

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL CAEZ,

Defendant and Appellant.

G050860

(Super. Ct. No. RIF1200510)

O P I N I O N

Appeal from a judgment of the Superior Court of Riverside County,
Michael B. Donner, Judge. Affirmed.

Patricia A. Scott, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney
General, A. Natasha Cortina and Ryan H. Peeck, Deputy Attorneys General, for Plaintiff
and Respondent.

* * *

A jury convicted defendant Samuel Caez of committing sexual offenses against his daughter (Daughter), including eight counts of aggravated sexual assault of a child under the age of 14 (Pen. Code, § 269, subds. (a)(4) [oral copulation] & (5) [sexual penetration])¹ and three counts of forcible lewd conduct with a child under the age of 14 (§ 288, subd. (b)(1)).² On appeal, defendant contends there was insufficient evidence of force, duress, or any other statutory aggravating factor to support the aggravated sexual assault and forcible lewd conduct convictions. We find substantial evidence of duress and therefore affirm the judgment.

FACTS

When Daughter was six years old, she lived in Kentucky with defendant, her mother, and two younger brothers. One day, while they were living in Kentucky, defendant told Daughter to come into the bathroom, close her eyes, sit down on the toilet seat, open her mouth, and orally copulate him by pretending she was sucking on a straw.

Daughter told her brother about what had happened. Daughter's mother found out about the incident and dragged Daughter outside, where the mother confronted defendant about it in Daughter's presence. Defendant denied it had happened. Daughter's mother asked Daughter whether it really happened. Daughter said, "No."

¹

All statutory references are to the Penal Code.

²

The jury also convicted defendant of committing other sexual offenses against Daughter, consisting of one count of oral copulation by force, one count of attempted oral copulation by force, two counts of attempted rape, and an additional (unchallenged on appeal) count of a lewd and lascivious act by force on a child under the age of 14. The jury also convicted defendant of committing sexual offenses against a friend of Daughter, consisting of one count of a lewd and lascivious act on a minor under the age of 16, one count of sexual intercourse with a minor under the age of 16, and two counts of sexual intercourse with a minor under the age of 18.

She did so because she was young, her father had denied it, and she feared she might get in trouble. Her mother then took her to a hospital, where Daughter told the doctors that the incident with defendant had never happened. Daughter did not understand that what her father had done was wrong. Yet, at the same time, she feared they “might get in trouble.”

Defendant and Daughter’s mother eventually divorced. Initially Daughter lived with her mother after the divorce, but while she was in the third grade, Daughter was removed from her mother’s home by Child Protective Services because her mother would leave the children alone at night while she worked as a nurse. Daughter then moved back and forth between her grandparents’ home in California and defendant’s home in Texas, before moving to Southgate, California, with defendant and his new wife.

Defendant then resumed sexually abusing Daughter, who was in the fourth grade at the time. The sexual abuse happened routinely, generally occurring multiple times a week. Defendant would come into the bathroom while Daughter was taking a shower. He would tell Daughter to get out of the shower and instruct her to sit on the toilet or lay on a towel he placed on the bathroom floor. When Daughter did as she was told, defendant would proceed to touch, kiss, and lick Daughter’s body, including her breasts, neck, and vagina. Daughter complied with defendant’s instructions because she “didn’t know it was wrong,” and she was taught “to always listen to [her] parents no matter what . . . especially [her] dad.” Additionally, Daughter found defendant “intimidating” because he had always been “a big guy to [her]” in both size and strength, and she was “nervous” around him because he was the “feared parent” in her household, who was in charge of her punishments. He had been in the military and had a very stern voice.

Once, when Daughter's mother came to town, defendant told Daughter, "[D]on't tell your mom about this, because I can get in trouble for this, you know." Daughter said, "[O]h, why?" Defendant said, "[J]ust don't worry about it. I can get in trouble for it. . . . I'll stop, but you just can't tell your mom."

Defendant promised many more times to stop the sexual abuse, but he never stopped. "[T]he same thing" that happened while Daughter was living with defendant in Southgate continued when Daughter was in the fifth grade and the family moved to Moreno Valley in Riverside County. While living in Moreno Valley, defendant continued to regularly touch, kiss, and lick Daughter's body in the same places, including her chest and vagina. When asked to describe how defendant would touch her vagina, Daughter explained that defendant would "just go and stick his hands down there and just start messing with it," which included moving her clitoris around with his finger, so he could lick it. This abuse continued to take place in the bathroom when Daughter took showers, but defendant also began sexually abusing her in her bedroom, defendant's bedroom, and the front and back seats of his car. The sexual touching and licking happened regularly when Daughter moved to Moreno Valley in the fifth grade, and at times would happen daily when Daughter's stepmother left town.

During Daughter's fifth-grade year, defendant continued to orally copulate her. He also began digitally penetrating her. Daughter recalled one instance in fifth grade when defendant digitally penetrated her, and she recalled repeated instances in her sixth-, seventh-, and eighth-grade years. Daughter said she could feel defendant's finger in her "vagina pushing through" in the same way defendant would later try to "push through with his penis" when Daughter was 16 and 17 years old. However, Daughter would not let defendant's finger "go far" because she would "tense up" and tell him "no" "[e]very single time." In resisting defendant's efforts, Daughter would "push [defendant]" away, or she would "try to get away," "move away," or "pull away" from him. When Daughter pulled away, defendant would "pull [her] back" or say "it's not

going to do anything” and “go back to doing whatever else he was doing,” like touching her breasts and licking her vagina. Defendant would momentarily stop from reinserting his finger into Daughter’s vagina when she resisted and said no, but defendant continued his efforts to digitally penetrate Daughter on a weekly basis by the time she was in the sixth grade.

As defendant’s efforts to digitally penetrate Daughter continued into her sixth-grade year, so did defendant’s touching and licking of Daughter’s body. During Daughter’s sixth-grade year, defendant began dressing Daughter in lingerie to pose for pictures he would take on his digital camera or phone. Defendant began instructing Daughter to pose for these pictures by telling her to “[d]o this or do that” or by “pull[ing]” her bra down for her and having her “hold it there.” Defendant would make Daughter pose on his bed, her bed, the bathroom, “or wherever,” and would take these photos of Daughter once or twice a week until she graduated from high school.

Sometime during her sixth-grade year, Daughter realized defendant’s conduct was “wrong” and began ignoring his instructions. In response to her resistance, defendant would either “constantly repeat” his instructions and refuse to leave unless Daughter agreed to what he wanted, or defendant would “just move [her] to whatever he wanted [her] to do.” Depending on what defendant wanted her to do, when she refused to comply, defendant would make her do what he wanted. For example, if Daughter would refuse to put on lingerie, defendant would “put” it on her. If Daughter refused to pose for defendant’s lewd pictures, defendant would “position” her. If Daughter refused to go to the bathroom or bedroom with defendant, defendant would “take [her]” where he wanted by “grabb[ing] [her] wrist” and saying “come on, [Daughter], let’s go.”

Despite defendant's response to Daughter's resistance, she did not believe defendant used any force, duress, or more "energy" than was necessary to accomplish the sexual abuse because she believed that, in order for defendant's actions to constitute force or duress, she needed to "struggle and fight" with him.

Daughter continued to ignore defendant in the seventh and eighth grades, but the same kinds of sexual abuse continued. Defendant continued to lick Daughter's vagina "every single chance . . . he got," which was usually more than once a week. He continued touching Daughter's body, including her chest and vagina. He continued to digitally penetrate her vagina. The sexual abuse continued to take place in "the same places," such as in the bathroom, Daughter's bedroom, and defendant's bedroom.

On one occasion, Daughter tried to tell her stepmother about what was happening. Defendant came over, "trying to see what was going on." He took Daughter across the street to the park and said, "I promise I will never do this again. . . . [J]ust tell her that . . . you lied about it." Daughter refused. Defendant told her to say she thought defendant had made sexually harassing comments. Daughter said she did not want to. Defendant said, "[Y]ou got to. You just have to. I promise I'll stop. I promise." Defendant then told the stepmother the lie about verbal harassment. Daughter said nothing because she "honestly . . . didn't want any of this to happen," possibly referring to the criminal prosecution of defendant. She did not "want to be separated from [her] family." She did not "want to be separated from [her] little brother and sisters."

Defendant's sexual abuse against Daughter continued until February 2012, when Daughter was in the 12th grade and confided in her friend's mother about what was happening. The friend's mother called the police and defendant was questioned before ultimately being arrested.

DISCUSSION

Defendant contends that 11 of his convictions for aggravated sexual offenses must be reduced to lesser included nonaggravated crimes because the evidence is insufficient to show he committed the offenses by means of force, duress, menace, or fear of immediate bodily injury.

The jury convicted defendant of four counts (counts 1, 4, 7, and 10) of aggravated sexual assault of a child under the age of 14 (§ 269, subd. (a)(4)), by means of *oral copulation* “accomplished against the victim’s will by means of force, . . . duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.” (§ 288a, subds. (c)(2)(A), (B).)³ The jury convicted defendant of four counts (counts 2, 5, 8, and 11) of aggravated sexual assault of a child under the age of 14 (§ 269, subd. (a)(5)), by means of *sexual penetration* “accomplished against the victim’s will by means of force, . . . duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.” (§ 289, subd. (a)(1)(A), (B).) The jury convicted defendant of three counts (counts 3, 6, and 12) of committing lewd and lascivious acts on a child under the age of 14, accomplished against the victim’s will by means of “force, . . . duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.” (§ 288, subd. (b)(1).)⁴

³ The operative information charged defendant with orally copulating Daughter in violation of section 288a, subdivisions (c)(2), (c)(3), or (d)(1). Section 288a, subdivisions (c)(3) and (d)(1) concern oral copulation by threat of retaliation or in concert, respectively.

⁴ The jury also convicted defendant of forcible lewd acts as charged in count 9, but defendant does not challenge that conviction on appeal.

The court sentenced defendant to consecutive terms of 15 years to life for each of his eight convictions of aggravated sexual assault, resulting in an indeterminate term of 120 years to life. It sentenced him to the upper term of eight years on the principal lewd acts count (count 3), and to consecutive midterms of six years for counts 6 and 12.

I. *Relevant Legal Principles*

A. *Duress*

Duress, in the context of the sexual offenses at issue — i.e., oral copulation, sexual penetration, and lewd acts — is “a direct or implied threat of force, violence, danger, hardship or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to (1) perform an act which otherwise would not have been performed or, (2) acquiesce in an act to which one otherwise would not have submitted.” (*People v. Leal* (2004) 33 Cal.4th 999, 1004-1005, 1010, italics omitted [as to lewd acts]; *People v. Senior* (1992) 3 Cal.App.4th 765, 774-775 [as to oral copulation and sexual penetration].)

Duress “involves psychological coercion.” (*People v. Senior, supra*, 3 Cal.App.4th at p. 775.) It “can arise from various circumstances, including the relationship between the defendant and the victim and their relative ages and sizes.” (*Ibid.*) “Where the defendant is a family member and the victim is young, . . . the position of dominance and authority of the defendant and his continuous exploitation of the victim’ is relevant to the existence of duress.” (*Ibid.*) “Other relevant factors include threats to harm the victim, physically controlling the victim when the victim attempts to resist, and warnings to the victim that revealing the molestation would result in jeopardizing the family.” (*People v. Veale* (2008) 160 Cal.App.4th 40, 46.)

The “fact that the victim testifies the defendant did not use force or threats does not require a finding of no duress; the victim’s testimony must be considered in light of her age and her relationship to the defendant.” (*People v. Cochran* (2002) 103

Cal.App.4th 8, 14 (*Cochran*.) Thus, in *People v. Pitmon* (1985) 170 Cal.App.3d 38, the victim testified the defendant never used any force, violence, duress, or threats against him, but the appellate court doubted the victim had “understood the questions asked,” especially because he testified the “defendant had ‘made’ him engage in the prohibited sex acts.” (*Id.* at pp. 47-48.)

Direct threats of violence, hardship, or retribution are not necessary to a finding of duress. (*People v. Wilkerson* (1992) 6 Cal.App.4th 1571, 1579 (*Wilkerson*.) Instead, “[i]mplied threats . . . may also create duress.” (*Ibid.*)

Wilkerson involved two 12-year-old victims of multiple counts of child molestation. (*Wilkerson, supra*, 6 Cal.App.4th at p. 1574.) The defendant occupied a position of authority as to each victim because he was the grandfather of one victim, and both victims were frequently left under his care. (*Id.* at p. 1575.) Both victims engaged in sexual acts with the defendant because he would “spoil” them or give them things like money. (*Ibid.*) But they also complied because they feared him, since he “drank a lot and would become violent when drinking,” and since the molestations often took place when he was drunk. (*Ibid.*) The Court of Appeal held that the total circumstances — including the defendant’s authority position and the victims’ statements that the defendant “‘made’” or “‘forced’” them to engage in various sex acts and that they were afraid of him due to his drinking — supported an inference that their “participation was impelled, at least partly, by an implied threat.” (*Id.* at p. 1580.)

In *Cochran*, the defendant committed 27 counts of aggravated sexual assault and 10 counts of forcible lewd conduct against his nine-year-old daughter. (*Cochran, supra*, 103 Cal.App.4th at pp. 11, 15.) Most of the acts did “not involve the use of any force, or even restraint of the victim, since the victim was being compliant.” (*Id.* at p. 16, fn. 7.) And “when she told him it hurt, he would stop.” (*Id.* at p. 12.) But, although the victim “testified she was not afraid of [her father], that he did not beat or punish her and never grabbed or forced her, she also testified she was mad or sad about

what he was doing to her, that he gave her money or gifts when they were alone together, and that he told her not to tell anyone because he would get in trouble and could go to jail.” (*Id.* at p. 15.) The Court of Appeal described a child’s particular vulnerability to duress when sexually abused by a parent: “The very nature of duress is psychological coercion. A threat to a child of adverse consequences, such as suggesting the child will be breaking up the family or marriage if she reports or fails to acquiesce in the molestation, may constitute a threat of retribution and may be sufficient to establish duress, particularly if the child is young and the defendant is her parent.” (*Ibid.*) The Court of Appeal observed that the nine-year-old victim “engaged in sex acts only in response to her father’s parental and physical authority. Her compliance was derived from intimidation and the psychological control he exercised over her and was not the result of freely given consent.” (*Id.* at pp. 15-16, fn. omitted.) The appellate court held: “Under these circumstances, given the age and size of the victim, her relationship to the defendant, and the implicit threat that she would break up the family if she did not comply, the evidence amply supports a finding of duress.” (*Id.* at p. 16.)

B. *Standard of Review*

“Our review of any claim of insufficiency of the evidence is limited. ‘In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] Reversal on this ground is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].” [Citation.]’” (*People v. Veale, supra*, 160 Cal.App.4th at p. 45.) “Given this court’s limited role on appeal, defendant bears an enormous burden in claiming there is insufficient evidence to sustain his molestation convictions.” (*Id.* at p. 46.)

II. *Substantial Evidence Shows Defendant Used Duress to Accomplish the Sexual Acts*

In *Cochran*, the Court of Appeal stated: “[A]s a factual matter, when the victim is as young as this victim [nine years old] and is molested by her father in the family home, in all but the rarest cases duress will be present.” (*Cochran, supra*, 103 Cal.App.4th at p. 16, fn. 6.) The instant case is no exception.

Defendant’s sexual exploitation of Daughter began when she was only six years old and continued for many more years. Defendant was the disciplinarian and authority figure in the family home. He pressured Daughter not to tell her mother or her stepmother about his sexual acts. He said he would get in trouble if Daughter told them about his conduct. Daughter kept silent because she feared they could get in trouble or she could be separated from her siblings if she revealed the secret. Defendant falsely promised to stop the abuse. As Daughter grew older, defendant increasingly exercised physical control to overcome her resistance and to accomplish his sexual crimes. Absent the foregoing psychological coercion and implied threats, Daughter would *not* have performed or acquiesced in the sexual conduct.

Defendant challenges his convictions for counts 1 through 11 (except for count 9) by attacking the specificity of the evidence with respect to each school year corresponding to particular counts. For example, he argues in his reply brief that the Attorney General’s brief fails to “discuss any of the challenged counts independently” as to duress. The challenged counts charged defendant with sexual assault (by oral copulation or sexual penetration), or lewd acts, during a specified time period corresponding to a particular school year (or portion of a year) when Daughter was in the fifth through eighth grades.

Daughter’s testimony was sometimes general in nature, as often happens in cases where a family member has continuously abused a child from a young age in the family home. In such cases, the victim “typically testifies to repeated acts of molestation occurring over a substantial period of time but, lacking any meaningful point of

reference, is unable to furnish many specific details, dates or distinguishing characteristics as to individual acts or assaults.” (*People v. Jones* (1990) 51 Cal.3d 294, 299.) Nonetheless, “[e]ven generic testimony (e.g., an act of intercourse ‘once a month for three years’) outlines a series of *specific*, albeit, undifferentiated, incidents, *each* of which amounts to a separate offense, and *each* of which could support a separate criminal sanction.” (*Id.* at p. 314.)⁵

Here, some facts remained constant throughout the years in question. For example, Daughter had lived with defendant (her father) in the family home from a young age. Defendant was the disciplinarian in the house. The sexual exploitation was continuous and ongoing. At some point, possibly when Daughter was in the fourth grade, defendant instructed her not to tell her mother about the abuse because he would get in trouble. He falsely promised to stop the abuse if she would keep the secret from her mother. Daughter feared they could get in trouble if she told her mother. These circumstances alone are sufficient to establish duress. (See *Cochran, supra*, 103 Cal.App.4th at p. 16.)

Although much of the evidence was undifferentiated and applied to more than one year, we separate the following evidence of duress by school year to the extent possible. When Daughter was in the fifth grade, defendant would enter the bathroom

⁵ The victim must describe (1) the kind of acts committed with sufficient specificity, e.g., lewd conduct, intercourse, oral copulation, or sodomy; (2) the number of acts committed with sufficient certainty to support each of the counts alleged in the information, e.g., “‘twice a month’ or ‘every time we went camping’”; and (3) the general time period in which the acts occurred, e.g., “‘the summer before my fourth grade,’ or ‘during each Sunday morning after he came to live with us,’” “to assure the acts were committed within the applicable limitation period.” (*People v. Jones, supra*, 51 Cal.3d at p. 316.) Defendant challenges only sufficiency of the evidence to support the aggravation element for the convictions in question. Defendant does not argue Daughter’s testimony was so nonspecific or “‘generic’” that it deprived him “of due process by preventing him from effectively defending against such charges, and by precluding a unanimous jury verdict as to each act charged in the information.” (*Id.* at pp. 299-300.)

while she showered and instruct her to take certain actions so he could touch and lick her body. Daughter did not know the behavior was wrong and had been taught to always listen to her parents no matter what, especially her dad. Defendant was the “feared parent” in the household — in charge of punishing her and her siblings. Daughter found defendant physically intimidating because he was much bigger and stronger than her.

As Daughter grew older, defendant exercised greater physical control over her to quell her resistance. Beginning when Daughter was in the fifth grade and continuing through her sixth and seventh grades, defendant persistently tried to digitally penetrate her vagina, even though she would say “no” “[e]very single time.” Each time defendant would try to digitally penetrate Daughter, she would tense up, push him, or try to get away from him, but defendant would pull her back and continue with another type of sexual conduct.

Starting in the sixth grade, defendant took pictures of Daughter wearing underwear or lingerie. As Daughter began to realize defendant’s conduct was wrong, she increasingly ignored him. But this did not stop him, since he would physically move her, put lingerie on her, place her in position, and take her where he wanted her to go by grabbing her wrist and saying, “let’s go,” or by refusing to leave unless she complied.

During daughter’s seventh-grade year, defendant continued to sexually abuse her: “[P]retty much the same thing continued to happen” more than once a week — “[e]very single chance [defendant] got.”

During Daughter’s eighth-grade year, “the same things” happened. Defendant continued to exercise forceful physical control over Daughter. He would take her hand and put it on his penis. When she moved her hand away, he would move it back. He told her to “play with it.” When Daughter “wouldn’t do anything . . . he would take it and do it . . . and say go, go, go” even though she “didn’t want to.”

Against this backdrop of voluminous evidence, defendant raises some fact-based contentions. He argues he only told Daughter *once* not to disclose the abuse to her mother or he would get in trouble. Once, however, was enough. As she grew older, her understanding of the risks posed by disclosure deepened; she realized she could be separated from her siblings as a result.

Defendant further argues that although Daughter feared him and he was the disciplinarian, there was no evidence he inflicted *extraordinary* punishment on his children. He provides no legal authority, however, for his apparent proposition that an implied threat of force (for purposes of duress) must threaten *extraordinary* force. He has therefore waived the contention. (Cal. Rules of Court, rule 8.204(a)(1)(C).)

Defendant suggests Daughter may have been 15 years old when he told her to lie to her stepmother, since Daughter could not recall exactly when this happened. But we must presume “in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

Next, defendant relies on *People v. Espinoza* (2002) 95 Cal.App.4th 1287, where the appellate court found insufficient evidence to support the trial court’s finding the defendant had committed a forcible lewd act and attempted rape upon his daughter by duress. (*Id.* at pp. 1319, 1322.) *Espinoza* is distinguishable, however. It did not involve a long-standing father-daughter relationship within a family home. Rather, the 12-year-old victim had only recently moved in with her father (*id.* at p. 1292) and he began molesting her within a few weeks (*id.* at p. 1293). In total, she lived with him for just one month. (*Id.* at pp. 1292-1294.) During the molestations, the victim did not react. Instead, she stayed still when the defendant touched her (*id.* at p. 1294) and did not offer any resistance or make any oral or physical response (*id.* at p. 1320). There was no evidence the defendant made any direct or implied threat “of any kind.” (*Id.* at p. 1321.) The daughter quickly reacted to the molestation by telling her friends about it, asking one

friend “if she could go live with her,” and then reporting her father to the school counselor. (*Id.* at p. 1293.)

Finally, relying on *People v. Pitmon, supra*, 170 Cal.App.3d 38, defendant contends psychological coercion alone is insufficient to establish duress and that an implied threat is always required. The distinction between psychological coercion and an implied threat, however, is a blurred one, amounting largely to semantics. The same factors that can support a finding of psychological coercion can also demonstrate an implied threat. For example, in *Pitmon*, the victim’s youth, his small size relative to the defendant, the isolated location where he encountered the defendant (who was a stranger), and the defendant’s acts of physical control (such as grabbing the victim’s hand and forcing him to rub the defendant’s genitals) — viewed “from the perspective of a normal, average eight-year-old” — easily “constituted an implied threat of force, violence, hardship or retribution.” (*Id.* at p. 51.)⁶

In any event, the circumstances here — including defendant’s statement he would get in trouble if Daughter told her mother, his begging for her to lie to her stepmother, his disciplinarian role, and his acts of physical control — constituted implied threats of hardship, force, and retribution. In sum, substantial evidence shows defendant accomplished the challenged sexual offenses by means of duress.

⁶ Defendant also relies on *People v. Hecker* (1990) 219 Cal.App.3d 1238, 1250, which stated that psychological coercion alone does not establish duress. However, 12 years later, the court that decided *Hecker* expressly disapproved this aspect of it. (*Cochran, supra*, 103 Cal.App.4th at pp. 14-15.) The Sixth District Court of Appeal also disagreed with *Hecker* in *People v. Senior, supra*, 3 Cal.App.4th at pages 775-776. Division Two of the Fourth District Court of Appeal impliedly disagreed with *Hecker* in *People v. Veale, supra*, 160 Cal.App.4th at pages 47-49.

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.