

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT FRANK MIRANDA,

Defendant and Appellant.

B224163

(Super. Ct. No. KA086832)

ORDER MODIFYING OPINION  
AND DENYING REHEARING  
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on October 18, 2011, be modified as follows:

The last paragraph commencing at the bottom of page 11 and ending at the top of page 12 after the sentence ending “capable of giving consent,” add as footnote 11 the following footnote, which will require renumbering of all subsequent footnotes:

<sup>11</sup> A sexual assault victim is not required to react to a defendant’s unexpected attack and may fail to do so out of fear. (See *People v. Inquez* (2994) 7 Cal.4th 847, 858 [sufficient evidence of rape by fear when victim, frozen by fear, did not react to unexpected attack].) The inferences to be drawn from a victim’s reaction or lack of reaction to a sexual assault vary from case to case. Here, the jury could have inferred Jane’s failure to react

indicated she did not appreciate the consequences of what was taking place, which supports a finding that Jane lacked the mental capacity to consent.

Respondent's petition for rehearing, filed October 26, 2011, is denied.

There is no change in judgment.

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**KRIEGLER, J.**

**TURNER, P. J.**