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Supreme Court of California
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IN THE SUPREME COURT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

vs.

RODNEY TAUREAN LEWIS,
Defendant and Appellant.

Fourth District Court of Appeal, Division Three, No. G060049
Santa Clara County Superior Court No. B136626, Hon. Vincent J. Chiarello

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ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

The State prosecuted Appellant on a theory that kidnapping can be committed through deceit, rather than force. The State proceeded under that theory because there was no evidence Appellant ever used force. After being incorrectly instructed that kidnapping does not require force, the jury convicted.

This Court's "long-standing" rule, however, is that kidnapping "requires asportation by force or fear." (*People v. Majors* (2004) 33 Cal.4th 321, 327.) Accordingly, the Court of Appeal reversed. In so doing, it held that the lack of evidence of force – which was, after all, the reason the State pursued a deceit theory – precludes retrial. It did so reluctantly, emphasizing that it was unable to "rewrite the kidnapping statute to eliminate the statutory requirement of force or fear." (*People v. Lewis* (2021) 72 Cal.App.5th 1, 5, 22.) It affirmed Appellant's conviction on the rape count and the resulting eight-year sentence. (*Id.* at 21.)

The Court of Appeal's opinion makes no new law and conflicts with no decision of any court. The State seeks review not because of any need to "secure uniformity of decision or to settle an important question of law" (Rule of Court 8.500(b)) but

simply because it is displeased with the outcome. It advances four arguments. None identifies a basis for review under this Court's rules, and none has merit.

First, the State claims the Court of Appeal failed to articulate the proper legal standard for kidnapping and that this Court needs to clarify the law on "the correct quantum of force required to kidnap an incapacitated adult." (Petition, 17.) On the first point, the court did articulate the correct standard. On the second, there is no need for clarification: while the State identifies a potential ambiguity in the law on kidnapping children, there are no such ambiguities with respect to adult victims.

Second, the State says the Court of Appeal denied it the opportunity to argue that the evidence was sufficient to support the verdict. In fact, the State briefed that issue before oral argument. Then, after argument, the court invited supplemental submissions on that very question. The State chose not to include any further argument on this issue in its submission. Whatever the State's reason for declining that opportunity, its choice is not grounds for this Court's review.

Third, the State argues that the instructional error was harmless, for two reasons. First, it says the instructions as given required the jury to find force. The Court of Appeal correctly rejected this claim, as the instructions unequivocally allowed the jury to convict even though Appellant had not used force. Next, it says the Court of Appeal applied the wrong harmless error standard. But the court employed exactly the standard that the State's petition says it should have. And again, the State fails to identify any ambiguity in the cases or unsettled question of law on this point.

Finally, the State says the Court of Appeal failed to cite the correct standard for evaluating sufficiency of the evidence and that it should have found evidence showing Appellant used force – even though the prosecution was premised on the theory that Appellant used deceit. Again, the court's opinion sets forth the exact standard the State says it failed to articulate. The opinion also demonstrates that the court meticulously reviewed the record and correctly concluded there was no evidence of force.

Ultimately, the State fails to identify any lack of uniformity in the relevant case law or any important question of law that

remains unsettled. It simply disagrees with the Court of Appeal's decision. The Petition should be denied.

ARGUMENT

I. There is no need to "clarify and enunciate" the correct quantum of force for kidnapping.

The petition argues that review is necessary because "the Court of Appeal did not enunciate the correct quantum of force required to kidnap an incapacitated adult, and there are conflicting statements on that issue by this Court." (Petition, 18.) The State is wrong on both fronts. The court articulated the correct standard, and there is no lack of uniformity in the decisions of this Court or the lower courts on this point.

A. The Court of Appeal correctly set forth the quantum of force required to kidnap an incapacitated adult.

The State claims "the Court of Appeal did not enunciate the correct quantum of force required to kidnap an incapacitated adult." (Petition, 18.) The State is wrong. The court explained that "the amount of force required to kidnap an incapacitated person is simply the amount of physical force required to take and carry the incapacitated person away with an illegal intent." (*Lewis*, 72 Cal.App.5th at 14-15 [*quoting People v. Daniels* (2009)

176 Cal.App.4th 304, 332, internal alterations omitted].) The State offers nothing to suggest this standard is inaccurate; to the contrary, it cites the exact same standard in its own petition. (Petition, 21.) Given the Court of Appeal's correct recitation of the standard, nothing in its opinion "conflicts with this Court's repeated statements that the force requirement for kidnapping is relaxed when the victim is a minor or a person unable to give legal consent to the movement and the kidnapper has an illegal purpose or intent." (*Id.* at 16.)

It is true that the Court of Appeals did not explicitly consider how the standard that it correctly enunciated applied to the facts before it, but there was no need. Having held that some degree of force was required, the court then searched the record for evidence to satisfy that requirement. As discussed further below, it found "no evidence of force to support a kidnapping conviction." (*Lewis*, 72 Cal.App.5th at 20.) Given that Appellant used no force at all – of any quantum – the court naturally did not need to consider whether "no force" meets a "reduced quantum of force" standard.

The Court of Appeal correctly set forth the standard that the State agrees should have applied. There is thus no conflict

between this case and the decision of any other court and no basis for review to "secure uniformity of decision." (Rule of Court 8.500(b).)

B. There is no lack of uniformity in the law of kidnapping with respect to incapacitated adult victims.

Not only did the Court of Appeal set forth the quantum of force the State agrees is required to kidnap an incapacitated adult, but, contrary to the State's claim, there is no lack of uniformity in the case law on this point.

With respect to adult victims, the law is clear and uniform. As this Court has consistently held for decades, force or fear is required to kidnap an adult. (*See People v. Rhoden* (1972) 6 Cal.3d 519, 527; *People v. Stephenson* (1974) 10 Cal.3d 652, 660; *People v. Camden* (1976) 16 Cal.3d 808, 814; *People v. Green* (1980) 27 Cal.3d 1, 64; *People v. Davis* (1995) 10 Cal.4th 463, 517 fn.13; *People v. Majors* (2004) 33 Cal.4th 321, 327; *People v. Rountree* (2013) 56 Cal.4th 823, 853; *People v. Westerfield* (2019) 6 Cal.5th 632, 713.)

The issue of *how much* force is necessary to kidnap an adult was not at issue at trial or in the Court of Appeal's opinion because, as set forth above, there was no evidence of any force at

all. In any event, there is no lack of unanimity on that question either.

The State identifies a single case, *Daniels*, *supra*, 176 Cal.App.4th at 332, which "relaxe[d] but [did] not eliminate the force requirement" in holding that it takes less force to kidnap an incapacitated adult than a conscious one. (*Id.* [holding that kidnapping an incapacitated adult requires "the amount of physical force required to take and carry the incapacitated person away with an illegal intent"].) The State cites no case that disagrees with *Daniels.* It attempts in passing to create the appearance of a dispute between *Daniels* and *People v. Hartland* (2020) 54 Cal.App.5th 71, but there is no conflict. (Petition, 21.) *Hartland* did not consider the quantum of force, much less disagree with *Daniels*.[1] There simply is no lack of uniformity on the question of how much force is required to kidnap an adult.

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[1] *Hartland* addressed whether the jury should be required to find a defendant "acted with illegal purpose or motive" before convicting him of kidnapping an intoxicated, resisting victim, who was violently dragged into a car and held there by force, with the defendant grabbing and choking her when she tried to exit as they drove. (*Hartland*, 54 Cal.App.5th at 76.) The court found there is no such requirement but was not asked to – and did not – consider the necessary quantum of force. (*Id.* at 80.)

In an effort to make it appear there is a dispute among California courts about how much force is necessary to constitute kidnapping, the State turns to cases involving children, asserting that "the issue of whether the quantum of force for kidnapping small children [is] 'relaxed' or entirely eliminated" has become "clouded." (Petition, 19.) Whatever the merits of the State's position, it is irrelevant. This case did not involve a child. The Court of Appeal correctly found cases involving minors "inapposite" given the "alternative standard in kidnapping cases involving children." (*Lewis*, 72 Cal.App.5th at 13-14 [noting that the legislature has codified the different standards applicable to adult and child victims in Penal Code § 207(e)].) A purported lack of uniformity in the case law regarding the kidnapping of children under Penal Code § 207(e) is no basis to review a decision involving the alleged kidnapping of an adult under Penal Code § 207(b).

In a final effort to raise an issue worthy of this Court's review regarding the law of kidnapping, the State argues that it is "unsettled whether the presence or absence of deception is relevant to the force requirement." (Petition, 21.) But here again, the supposedly "unsettled" legal question is not relevant,

because it pertains to cases involving child victims, not adults. (*Id.* [citing purported conflict between *People v. Dalerio* (2006) 144 Cal.App.4th 775 [child victim] and *People v. Nieto* (2021) 62 Cal.App.5th 188 [child victim].)[2] And the law is decidedly *not* unsettled with respect to the interaction of force and deceit in the kidnapping of an adult: force is required, and deceit is insufficient. (*See*, *e.g.*, *Westerfield*, *supra*, 6 Cal.5th at 713 ["asportation by fraud alone does not constitute general kidnapping in California"] [citation omitted].)

California courts are in full agreement that a defendant must use some amount of force to kidnap an adult victim. No force was used here. There is no lack of unanimity in the case law and no need to grant review.

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[2] In any event, there is no tension between *Dalerio* and *Nieto*. As Justice Bedsworth explained, "the *Nieto* court did not believe deception alone was sufficient to satisfy the asportation requirement of kidnapping, nor did it believe that *Dalerio* so held." (*Lewis*, 72 Cal.App.5th at 31 [Bedsworth, J., concurring and dissenting].)

II. The State had ample opportunity to argue force.

The State seeks review because, it claims, it was "never afforded an opportunity to address the sufficiency of the evidence of force." (Petition, 25.) This is not the case.

In his opening brief before the Court of Appeal, Appellant argued that there was no evidence he had used force. (Appellant's Brief, 21-22.) The State naturally had every incentive to respond with evidence it believed showed he had done so. And it did. Its brief raised every evidentiary point it now says it was not permitted to bring to the Court of Appeal's attention. It argued that Appellant's use of a car was sufficient force (Respondent's Brief, 25), that the jury could have concluded Ms. Doe was unconscious in the car (*id.* at 27), that Appellant admitted Ms. Doe looked drunk (*id.* at 30), that Ms. Doe had bruises and abrasions when found the next morning (*id.* at 8), that Appellant employed a ruse to convince Doe to leave the bar with him (*id.* at 27), that Appellant supposedly gave Doe alprazolam (*id.* at 28), and the significance of Appellant's cell phone records (*id.* at 32). (*Compare* Petition, 27-28.) And it cannot be said that the court ignored this evidence once the State raised it, as its opinion

recounts everything the State now says it refused to consider. (*See Lewis*, 72 Cal.App.5th at 6-11.)

Moreover, the court gave the State a further opportunity to discuss the sufficiency of the evidence. Following argument, the court issued a request for briefing on the appropriate remedy should it find the instructional error prejudicial. (*See id.* at 17, n.7.) In so doing, it pointed the parties to two cases, both of which discussed whether retrial is permissible after an appellate finding that the evidence was insufficient. (October 12, 2021, Order, *citing Lockhart v. Nelson* (1988) 488 U.S. 33, 41 [holding that "a reviewing court must consider all of the evidence admitted by the trial court in deciding whether retrial is permissible under the Double Jeopardy Clause"]; *People v. Shirley* (1982) 31 Cal.3d 18, 71 [finding no double jeopardy bar to retrial where substantial evidence supported the verdict].)

Appellant accepted the court's invitation and briefed the sufficiency of the evidence. (*See* Appellant's Letter Brief dated Oct. 27, 2021.) The State did not. While its submission noted that the Double Jeopardy Clause bars retrial "when a conviction is reversed 'on the sole ground that the evidence was insufficient to sustain the jury's verdict,'" the State opted to make no

additional argument about the sufficiency of the evidence at trial. (Respondent's Letter Brief dated Oct. 27, 2021, 2 [quoting *Lockhart*].)

In short, the State briefed the sufficiency of the evidence before argument and was given the chance to brief it again later. It chose not to. That was its prerogative, of course, but it cannot now be heard to complain that it "was never afforded an opportunity to address the sufficiency of the evidence of force." (Petition, 25.) Nor is it accurate to say that the Court of Appeal ignored the evidence the State now points to, given that all of it is recounted in the opinion. There is no basis for review on the grounds that the State was somehow denied an opportunity to fully litigate the case.

III. The Court of Appeal's harmless error analysis was correct.

The State argues that the Court should grant review to "secure uniformity of decision on the application of the harmless error standard to facts in the reduced-force context." (Petition, 24.) The State identifies no conflict in lower court decisions for this Court to resolve but simply argues that the Court of Appeal erred in its analysis on the facts of this case. Not only is there no

cognizable basis for review here, but the Court of Appeal was correct.

A. There is no lack of uniformity in the law with respect to "application of the harmless error standard to facts in the reduced-force context."

The State's claim that this Court must ensure "uniformity of decision on the application of the harmless error standard to facts in the reduced-force context" is baseless. (Petition, 24.) The State does not attempt to articulate what legal dispute exists about "the application of the harmless error standard to facts in the reduced-force context." It identifies no conflicting decisions on this issue. Indeed, it only discusses one case addressing harmless error in a kidnapping prosecution – this one.

The State's complaint, then, is not about resolving a conflict in the cases or settling an important question of law. It is merely about the State's dissatisfaction with the outcome of this particular case. That is no grounds for this Court's review. In any event, the court below was correct.

B. The instructions did not require the jury to find force.

In attempting to show the instructional error was harmless, the State first argues that the trial court's instruction

did require the jury to find force. Not only is there no disputed issue of law here, but the State's reading of the instructions is plainly wrong.

First, the law on this point is clear, and no review is required. Kidnapping requires force, and a trial court that does not instruct a jury to that effect commits error. (*E.g.*, *Green*, 27 Cal.3d at 63 [finding error in instructions that permitted conviction on deceit theory of kidnapping].)

Second, the trial court's instructions here did not require the jury to find force. The State writes that "it is not reasonably likely that the jury understood the instructions as permitting a guilty verdict based on 'deception' alone." (Petition, 22.) But the jury was told it could convict if it found Appellant "used physical force *or deception* to take and carry away an unresisting person." (*Lewis*, 72 Cal.App.5th at 11.) This instruction cannot be read to mean anything other than what it says: the jury could convict if it found Appellant used physical force *or* if it found he used deception. (*Id.* at 16 [finding that "the trial court eliminated the force requirement completely when it permitted the jury to conclude Lewis carried away Doe by 'physical force *or* deception'"] [emphasis original].)

Rather than address the plain language of the erroneous instruction on this element, the State rehashes a claim it raised unsuccessfully below: that the instructions on a different element required the jury to find force. This argument concerns the instructions on movement. To be guilty of kidnapping, a defendant must use force or fear to move the victim. (*See* CALCRIM No. 1203 [requiring jury to find that "using that force or fear, the defendant moved the other person . . . a substantial distance"] [alterations omitted]; *People v. Robertson* (2012) 208 Cal.App.4th 965, 987 [noting that kidnapping requires proof that "using force or fear, the defendant moved the other person or made the other person move a substantial distance"] [internal quotation omitted].) The State notes that the trial court told the jury it must find that Appellant "moved [Doe] a substantial distance" and claims "this instruction correctly recited the . . . reduced quantum of force." (Petition, 22.) That is not the case. In its movement instruction, the court said nothing about force, of any quantum. To the contrary, it *excised* language from the pattern instruction concerning force:

CALCRIM No. 1203:	Instruction as given:
To prove that the defendant is guilty of this crime, the People must prove that:	To prove that the defendant is guilty of this crime, the People must prove that:
1. The defendant intended to commit [specified crime];	[1. T]he defendant intended to commit rape of a woman while intoxicated;
2. Acting with that intent, the defendant took, held, or detained another person **by using force or by instilling a reasonable fear**;	[2. A]cting with that intent, the defendant used physical force **or deception** to take and carry away an unresisting person with a mental impairment;
3. **Using that force or fear**, the defendant moved the other person a substantial distance;	[3. A]cting with that intent, the defendant moved the person with a mental impairment a substantial distance;

(RT 3318-29 [emphasis added].) Thus, rather than telling the jury it had to find Appellant moved Doe through force, as the State now claims, the trial court said only that Appellant had to move Doe, regardless of whether he did so through force or through deceit.

The Court of Appeal, noting the improper alteration of the model instruction, rejected this argument when the State raised it below. (*Lewis*, 72 Cal.App.5th at 16 [finding the trial court's omission of the force requirement from the movement instruction

was "an erroneous statement of the law"].) The State does not mention the court's holding on this point, much less demonstrate that it was wrong. There is no basis to find error in the Court of Appeal's decision here.

C. The Court of Appeal correctly applied the harmless error standard.

Next, the State argues that the Court of Appeal applied the wrong harmless error standard. The State's argument appears to be that only reduced force is required to kidnap an incapacitated adult, and so the Court of Appeal should have asked whether a jury properly instructed "on the reduced force required to take and carry away an incapacitated adult would have found appellant guilty." (*Id.*) If it had, the State believes, the court would have determined that a properly instructed jury "would have found appellant's driving Doe to have been forceful." (*Id.* at 25.)

The court below undertook the exact harmless error inquiry the State describes. It explained its task was to decide whether it was clear "beyond a reasonable doubt [that] the jury's verdict . . . was not tainted by the legally incorrect jury instruction." (*Lewis*, 72 Cal.App.5th at 17; *compare* Petition, 24 [arguing the court

should have asked if it was clear "beyond a reasonable doubt that a jury . . . properly instructed on the reduced force required to take and carry away an incapacitated adult would have found appellant guilty"].)

Under this Court's precedent, courts must examine the verdict and the record to see if "the jury might have based its verdict on the invalid theory." (*People v. Aledamat* (2019) 8 Cal.5th 1, 13.) The Court of Appeal did so and determined both that "other portions of the verdict do not demonstrate the jury necessarily found Lewis guilty based on the legally proper theory that he used force" and that the record contained no evidence that "Lewis forced Doe to leave" the bar. (*Lewis*, 72 Cal.App.5th at 17.) Thus, it could not "conclude beyond a reasonable doubt the jury's verdict . . . was not tainted by the legally incorrect jury instruction." (*Id.*)

As part of its analysis, the court specifically addressed the question the State now claims went unanswered: whether "Lewis's driving constitutes the required force" for kidnapping. (*Id*. at 17.) It correctly explained that there is no kidnapping "where the defendant entices the victim by fraud or trickery, and not force, to get into his car." (*Id.* [citing *Stephenson*, 10 Cal.3d at

659-60].) It also correctly noted that, because "kidnapping is a continuous offense," it can occur "if a victim initially accompanies the defendant willingly, but the defendant subsequently restrains the victim's liberty by force and compels the victim to accompany him further." (*Id.* [citing *People v. Camden* (1976) 16 Cal.3d 808, 814].) However, there was no evidence showing Appellant used force either before or during the drive. (*Id.*) In the absence of such evidence, the court properly refused to "speculate [that] Lewis forced Doe into his car or once in the car restrained her liberty." (*Id.*; *see People v. Memro* (1985) 38 Cal.3d 658, 695 ["[A]lthough reasonable inferences must be drawn in support of the judgment, this court may not go beyond inference and into the realm of speculation in order to find support for a judgment."] [citation omitted] [*overruled on other grounds*, *People v. Gaines* (2009) 46 Cal.4th 172, 181 n.2].)

In short, the State raised below the argument that the instructional error was harmless because driving alone constitutes sufficient force for kidnapping. The court gave that contention full consideration under the proper legal standard and, after careful examination of the facts, concluded that it was insufficient to sustain the verdict in this case. The State's

dissatisfaction with the outcome of that analysis does not transform the Court of Appeal's highly fact-specific inquiry into an unsettled question of law meriting this Court's review.

IV. The Court of Appeal applied the correct standard and correctly found the evidence insufficient to sustain the conviction.

Finally, the State argues that review is required because the Court of Appeal supposedly ignored this Court's "well-established methodology of appellate review of the sufficiency of the evidence." (Petition, 26.) In support of this accusation, the State says the court "did not refer to the controlling law on challenges to the sufficiency of the evidence" in evaluating the kidnapping count. (Petition, 26.) This claim is nonsensical. The opinion below sets out the relevant standard at length and in great detail:

> In evaluating a claim regarding the sufficiency of the evidence, we review the record 'in the light most favorable to the judgment below to determine whether it discloses substantial evidence – that is, evidence which is reasonable, credible, and of solid value – such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' 'The federal standard of review is to the same effect: Under principles of federal due process, review for sufficiency of evidence entails not the determination whether the reviewing court itself believes the evidence at trial establishes guilt beyond a reasonable doubt, but, instead, whether, after

> viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' 'The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence.' 'We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding.'

(*Lewis*, 72 Cal.App.5th at 20 [quoting *Westerfield*, 6 Cal.5th at 713].) It appears that the State seeks review simply because the Court of Appeal was facing two sufficiency arguments – one on each count – but only recited the standard once. (*See* Petition, 26.) It makes no sense to require a court to reiterate an identical standard multiple times in the same opinion, and the State offers neither argument nor authority to support its claim that the Court of Appeal should have done so here.

The State then argues that "review should be granted to secure uniformity of decision" because the Court of Appeal "failed to correctly apply legal principles that this Court has previously admonished Courts of Appeal to apply." (*Id.* at 17; *see also* id. at 26.) But its reason for saying so is not that it has identified any legal error, nor has it identified any case in which a court reached

a conflicting outcome on the same question. It simply does not agree with the court's conclusion. (*Id.* at 27.) It reiterates evidence that it believes would support a jury verdict on force and offers its opinion that its proffered evidence is "strong." (*Id.*) But that was not the Court of Appeal's view.

The State offers a number of thoughts on how a jury could have found that Appellant used force. It reiterates the argument that Appellant's driving should be enough for a conviction. (Petition, 27.) But as the Court of Appeal observed, this argument is foreclosed by the absence of evidence that Appellant "forced Doe into his car or refused to let her out once she was in his car." (*Lewis*, 72 Cal.App.5th at 17.) Under this Court's decisions, even if a victim rides in a car driven by the defendant, it is not kidnapping unless there is proof beyond a reasonable doubt the victim was moved by force or fear. (*Stephenson*, 10 Cal.3d at 559-60 [holding that, although defendant intended to rob his victims, because "he did not forcibly require any of them to enter his car initially . . . , [the offenses] do not meet the statutory definition of kidnaping"]; *Green* 27 Cal.3d at 65 [no kidnapping where defendant tricked his wife into getting into his car, drove away with her, and then killed her because the victim's

consent to getting into the car was "obtained under the influence of fraud"].)

The State then hypothesizes that Appellant could have "forcibly removed Doe from the car" and "carr[ied] or dragg[ed] her" somewhere, citing as support the bruises on Ms. Doe's legs and back. (Petition, 28.) But there was no evidence that Appellant did any such thing, nor was there evidence as to how the bruises were sustained. The State's argument here improperly ventures beyond reasonable inference and "into the realm of speculation." (*Memro*, 38 Cal.3d at 695; *see People v. Thompson* (1980) 27 Cal.3d 303, 324 ["Evidence which merely raises a strong suspicion of the defendant's guilt is not sufficient to support a conviction. Suspicion is not evidence; it merely raises a possibility, and this is not a sufficient basis for an inference of fact."].)

It is worth noting, as the Court of Appeal did, that the reason the State asked for a deceit instruction is that there was no evidence Appellant used force. (*Lewis*, 72 Cal.App.5th at 19 ["[O]n this record we think it safe to conclude the prosecutor recognized the evidentiary deficiency on the force element and requested the trial court instruct the jury that deception could

supplant force.”].) Even then, it took two trials to secure a conviction. (*Id.*) It is not surprising that the State finds itself resorting to speculation as it tries to uphold a verdict on evidence entirely different than that on which it prosecuted in the first place.

The court below emphasized its careful review of the record, even noting that it had “watched Rudy’s surveillance video several times” in order to determine whether there was evidence of force. (*Id.* at 15.) “[N]either Rudy’s video surveillance nor any other evidence establishes Lewis used force to take and carry away Doe.” (*Id.*) The State may disagree with the outcome of this examination. But that does not transform the court’s highly fact-specific analysis into either a lack of uniformity or an unsettled question of law.[3]

---

[3] The State also writes that “appellant’s behavior demonstrated the execution of a planned rape.” (Petition, 28.) But that argument is about the rape count, which the Court of Appeal found was supported by the evidence and for which Appellant is serving an eight-year sentence. (*Lewis*, 72 Cal.App.5th at 27.)

CONCLUSION

The State concludes its petition by again claiming the Court of Appeal reached its decision after "failing to afford respondent an opportunity to brief the issue, failing to specify the quantum of force required, failing to recite or apply the controlling legal principles for such a claim, and ignoring evidence from which the jury could rationally have found force." (Petition, 28-29.) As this Answer has shown, every aspect of this argument is wrong. The State briefed the sufficiency of the evidence initially and declined an invitation to do so again after argument. The court specified the necessary quantum of force using exactly the standard the State says is correct. The court applied the correct legal principles for a claim of insufficient evidence, again using the exact language the State now claims it omitted. And every piece of evidence the State claims was ignored can be found in the opinion below.

In sum, there is no basis for review here. Nowhere does the State identify a legitimate need to "secure uniformity of decision or to settle an important question of law." (Rule of Court 8.500(b).) It merely disagrees with the outcome of the case below,

and that is no basis for invoking review. The Court should deny the Petition.

Dated: January 28, 2022

Respectfully submitted,

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CERTIFICATE PER RULE OF COURT 8.504(d)

I certify that this petition is produced in 13-point proportional type and contains 5,158 words, excluding portions enumerated under Rule 8.504(d)(3).

Dated: January 28, 2022 /s/ August Gugelmann
August Gugelmann

PROOF OF SERVICE

I declare that I am employed in the County of San Francisco. I am over the age of eighteen years and not a party to this cause. My business address is 300 Montgomery Street, Suite 1100, San Francisco, California. Today, I served the foregoing ANSWER TO PETITION FOR REVIEW to the parties in this case by transmitting a true copy via this Court's TrueFiling system and by causing a true copy thereof to be deposited in a sealed envelope with postage thereon fully prepaid, in the United States Mail, addressed as set forth below:

Superior Court of California, County of Santa Clara
Criminal Division - Hall of Justice
Attention: Criminal Clerk's Office
191 North First Street
San Jose, CA 95113-1090

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 28, 2022, in Berkeley, California.

/s/ August Gugelmann
August Gugelmann

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 1/28/2022 by Tao Zhang, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. LEWIS**
Case Number: **S272627**
Lower Court Case Number: **G060049**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **august@smllp.law**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ANSWER TO PETITION FOR REVIEW	answer to petition [final]

Service Recipients:

Person Served	Email Address	Type	Date / Time
August Gugelmann Swanson & McNamara LLP 240544	august@smllp.law	e-Serve	1/28/2022 12:56:07 PM
Attorney Attorney General - San Francisco Office Court Added	sfagdocketing@doj.ca.gov	e-Serve	1/28/2022 12:56:07 PM
Arthur Beever Office of the Attorney General 242040	arthur.beever@doj.ca.gov	e-Serve	1/28/2022 12:56:07 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

1/28/2022
Date

/s/August Gugelmann
Signature

Gugelmann, August (240544)
Last Name, First Name (PNum)

Swanson & McNamara LLP
Law Firm