

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**THE PEOPLE,**  
**Plaintiff and Respondent,**  
  
**VINCENT TURNER,**  
**Defendant and Appellant.**

**A129225**  
  
**(Alameda County**  
**Super. Ct. No. C162120)**

Vincent Turner appeals from a judgment of conviction and sentence imposed after a jury found him guilty of multiple sex offenses. He contends there was insufficient evidence to support convictions for forcible rape and forcible oral copulation. In particular, he urges that the evidence was insufficient to show that the sex he had with his victims – whom he had kidnapped and was holding for ransom – was against their will. We will affirm the judgment.

I. FACTS AND PROCEDURAL HISTORY

An amended information charged Vincent Turner (Turner) with eight offenses. Counts 1-3 pertained to victim Jane Doe 2: kidnapping to extract financial gain (Pen. Code, § 209, subd. (a)); forcible rape (§ 261, subd. (a)(2)); and forcible oral copulation (§ 288a, subd. (c)(2)).<sup>1</sup> Counts 4-8 pertained to victim Jane Doe 1: pandering by procuring a minor (§ 266i, subd. (a)(1)); human trafficking of a minor (§ 236.1, subd. (c)); kidnapping to extract financial gain (§ 209, subd. (a)); forcible rape (§ 261,

---

<sup>1</sup> All statutory references herein are to the Penal Code.

subd. (a)(2)); and attempted kidnapping to extract financial gain on a second occasion (§ 209, subd. (a)).

As to the count 2 and count 7 rape charges, as well as the count 3 oral copulation charge, it was alleged that the kidnapping substantially increased the risk of harm to the victim, there were multiple victims, and there were multiple victims on separate occasions. (§§ 667.61, subds. (d)(2), (e)(5), 667.6, subd. (d)). Also as to the count 2 rape charge, it was alleged that there were multiple offenses to a single victim. (§ 667.6, subd. (c).) Other enhancement allegations are not directly germane to this appeal: in connection with the count 6 kidnapping charge, it was alleged that Turner caused bodily harm and exposed his victim to a likelihood of death (§ 209, subd. (a)); as to the count 8 attempted kidnapping, it was asserted that Doe 1 suffered bodily harm and exposure to death; and it was further alleged that Turner had three felony convictions and two prior prison terms for purposes of section 667.5, subdivision (b).

The matter proceeded to a jury trial.

#### *A. Prosecution Case*

Sixteen-year-old Doe 1 and seventeen-year old Doe 2 testified that Turner, a pimp, had kidnapped and raped them.

##### *1. Turner's Abduction and Rape of Jane Doe 2*

At 10:00 p.m. on April 7, 2009, Doe 2 was working International Boulevard as a prostitute, without a pimp. She was approached by a woman she did not know (Maria), who said a man in a car nearby wanted to pay her for sex. At trial, Doe 2 identified the man as Turner.

Doe 2 got into Turner's car. Maria got in as well, while Turner claimed that he wanted Maria to join them and give him oral sex. Turner then drove toward the freeway, telling Doe 2: "You messed up. Do I look like a person that would trick off his money?" – meaning that he was a pimp. Doe 2 became frightened.

Doe 2 pleaded with Turner to let her go. Turner refused and demanded \$2,500 (or "25-something") in ransom. He said he wanted to make her his "girl." She wanted to leave, but he said he would hurt her if she tried to get away.

Turner drove Doe 2 and Maria to his apartment in Stockton. He warned Doe 2 that she “bet’ not run” and instructed Maria to watch her.

At one point, Maria went into another room while Turner took Doe 2 into his bedroom. Turner said he wanted Doe 2 to “run all his other [girls].” Doe2 replied that she had a boyfriend and was uncomfortable being there, but she would “do anything just for [Turner] to let [her] go and take [her] back to where [she] was.”

Turner refused to let Doe 2 go unless her boyfriend or other friends paid him the \$2,500 ransom. If they did not come up with the money, he would make Doe 2 his girlfriend, or he would let all his “partners” “[r]un a train” on her (meaning he would let them have sex with her), or she would “die.” He told her he was crazy and that he shot someone in the face on the highway. He was trying to scare her, Doe 2 determined, and she was indeed afraid.

Turner allowed Doe 2 to call her friends to try to raise the money. At some point, Turner offered to lower the ransom amount to \$1,000 if Doe 2 had sex with him. Doe 2 testified: “I didn’t want to do it, but if this was going to get me away from him, I didn’t really have no choice.”

Because she “wanted to get away,” Doe 2 had sexual intercourse with Turner that night. He also kissed her all over her body and orally copulated her. Doe 2 thought, “Maybe he’ll let me go after I complete his needs.”<sup>2</sup>

After Turner had intercourse with Doe 2, she moved from the bed to the floor to sleep. She testified: “This is the guy that’s holding me hostage. This is the guy that is forcing me to basically do something that I don’t want to do, so why do I want to lay by somebody that’s doing all these things?”

The next day, Turner threatened Doe 2 that if she made any moves, he would hurt her. On this or another occasion, Turner threatened “that if [she] tried to make a move—

---

<sup>2</sup> Doe 2 noticed that Turner had “M.O.B.” tattooed on his chest. At trial, Officer Joshi testified that M.O.B. means “money over bitches,” a phrase often used “between pimps to basically pledge their allegiance to the game of pimping and to remind themselves and each other that the money is always more important than any emotional feelings or connection that you get with the females.”

he had something by the door, and if [she] tried to make a move, he'll hit [her] in the face with that.”

Turner later drove Doe 2 (and Maria) to 48th and International Boulevard in Oakland to get the ransom money from Doe 2's friends, or to pick up one of those friends, Arlene. When they got there, Doe 2 saw her boyfriend, Arlene, and other friends including Doe 1 (whom she referred to as Coko) near a taco truck.

When Turner stopped the car, Doe 2 jumped out, ran toward her boyfriend, and hid inside the taco truck with Coko. Doe 2 did not see Arlene and assumed she got into Turner's car. Turner yelled for Doe 2 to come out or he would “light this whole place up,” meaning he would “shoot up” the parking lot.

After about 10 minutes, Doe 2 and Coko ran out of the taco truck and toward a doughnut shop. Doe 2 saw police officers and, although afraid of the consequences of “snitchin’,” approached them. Nervous and scared, Doe 2 reported that Turner had raped her.

Officers Ernst and Bowling drove Doe 2 to Highland Hospital for a SART (sexual assault response team) examination. Around 1:00 a.m. on April 9, Doe 2 told a physician assistant and sexual assault examiner, Dana Kelly, that Turner had raped her, rubbed the external part of her vagina, and orally contacted her genitals. Doe 2 reported that he licked, kissed, bit and sucked various parts of her body. She also complained of vaginal bleeding.

Kelly examined Doe 2 and found blood at the opening of the vagina, scatter lesions on the cervix, and fresh blood coming from the lesions. There was swelling and redness around the opening of the vagina and the inner lips of the vagina. Kelly determined that the source of the vaginal bleeding was assault, consistent with the history given by Doe 2.

## *2. Turner's Abduction and Rape of Jane Doe 1*

In April 2009, Jane Doe 1 was using the alias Coko (or Cocoa) and worked for a pimp as a prostitute in the area of International Boulevard.

Doe 1 heard that Turner had kidnapped her friend, Doe 2. She understood that Turner wanted ransom money. Doe 1 and friends Arlene, A-1, Britton, and J formulated a plan to tell Turner they had the money and would meet him at 48th and International Boulevard; they did not really have the money, but one of them had a gun and they believed they might be able to get her back.

Turner pulled up in his car, and Doe 1 saw Doe 2 and another woman she did not recognize (Maria) were inside. When Turner stopped his car, Doe 2 jumped out and ran with Doe 1 to a taco truck, where they hid. After about 10 minutes, they left the taco truck and ran down the street. They heard that Arlene had gotten into Turner's car.

The next day, Doe 1 had purchased a soft drink from the taco truck when she noticed Turner in his car nearby. Also in the car were Arlene, Maria, and another girl (Angel).

Turner approached Doe 1, touched her shoulder and warned, "We're going to do this the easy way or the hard way." Doe 1 became frightened and ran toward a liquor store for help, leaving her drink behind. Turner threw the soft drink bottle at Doe 1, hitting her in the back.

Doe 1 ran into the liquor store, hid behind the cash register, and begged the clerk to call the police. She was "really scared." The clerk, however, was a friend of Turner and claimed his "phone didn't work."

Turner grabbed Doe 1's arm, pulled her out from behind the counter, and walked her out of the store and put her into his car with Arlene, Angel, and Maria. Turner warned Doe 1 not to call the police and told her that Angel had a gun. He further warned Doe 1 not to try anything, because he knew people all around the "dubs" and she would not get far. (The "dubs" refers to the area between 20th and 29th Avenue around International Boulevard in Oakland.) Doe 1 was shaking with fear.

Later that day, Turner drove Doe 1, Maria, Angel, and Arlene to various locations in Oakland and then dropped Angel off. Doe 1 was still scared.

Turner told Arlene to call her family to raise the ransom money for her release. He also instructed Doe 1 to call her family to deliver a \$1,000 ransom. Doe 1 believed she “was being kept” and could not leave.

Turner returned to Stockton with Doe 1, Maria, and Arlene. Back at Turner’s apartment, Doe 1 told Turner that she wanted to leave. Turner refused, claiming that he wanted her to help get Doe 2 back. Later Turner repeated that he would release Doe 1 if her friends paid “like a thousand dollars.” Turner handed Doe 1 a phone to call her mother, but her little brother answered. Doe 1 hung up after about 5 minutes because her brother “just don’t even know what’s going on.”

Arlene advised Doe 1 to “play it off cool” and gain Turner’s trust so he might let her go; Doe 1 decided to follow her advice.

That evening, Doe 1, Arlene, Maria and Turner were in Turner’s bedroom. Arlene and Maria left the room, leaving Turner and Doe 1 alone. Doe 1 was not “scared” at that point, but she was “looking lost.” Turner told Doe 1 that she was there with him to stay, and Doe 1 did not think she could leave.

Turner told Doe 1 she had smooth skin, touched her legs and arms, and directed her to change into pajamas. Doe 1 changed in the bathroom.

When Doe 1 returned, Turner told her that she was “going to sleep in the room with him tonight.” He grabbed her hand and her “clothes started coming off.” She did not know what to do. Turner took off her pajama pants, and she removed her shirt, because “if this was going to go on he would trust [her].” Doe 1 told Turner she was uncomfortable, but he continued. Turner took off his shirt revealing his “M.O.B.” tattoo. Turner had sexual intercourse with Doe 1.

The next day, Turner drove Doe 1, Arlene, and Maria to his mother’s house in Stockton. Doe 1 told Turner’s mother, “I [want] to go home” and cried.

Eventually, Doe 1 tricked Turner into letting her call J, telling him that J could be a new girl for him, when really Doe 1 wanted J to help her escape. J agreed with Doe 1 that she would come out and get her. Doe 1 told Turner that J wanted to be picked up in Oakland.

Turner drove Doe 1 and Maria back to Oakland, let Arlene go, picked up J, and brought Doe 1, J, and Maria back to his apartment. At one point, Doe 1 saw Turner slap Maria across her face.

Early the next day, Turner drove Doe 1, J, and Maria back to 46th and International Boulevard in Oakland to work as prostitutes while he watched over them. Doe 1 asked a potential customer to use his phone, but he refused.

Later, Turner drove Doe 1, J, Maria, and a new girl he picked up to visit several of his friends in Oakland and then drove the girls back to his apartment in Stockton.

The following day, Turner drove Doe 1, J, Maria, and two other girls to his mother's house for Easter dinner. After they ate, Turner took Doe 1, J, and Maria to Oakland, where Maria sold drugs "all night."

After sunrise, Turner took Doe 1, Maria, and J to a motel room on International Boulevard. When Turner went to pay a phone bill, Doe 1 and J walked away to 46th and International Boulevard, where they saw their friend Paul and two companions. Turner pulled up in his car and got out. Paul confronted Turner, and Turner left.

A day or two later, Doe 1 and J spotted Turner on 17th and International Boulevard in Oakland. Turner got out of his car, yelled something like, "Bitch I'm going to get you," and chased Doe 1 with a pit bull. Doe 1 ran to a motel and hid in the bushes, while another man, driving Turner's car, tried to run her down. Doe 1 called a friend to pick her up. Doe 1 testified that she did not call the police because: "I have to live in Oakland, and don't nobody else have to stay in Oakland and go through the things I have to go through, I don't want to involve the police in anything and put myself into danger."

#### *B. Defense Case*

The only witness to testify on behalf of the defense was Turner's mother, Tamara Beamon. Beamon testified that she saw Doe 1 and other girls at Easter dinner, and they did not seem to be in distress; they appeared to be happy, laughing, and talking.

### C. *Verdict and Judgment*

The jury found Turner guilty of: two counts of kidnapping to exact financial gain (counts 1 and 6); forcible rape of Doe 2 and Doe 1 (counts 2 and 7); forcible oral copulation of Doe 2 (count 3); pandering by procuring Doe 1, a minor (count 4); and human trafficking of Doe 1, a minor (count 5). As relevant here, the jury found true the kidnapping and multiple victim allegations associated with the count 2 rape, the multiple victim allegations as to the count 7 rape, and the kidnapping allegation related to the count 3 oral copulation. The jury found Turner not guilty of attempted kidnapping to exact financial gain (count 8).

The court struck the three prior conviction allegations for sentencing purposes. Turner was then sentenced to 48 years to life with the possibility of parole.

This appeal followed.

## II. DISCUSSION

Turner contends: (1) there was insufficient evidence that he forcibly raped Doe 1 and Doe 2; and (2) there was insufficient evidence that he orally copulated Doe 2.

### A. *Forcible Rape Convictions (Counts 2 and 7)*

Turner argues that the evidence was insufficient to convict him of the forcible rape of Doe 2 (count 2) and Doe 1 (count 7). He insists that his convictions for forcible rape, as well as the associated kidnapping and multiple victims enhancements, must therefore be reversed. We disagree.

#### 1. *Law*

We review the whole record in the light most favorable to the judgment, and presume in support of the judgment the existence of every fact the jury could reasonably deduce from the evidence. (*People v. Johnson* (1980) 26 Cal.3d 557, 576-577; see also *Jackson v. Virginia* (1979) 443 U.S. 307, 317-320.) In essence, the question is whether any rational trier of fact could find Turner guilty of the charge beyond a reasonable doubt. (*People v. Barnes* (1986) 42 Cal.3d 284, 303.)

The crime of forcible rape is defined in section 261, subdivision (a)(2) as “an act of sexual intercourse accomplished with a person not the spouse of the perpetrator,” “[w]here it is accomplished against a person’s will by means of force, violence, *duress*, menace, or *fear of immediate and unlawful bodily injury on the person or another.*” (Italics added.)

The “gravamen of the crime of forcible rape is a sexual penetration *accomplished against the victim’s will*” and without her consent. (*People v. Griffin* (2004) 33 Cal.4th 1015, 1027 (*Griffin*), emphasis in original.) Thus, whether the defendant used physical force to prevent the victim’s resistance or to facilitate sexual penetration is not the issue; the issue is “simply whether defendant used force to accomplish intercourse with [the victim] against her will, not whether the force he used overcame [her] physical strength or ability to resist him.” (*Id.* at pp. 1027-1028.) The court looks “to the circumstances of the case, including the presence of verbal or nonverbal threats, or the kind of force that might reasonably induce fear in the mind of the victim, to ascertain sufficiency of the evidence of a conviction.” (*Id.* at p. 1028.)

In the matter before us, the means by which Turner perpetrated rape on Doe 1 and Doe 2 were *duress* and *fear*, and substantial evidence of either is sufficient to uphold the conviction.

“Duress” in this context means “a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted.” (§ 261, subd. (b).) “The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.” (*Ibid.*)

The element of “fear of immediate and unlawful bodily injury” in the context of section 261, subdivision (a)(2) has subjective and objective components. (*People v. Iniguez* (1994) 7 Cal.4th 847, 856-857.) The subjective component asks whether a victim genuinely had a fear of immediate and unlawful bodily injury sufficient to induce her to submit to sexual intercourse against her will. The objective component asks

whether the victim's fear was reasonable under the circumstances, or, if unreasonable, whether the perpetrator knew of the victim's subjective fear and took advantage of it. (*Id.* at pp. 856-857.)

## 2. *Application to Count 2: Forcible Rape of Doe 2*

Substantial evidence supported the finding that Turner's intercourse with Doe 2 was perpetrated by duress, in that Turner made direct and implied threats of force, violence, danger, or retribution that reasonably led Doe 2 to engage in the intercourse to which she otherwise would not have submitted. After she got into Turner's car and asked to leave, Turner refused to let her go and threatened to hurt her if she tried. He demanded a ransom for her release and threatened that, if the ransom were not paid, he would force her to be his "girlfriend," he would let his partners "run a train" on her, or she would "die." He also told her he was crazy and that he had shot someone in the face. Furthermore, she had reason to believe he could carry out those threats: Turner, in his 30's at the time, was about twice the age and much larger than 16-year-old Doe 2, who was 4 feet 8 inches tall and weighed 90 pounds.

While none of Turner's threats expressly warned of consequences if she did not consent to intercourse specifically, and none of them occurred precisely when he was in the act, a reasonable inference from the evidence is that, by the time of the intercourse, Turner's threats had led Doe 2 to believe that she had to submit to his demands while he held her captive – ultimately including the intercourse. Indeed, Doe 2 testified that she told Turner she would "do anything" so that he would let her go and not hurt her. Doe 2 testified that she had sex with Turner because "she wanted to get away" and he might let her go if she "complete[d] his needs." She testified: "I didn't want to do it, but if this was going to get me away from him, I didn't really have no choice." And after the intercourse, she slept on the floor rather than in the bed because, in her words: "This is the guy that's holding me hostage. This is the guy that is forcing me to basically do something that I don't want to do, so why do I want to lay by somebody that's doing all these things?"

Ample evidence supported the conclusion that Doe 2 acquiesced to intercourse with Turner, an act to which she otherwise would not have submitted, as a result of Turner's threats of force, violence, danger, or retribution.<sup>3</sup>

In addition, this same evidence was sufficient to give rise to a reasonable inference that Doe 2 submitted to intercourse with Turner out of fear, and that her fear was reasonable under the circumstances. Turner threatened to hurt Doe 2 physically, he was twice her age and significantly larger, she was afraid of him, and he refused to let her go except upon his own terms, leading her to be willing to "do anything" to gain her freedom. A logical inference is that her fear of Turner continued at the time they had intercourse, and without such fear she would not have consented.

Substantial evidence supported the verdict on count 2.

### *3. Application to Count 7: Forcible Rape of Doe 1*

Substantial evidence also supported a finding that Turner's intercourse with Doe 1 was perpetrated by duress.

When Turner approached Doe 1 to kidnap her, he threatened: "We're going to do this the easy way or the hard way" – the implication being that he would get her into his car and take her away, by force if necessary. When she attempted to get away, he hit her with a bottle, grabbed her by the arm, dragged her from the store where she was hiding, and pushed her into his car. He warned her not to "try anything" because "he knows people in the dubs, all around the dubs," and Doe 1 "wouldn't get far." Indeed, when Doe 1 had sought help from the liquor store clerk, he refused. After Turner kidnapped Doe 1, he threatened her with a gun. Doe 1 even witnessed Turner slapping Maria across the face when he was irritated by a comment she made.

The reasonable inference is that, by the time of the intercourse, Turner had communicated clearly to Doe 1 that she would have to comply with his demands during her captivity, or face physical consequences. Further, it was apparent that Turner would

---

<sup>3</sup> Turner also continued his threats after the rape. He threatened that if Doe 2 tried to escape he would hit her in the face with an object he kept by the door. The next day, he threatened that if she made any moves, he would hurt her.

back up those threats: he was in his 30's and over twice the age and larger than 15-year-old Doe 1, who was 5 feet 4 inches tall.

In addition, a reasonable inference from the evidence was that Doe 1 went along with the intercourse because he was holding her captive. Turner refused to release Doe 1 unless someone paid a ransom. Arlene advised Doe 1 that he might nevertheless let her go if she cooperated with him. Doe 1 testified that, although she was uncomfortable after Turner announced that she was going to sleep with him, she attempted to follow Arlene's advice and cooperate. In other words, if Turner had not been holding Doe 1 hostage, she would not have consented to the intercourse.

Given all of this evidence, it was not unreasonable for the jury to conclude that Doe 1 acquiesced to intercourse to which she would not otherwise have submitted, as a result of Turner's direct and implied threats of force, violence, danger, or retribution.

#### 4. *Turner's Arguments*

Turner argues that he never specifically threatened Doe 1 or Doe 2 with force, violence, danger, or retribution if they did not have intercourse with him.<sup>4</sup> However, a trier of fact could reasonably conclude that such direct threats at the time of the intercourse were unnecessary: by the time he pursued sex from them, he had already made it abundantly clear that they would be physically harmed if they disobeyed him.

Turner next points to Doe 1's testimony that she took off her own shirt, did not voice an objection or push Turner away, denied being scared in the room alone with him, and did not know what would happen if she had said no to him. None of this evidence, however, precludes a finding of duress under the circumstances. Doe 1's taking off her shirt, and not voicing an objection or fighting back, is reasonably attributable to the threats Turner had previously made and the context of her captivity. Although Doe 1 denied being afraid when she was in the room with Turner, that was before he told her that she would be sleeping in his room. Doe 1's uncertainty as to what Turner would do if she refused his advances does not negate the conclusion that, whatever he would do, it

---

<sup>4</sup> Doe 1 testified that instead of making direct threats, Turner told her that she was "there" with him, meaning she "wasn't going anywhere."

would not be good. In short, Turner merely illustrates a conflict in the evidence; it is not our role to reweigh the evidence, but to determine whether there is substantial evidence from which the trier of fact could conclude that Turner had committed the crime.

For reasons set forth *ante*, substantial evidence supports the conclusion that Doe 1 ultimately consented to intercourse because she wanted to placate Turner; and the reason she wanted to placate Turner was because he had kidnapped her, threatened her, and refused to let her go unless her friends or family paid a ransom. To suggest that a trier of fact could not infer that the intercourse was against her will under these circumstances is simply untenable.

Turner further argues that the “only way these convictions could be sustained is on a theory that any sex that a kidnap victim engages in with her captor is automatically a rape or forcible sex simply because the victim is being detained against her will.” Not so. Kidnapping may not *automatically* make all ensuing sexual intercourse between the kidnapper and his captive against the will of the captive. But the fact that the perpetrator kidnapped the victim may obviously be considered in determining whether the ensuing intercourse – between kidnapper and victim while the victim was still captive and being held for ransom – might have been against her will.

Lastly, Turner acknowledges that he “told both Jane Does that he would not let them go home unless their friends and relatives paid a ransom, participated in a robbery, or worked for him as prostitutes for an indeterminate time.” He argues, however, that this was merely a threat of hardship, which is insufficient for duress under section 261, subdivision (a). (See *People v. Valentine* (2001) 93 Cal.App.4th 1241, 1248, as limited in *People v. Leal* (2004) 33 Cal.4th 999, 1007-1010 (*Leal*).) However, we do not rely on this evidence as a threat of hardship, but as a threat of force, violence, danger, or retribution, which *are* sufficient to constitute duress under section 261, subdivision (a).

Substantial evidence supports the verdicts on counts 2 and 7.

**B. *Forcible Oral Copulation (Count 3)***

Turner contends there was insufficient evidence to convict him of forcible oral copulation of Doe 2 under count 3. (§ 288a, subd. (c)(2).) He urges that his conviction

for forcible oral copulation, and the associated sentence enhancement for kidnapping, should be reversed. We disagree.

Section 288a, subdivision (c)(2) reads in part: “Any person who commits an act of oral copulation 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 shall be punished by imprisonment in the state prison for three, six, or eight years.” (§ 288a, subd. (c)(2)(A), italics added.)

In the matter before us, the evidence that was sufficient to demonstrate that Turner’s intercourse with Doe 2 was a product of duress and fear was also sufficient to demonstrate that his oral copulation of Doe 2 was a product of duress and fear.

Turner contends the evidence was insufficient because, at trial, Doe 2 “at first could not remember whether she had even engaged in oral copulation with [Turner].” As Turner acknowledges, however, she did recall telling the police that Turner had orally copulated her.<sup>5</sup> Turner nonetheless suggests that these statements are conflicting and argues that the statement to the police was not evidence that the oral copulation was forcible.

Turner’s arguments are unavailing. First, Doe 2’s statement of uncertainty at trial and her confirmation of her prior testimony were not diametrically opposed. Doe 2 never testified that forcible oral copulation did not occur or that her statement to the police was false. And, even if Doe 2’s trial testimony and prior testimony were to some extent inconsistent, the jury was free to weigh the evidence and assess her credibility. On such credibility determinations, we defer to the trier of fact. (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.)

---

<sup>5</sup> Doe 2 testified: “Q. Did he touch any other part of your body with his mouth? [¶] A. I don’t know. I don’t remember. [¶] Q. Did he ever touch your vagina with his tongue? [¶] A. I don’t quite remember on that one.” On redirect examination, the prosecutor asked Doe 2 if she had told the police that Turner orally copulated her. Doe 2 admitted she had: “Q. Did you tell the officers: Legs and I ended up having sex, but it was against my will. While Legs was having sex with me, Legs grabbed my breast and buttocks. Legs kissed me on my breast and put his mouth on my vagina. [¶] A. Yes. I told them that.”

Second, as to whether Doe 2's statement to police was evidence that the oral copulation was forcible, there is no indication Doe 2 ever said the oral copulation was *not* forcible, and the reasonable inference from a report to the police of oral copulation would be that it *was* forcible – since there would otherwise be no reason to make the report. Furthermore, as Turner recognizes “in her statement to the police, she said that the accompanying sexual intercourse was forcible.” In the context of reporting a forcible rape, we see no reason that Doe 2 would have to spell out that the oral copulation, committed at the same time as the intercourse, was also perpetrated without her consent. Indeed, under the circumstances of the matter at hand, it would be unreasonable to infer that the sexual intercourse was forcible but the oral copulation was not.

Turner also repeats his argument that Doe 2 was merely threatened with hardship, and hardship does not fall under the definition of duress. He is incorrect. Threats of hardship are not a basis for establishing duress as defined for purposes of section 261. (*Leal, supra*, 33 Cal.4th at pp. 1007 [“deletion of the term ‘hardship’ from the definition of ‘duress’ applies only to the rape and spousal rape statutes”].) But the definition of “duress” for purposes of forcible oral copulation under section 288a, subdivision (c)(2) continues to include threats of “hardship.” (*Id.* at p. 1008 [duress for purposes of § 288, subd. (b)(1) includes threats to inflict hardship].)

Turner fails to demonstrate error.

III. DISPOSITION

The judgment is affirmed.

---

NEEDHAM, J.

We concur.

---

JONES, P. J.

---

BRUINIERS, J.