

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD A. MINSKY,

Defendant and Appellant.

B155109

(Super. Ct. No. BA175204)

MODIFICATION OF OPINION

[NO CHANGE IN JUDGMENT]

THE COURT:*

GOOD CAUSE appearing therefor the opinion filed on January 23, 2003, in the above-entitled matter is hereby modified as follows:

On page 8, delete the entire second paragraph and footnote 9 beginning with “Relying on recent case authority . . .” and replace with the following paragraph and footnote 9:

Relying on recent case authority, Minsky contends that the statutory definition of duress for rape in section 261, which now excludes hardship, applies to the other sex offense statutes. (*Valentine, supra*, 93 Cal.App.4th at pp. 1249-1252.) Respondent contends it does not, pointing to the language of section 261, which defines duress “[a]s used in this section . . .” (§ 261, subd. (b).) Assuming for discussion’s sake only that Minsky is correct, because we hold that his ploy constituted duress by threat of danger or

retribution under section 261, we also hold that it constituted duress under sections 288a and 289.⁹

[Footnote text:]

⁹ Respondent relied on *People v. Edmonton* (2002) 103 Cal.App.4th 557, which disagreed with *Valentine*, holding that the section 261 definition of duress was limited to that statute and did not trump the case law definition for other sex crimes, which includes hardship. The Supreme Court recently granted review in that case. (Rev. granted January 22, 2003, S112168.) Even though we do not reach the question whether the section 261 definition of duress applies to other sex crimes, we agree with the *Valentine* court that there seems to be no good reason for the Legislature to establish inconsistent definitions of duress for different sex crimes. (*Valentine, supra*, 93 Cal.App.4th at p. 1249.) Whatever the Legislature's intent, however, we believe legislation to clarify the matter may be warranted.

[end of modification]

* COOPER, P.J.

RUBIN, J.

BOLAND, J.