lied to appellant. Indeed, Martin believed he had probable cause to arrest appellant virtually from his first contact with him at his office. Moreover, appellant was Martin's only suspect for Karen's rape, he subjected appellant to hostile questioning, and decided during the interview that he would arrest him when the interview ended. (Compare *United States v. Wauneka* (9th Cir. 1985) 770 F.2d 1434, 1439 [defendant in custody when subjected to

repeated sessions of hostile questions and had no means of leaving] with *Oregon v. Mathiason, supra,* 429 U.S. at p. 495 [prior identification of person as suspect and interview taking place in police station not enough to create custody].) Nevertheless, what matters is what a reasonable person in appellant's position would believe, not officer Martin's unexpressed intentions. As our Supreme Court explained in another case where police misled a defendant about his ability to leave, "The officers expressly told defendant he was not in custody and was free to leave at any time. Defendant argues that the officers suspected he had murdered [the victim] and had committed some of the other crimes. To the extent they did, their suspicions, undisclosed to defendant, do not establish custody. '[T]he initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned.' [Citation.] 'It is well settled, then, that a police officer's subjective view that the individual under questioning is a suspect, if undisclosed, does not bear upon the question whether the individual is in custody for purposes of Miranda.' " (*People v. Carpenter* (1997) 15 Cal.4th 312, 384; *Berkemer v. McCarty, supra,* 468 U.S. at pp. 441-442 [same].) Hence, officer Martin's well-concealed lies were irrelevant. (*Stansbury v. California, supra,* 9 Cal.4th at p. 830 ["uncommunicated subjective impressions of the police regarding defendant's custodial status [are] irrelevant"].) Accordingly, Martin was not obligated to advise appellant of his *Miranda* rights, and the court did not err in denying appellant's motion to suppress.

Circumstantial Evidence Instruction

Appellant argues penetration by a foreign object requires the specific intent of either sexual arousal, gratification, or abuse. He asserts the only evidence of his intent in inserting his finger in Karen's vagina was circumstantial. Thus, according to him, the court was obligated to instruct the jury with CALJIC No. 2.02. That instruction informs the jury that if circumstantial evidence reasonably pointed both to a defendant having the needed specific intent and not having any such intent, the jury is required to find he lacked the intent; it could use circumstantial evidence to find specific intent only if the

sole reasonable inference from the circumstantial evidence pointed that way.[3] Because, as appellant reads the record, the court did not instruct with CALJIC No. 2.02, he concludes reversal is required.

Appellant's contention misapprehends the record. He bases his claim that the court did not instruct the jury with CALJIC No. 2.02 on the court's apparent oversight in not reading the instruction while orally instructing the jury. We note, however, that the packet of written jury instructions prepared for the jury did include CALJIC No. 2.02. Furthermore, the court told the jury it would receive in the jury room written instructions of all the oral instructions it heard in the courtroom. Finally, the court initialed CALJIC No. 2.02 as having gone to the jury, and the cover sheet for the collected instructions states it contains 47 pages, which is the correct number of pages when one includes CALJIC No. 2.02. Based on all the foregoing, we find the jury received CALJIC No. 2.02 in writing, and there is nothing in the record to indicate otherwise. And because written instructions control when a discrepancy exists between oral and written instructions, we hold the jury was instructed with CALJIC No. 2.02 despite the court's not having read it to them. (See *People v. Majors* (1998) 18 Cal.4th 385, 409-410 [when discrepancy exists between incorrect oral and correct written instruction, jury presumed to follow written instruction and thus no error]; *People v. Garceau* (1993) 6 Cal.4th 140, 189-190 [no error where court omitted portion of instruction in oral reading but provided complete instruction in written form].)

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[3] As amended, CALJIC No. 2.02 states: "The specific intent with which an act is done may be shown by the circumstances surrounding the commission of the act. However, you may not find the defendant guilty of [sexual penetration by a foreign object] unless the proved circumstances are not only (1) consistent with the theory that the defendant had the required specific intent but (2) cannot be reconciled with any other rational conclusion. [¶] Also, if the evidence as to specific intent permits two reasonable interpretations, one of which points to the existence of the specific intent and the other to its absence, you must adopt that interpretation which points to its absence. If, on the other hand, one interpretation of the evidence as to the specific intent appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable."

In any event, even if the court did not instruct the jury with CALJIC No. 2.02 in any shape or form, it instructed the jury both orally and in writing with CALJIC No. 2.01, which similarly instructed the jury on the proper use of circumstantial evidence. It states: "[A] finding of guilt as to any crime may not be based on circumstantial evidence unless the proved circumstances are not only (1) consistent with the theory that the defendant is guilty of the crime, but (2) cannot be reconciled with any other rational conclusion. [¶] Further, each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt must be proved beyond a reasonable doubt. In other words, before an inference essential to establish guilt may be found to have been proved beyond a reasonable doubt, each fact or circumstance upon which the inference necessarily rests must be proved beyond a reasonable doubt. [¶] Also, if the circumstantial evidence permits two reasonable interpretations, one of which points to the defendant's guilt and the other to his innocence, you must adopt that interpretation that points to the defendant's innocence, and reject that interpretation which points to his guilt. [¶] If, on the other hand, one interpretation of this evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable."

Appellant contends CALJIC No. 2.01 is not good enough because the jury would not have applied its general terms regarding all elements of all charges to the specific intent element of penetration by a foreign object. According to appellant, the jury would have applied 2.01 only to the broad issue of whether he did any of the acts of which he was accused, not whether he had a specific intent.

Appellant's contention is unavailing because nothing in CALJIC No. 2.01 suggests it does not apply to his specific intent. In its breadth it applies to all the charges and all the evidence. Its language does not imply that the jury should parse its meaning, selectively applying its provisions to some elements of various offense but not others. (Compare *People v. Salas* (1976) 58 Cal.App.3d 460, 474-475 [singling out one element by implication excludes another element, making it error to give pinpoint instruction highlighting limitation of circumstantial evidence as to one element while omitting

similar pinpoint instruction as to another element].) Accordingly, even if the jury were somehow ignorant of CALJIC No. 2.02, CALJIC No. 2.01 properly instructed it on the use of circumstantial evidence, making the court's (asserted) mistake in not giving the jury CALJIC 2.02 harmless beyond a reasonable doubt.[4]

Sexual Battery Instruction

Based on appellant's insertion of his finger in Karen's vagina, the court instructed the jury on penetration with a foreign object. (§ 289, subd. (a)(1).)[5] Appellant asked the court to also instruct the jury on sexual battery as a lesser included offense of penetration. (§ 243.4, subd. (a).)[6] Appellant argued it was a lesser included offense because one

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[4] We have accepted solely for purposes of review appellant's assertion that the only evidence of his specific intent was circumstantial, but in doing so he asks us to ignore the direct evidence of his intent. For example, appellant testified that when he inserted his finger in Karen's vagina he found she was "moist," from which he concluded she was sexually excited. Finding her in this state, he continued with his sexual designs. There is no way to interpret his insertion of his finger as anything but a prelude to the sexual contact that ensued, which plainly was for sexual arousal or gratification; he was most decidedly not, for example, a doctor performing a medical exam. This evidence is direct, not circumstantial.

Because most of the evidence of appellant's *specific intent* was not circumstantial, the court's use of CALJIC 2.02 was incorrect, albeit in a fashion that favored appellant by arguably increasing the People's burden in proving his specific intent. We observe, however, CALJIC No. 2.02 expressly applies both to specific intent and other mental states. Here, the court should have instructed the jury with CALJIC 2.02 modified to cover appellant's mental state; for other than his confessions, much of the evidence involving his relevant mental state, i.e., his belief in whether Karen consented to having sex, was circumstantial. Because appellant did not, however, request a modified version of CALJIC 2.02, the issue is not preserved for appeal.

[5] Section 289, subdivision (a)(1) states in part, "Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person" is guilty of a felony.

[6] Section 243.4, subdivision (a) states in part, "Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the

cannot penetrate another's genitals with a foreign object without also committing a sexual battery, which involves physical contact with the victim's skin.[7]

The court refused to so instruct the jury. It reasoned there was no dispute about appellant's physical acts with Karen; the dispute was whether he acted with her consent. Appellant's offense was therefore all-or-nothing; he either inserted his finger without Karen's consent, in which case it was nothing less than penetration by a foreign object, or he did so with her consent, in which case it was no crime at all.

The court ruled correctly. A lesser included offense instruction is proper only if substantial evidence could support finding appellant guilty of no more than that lesser offense. (*People v. Williams* (1997) 16 Cal.4th 153, 227.) Here, appellant admitted inserting his finger into Karen's vagina, his defense being he believed it was consensual. He did not claim he merely touched her vulva without inserting his finger, which arguably would have been only a sexual battery. Thus, no substantial evidence supported an instruction on sexual battery as a lesser included offense.

Definition of "Force"

The People charged appellant with forcible rape (§ 261, subd. (a)(2)), forcible oral copulation (§ 288a, subd.(c)(2)), and penetration with a foreign object (§ 289, subd. (a)(1)). The court instructed the jury that each of those offenses may be accomplished "by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury." The court additionally defined the terms "menace," "duress," and "fear of immediate and unlawful bodily injury," telling the jury that an objective test applied in

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purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. . . ." The statute further defines "touches" as "physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim." (§ 243.4, subd. (e)(2).)

[7] In support of his contention, appellant cites *People v. Vu* (2002) 98 Cal.App.4th 1360, which held sexual battery is a lesser included offense of penetration by a foreign object, but our Supreme Court has since ordered that decision's depublication. It thus cannot be cited as authority.

particular to "duress" and "fear of immediate and unlawful bodily injury." The court did not, however, further define "force."

Appellant contends the court erred because it should have told the jury that an objective definition applied to "force," namely that force which would cause a reasonable person to acquiesce. Otherwise, appellant argues, the jury could have convicted him for *any* use of force, even that which would not overcome a reasonable person's resistance. (Accord *People v. Mom* (2000) 80 Cal.App.4th 1217, 1225 ["Force [for forcible rape] is that level of force substantially different from or substantially greater than that necessary to accomplish the rape itself."]; *People v. Elam* (2001) 91 Cal.App.4th 298, 306 ["The force necessary in sexual offense cases is 'physical force substantially different from or substantially in excess of that required' for the commission of the sexual act."].)

We see no error. A trial court must sua sponte instruct the jury on the general legal principles necessary for the jury to understand the case. (*People v. Cummings* (1993) 4 Cal.4th 1233, 1311.) The court need not, however, define common words that do not have a peculiar legal meaning different from their everyday sense. (*People v. Estrada* (1995) 11 Cal.4th 568, 574.) Appellate decisions have split on whether "force" has a special legal meaning. Almost two decades ago, *People v. Pitmon* (1985) 170 Cal.App.3d 38, held "force" had a special meaning in the law because it was force greater than that needed to accomplish the act itself. (*Id*. at p. 52.) More recently, however, *People v. Elam, supra,* 91 Cal.App.4th 298, held no special meaning applied. It stated, "One nonlegal meaning of force is 'to press, drive, attain to, or effect as indicated against resistance . . . by some positive compelling force or action.' [Citation.] Another is 'to achieve or win by strength in struggle or violence.' [Citation.] These definitions do not differ in any significant degree from the legal definition. It thus is doubtful whether the court ever has a sua sponte duty to define 'force' in a sexual offense case containing the element that it be accomplished against the will of the victim." (*Id*. at p. 306.) It appears resolution of this split must await our Supreme Courts' decision in *People v. Griffin* (No. S109734, Oct. 23, 2002), which is currently pending before that court. In the meantime, we adopt *Elam*'s holding of no special meaning for the word "force" as the more current

and correct statement of the law. (Accord *People v. Anderson* (1966) 64 Cal.2d 633, 639-640 ["force" does not have peculiar meaning for robbery].) Hence, the court had no sua sponte obligation to further define "force" for the jury.

Sufficiency of the Evidence

Appellant's awareness of Karen's lack of consent was an element of each of his offenses. Appellant contends no rational trier of fact could have found beyond a reasonable doubt that he knew Karen did not consent to their sexual contact. (Cf. *People v. Mayberry* (1975) 15 Cal.3d 143, 153-158 [not rape if defendant reasonably believes victim consented to intercourse].) He thus argues insufficient evidence supported his convictions.

We review the evidence in the light most favorable to the judgment. (*People v. Lee* (1999) 20 Cal.4th 47, 58.) Much of the evidence was indeed open to interpretation. For example, Karen admitted appellant never threatened or hurt her, yet she removed her jacket on her own and unzipped and removed her boots to make it easier for him to remove her pants. Also, when he performed oral sex on her, she said "Oh, my God," an utterance as commonly associated with pleasure as with, as she claimed, unpleasant shock at what was happening to her.

Ambiguity in the evidence nevertheless does not require reversal on appeal if a rational jury was convinced beyond a reasonable doubt of defendant's guilt. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053-1054.) Although appellant's and Karen's description of their physical acts largely coincided, their testimony about their individual states of mind—and what they perceived the other was intending—differed significantly. The trial thus appears to have turned on the competing credibility of appellant and Karen. We cannot judge credibility here, but must instead presume the jury found Karen the more credible of the two. In that regard, we discern several pieces of evidence that in all likelihood tipped the case against appellant. First, by appellant's own account, Karen repeatedly said she "did not want to be doing this" at each of various stages of sexual contact. In addition, his two letters revealed a guilty conscience. In them, he

acknowledged she said no, that what he did was wrong, and that he was sorry. Such evidence permitted a rational trier of fact to conclude appellant knew that Karen did not consent to his acts. Accordingly, sufficient evidence supported the convictions.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

RUBIN, J.

We concur:

COOPER, P.J.

BOLAND, J.