

No. D068901

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,

Respondent and Appellant

v.

JOHN DOE

Petitioner and Appellee.

Appeal from the Superior Court of California, County of San Diego,
Case No. 37-2015-00010549-CU-WM-CTL
The Honorable Joel M. Pressman

**AMICUS BRIEF OF
THE CALIFORNIA COALITION AGAINST SEXUAL ASSAULT,
THE NATIONAL ALLIANCE TO END SEXUAL VIOLENCE, AND
THE CALIFORNIA WOMEN'S LAW CENTER
IN SUPPORT OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**

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I. Introduction

Amici are organizations with a long-standing interest in preventing sexual assault, especially on college campuses, and in advocating for survivors of sexual assault.¹ Amici write to address the superior court's deeply flawed interpretation of the post-assault sexual contact between Ms. Roe and Mr. Doe as apparently constituting conclusive evidence that no assault in fact occurred.

Ms. Roe testified that her boyfriend of a few weeks repeatedly attempted to digitally penetrate her despite her unambiguous verbal and physical protests. The evening following the assault, the man allegedly shamed and pressured her to again have sex with him, saying things like “you are already not a virgin . . . you might as well do it again.” Ms. Roe said no multiple times, but eventually, “gave up on [herself]” and “didn’t try and resist.” The superior court found this sequence of events – that a woman might consent to sex with her assailant after an assault – so wildly implausible that it concluded the victim must have been lying about the initial assault and was merely feeling “personal regret for engaging in sexual activity beyond her boundaries.”

The superior court's assertion that consensual sexual activity proves that earlier sexual contact could not have been non-consensual is contradicted by empirical studies

¹ Pursuant to Rule 8.200(c)(3), Amici state that no party or counsel for any party funded or authored this brief, in whole or in part, and that no person or entity aside from Amici, their members, or counsel made a monetary contribution intended to fund the preparation or submission of this brief.

and social science research. Further, it perpetuates the pernicious myth that sexual assault victims *should* react in a particular way, and that therefore anyone who does not fit a particular mold must be lying or mistaken about the fact of her assault. That reductive presumption is disproved by multiple studies showing that a substantial number of victims of sexual assault have a subsequent sexual relationship with the perpetrator – over a quarter in the most conservative study. The reasons are varied: sometimes the victim is in shock; sometimes the victim does not recognize that an assault has occurred; and sometimes the victim reaches out to the perpetrator attempting to regain agency or minimize the trauma of her earlier experience. Whatever the reasons and facts here, it was inappropriate for the superior court to superimpose onto those facts its own incorrect, preconceived assumption that a subsequent sexual relationship means that no earlier assault could have occurred.

The error made by the superior court is, unfortunately, one that is commonly made by those who subscribe to the myth that rape is only “real rape” if a victim reacts the way that a “real victim” would. This myth makes prosecutions more difficult, causes survivors to feel shame and stigma if they do not react to sexual assault in the socially prescribed manner, and leads to under-reporting of rape and sexual assault by survivors who feel that they will not be believed because of their perceived “abnormal” reaction. Amici urge this Court to reject the superior court’s reliance on an unfounded myth about how women should react after they have been sexually assaulted.

II. Amici's Statements of Interest²

The California Coalition Against Sexual Assault (CALCASA) provides leadership, vision, and resources to rape crisis centers, individuals, and other entities committed to ending sexual violence. As the statewide voice for the 84 rape crisis centers in California and a national leader in preventing and ending sexual violence, CALCASA guides those centers as well as partners across the country in building capacity for recognizing and addressing the needs of survivors of sexual violence. CALCASA also works with policymakers and stakeholders to propose and comment on California and federal legislation affecting rape crisis centers and survivors. In addition, CALCASA assists colleges and universities across the country in developing best practices for responding to sexual assault, dating violence, and stalking, and preventing sexual violence from occurring in the first place.

The National Alliance to End Sexual Violence (NAESV) is the voice in Washington for the 56 state and territorial sexual assault coalitions and 1300 rape crisis centers working to end sexual violence and support survivors. NAESV's experts and advocates publish written analyses, advise members of Congress and the executive branch, and educate the policy community about federal laws and proposed legislation that affect the fight to end sexual violence.

² Amici wish to thank Morgan E. Lewis, Stanford Law School, J.D. expected June 2018 for her contributions to this brief and her work on behalf of survivors of sexual assault.

The California Women’s Law Center (CWLC) breaks down barriers and advances the potential of women and girls through transformative litigation, policy advocacy, and education. CWLC places particular focus on campus sexual assault, violence against women, gender discrimination, and women’s health. CWLC is a leader in the fight to end sexual assault on college campuses and provides resources to students and their advocates to prevent campus sexual assaults and secure justice for survivors.

III. Argument

A. Most Sexual Assault, Particularly on College Campuses, Is Not Perpetrated By Strangers, But By Intimate Partners.

The dominant narrative about sexual assault is that it is perpetrated by a stranger or perhaps a brand new acquaintance; that it involves severe violence; and that it is a discrete event, with no further interaction between victim and perpetrator once the assault is complete. The reality is much more complicated. Studies have confirmed that sexual assault, particularly on college campuses, is more commonly perpetrated by intimate partners, such as boyfriends and husbands, who have ongoing relationships with the victims.

A recent study by the Center for Disease Control puts this in stark relief: “More than half of female victims of rape (51.1%) reported that at least one perpetrator was a current or former intimate partner.”³ This compares to only one in seven female victims

³ M.C. BLACK, ET AL., CENTER FOR DISEASE CONTROL AND PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2010 SUMMARY REPORT (footnote continued)

who is raped by a stranger.⁴ Those figures are generally consistent with reports from the Department of Justice finding that 34% of rapes and sexual assaults are committed by a current or former intimate partner⁵ and that only 9% of campus rapes are committed by strangers.⁶ As another study put it, “rape by intimates is far more prevalent than rape by strangers or nonromantic acquaintances.”⁷ And studies have consistently found that university women are at greater risk of sexual assault than women of a comparable age in the general population.⁸

21 (2011), available at https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

⁴ *Id.*

⁵ BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PUB. NO. 240655, FEMALE VICTIMS OF SEXUAL VIOLENCE 1994-2010 4 (2013), available at <http://www.bjs.gov/content/pub/pdf/fvsv9410.pdf> (Per Bureau of Justice Statistics from 2005-10, 78% of rape or sexual assault victims knew the offender and roughly 34% of all rape or sexual assault victimizations were committed by an intimate partner (former or current spouse, girlfriend, or boyfriend)).

⁶ BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PUB. NO. NCJ 249545, CAMPUS CLIMATE SURVEY VALIDATION STUDY FINAL TECHNICAL REPORT (2016), available at <http://www.bjs.gov/content/pub/pdf/ccsvsfr.pdf> (finding that only 9% of campus rapes were perpetrated by strangers).

⁷ Mary P. Koss, et al., *Stranger and Acquaintance Rape: Are There Differences in the Victim's Experience*, 12 PSYCHIATRY OF WOMEN Q. 1, 4 (1988) (“*Stranger and Acquaintance Rape*”) (citing Mary P. Koss, *Hidden Rape: Incidence, Prevalence, and Descriptive Characteristics of Sexual Aggression in a National Sample of College Students*, in SEXUAL ASSAULT (A. W. Burgess ed., 1988); D.E.H. RUSSELL, SEXUAL EXPLOITATION: RAPE, CHILD SEXUAL ABUSE, AND WORKPLACE HARASSMENT (1984)).

⁸ CHRISTOPHER P. KREBS, ET AL., THE CAMPUS SEXUAL ASSAULT STUDY 2-1 (2007), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>; see also BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PUB. NO. NCJ 249545, CAMPUS CLIMATE SURVEY VALIDATION STUDY FINAL TECHNICAL REPORT 73 (2016), available at <http://www.bjs.gov/content/pub/pdf/ccsvsfr.pdf> (finding the average prevalence of experiencing a completed sexual assault since entering college among women at nine
(footnote continued)

B. Post-Assault Sexual Contact With the Perpetrator is Not Uncommon in Instances of Intimate Partner Sexual Assault.

Just as sexual assault does not conform to convenient stereotypes or predetermined scripts, neither does the range or severity of victims' responses to an assault. To the contrary, like sexual assault itself, victims' reactions upon being assaulted are diverse, deeply personal, and frequently counterintuitive.⁹

Here, Jane Roe stated that she had consensual – albeit conflicted – sex with the perpetrator the evening following the morning that she was assaulted. To overturn the panel's finding under substantial evidence review, the superior court would have to have concluded that Ms. Roe's subsequent sexual contact with Mr. Doe necessarily precluded an earlier nonconsensual encounter. Minute Order at p. 5 (“When viewed as part of the entire narrative, the sequence of events do not demonstrate non-consensual behavior.”). The superior court's reasoning is based on its apparent belief that subsequent sexual contact with the perpetrator is not just uncommon, but so inconsistent with the way an assault victim “should” react that Ms. Roe must have been lying about her experience.

sample campuses at 21%); BONNIE FISHER, ET AL., U.S. DEP'T OF JUSTICE, THE SEXUAL VICTIMIZATION OF COLLEGE WOMEN 1 (2000), *available at* <https://www.ncjrs.gov/pdffiles1/nij/182369.pdf>; Walter DeKeseredy and Katharine Kelly, *The Incidence and Prevalence of Women Abuse in Canadian University and College Dating Relationships*, 18 CANADIAN J. SOC. 137 (1993).

⁹ JENNIFER GENTILE LONG, THE NATIONAL CENTER FOR THE PROSECUTION OF VIOLENCE AGAINST WOMEN, EXPLAINING COUNTERINTUITIVE VICTIM BEHAVIOR IN DOMESTIC VIOLENCE AND SEXUAL ASSAULT CASES 2 (2004) *available at* <http://www.ncdsv.org/images/Explaining%20Counterintuitive%20victim%20behavior.pdf> (stating that “certain behaviors are counterintuitive to the type of behavior the public would expect from a ‘real victim’ and, without explanation, [these behaviors] are easily transformed into reasons to doubt the victim's account of the assault”).

(footnote continued)

The superior court was wrong. Among the one in ten women on college campuses who experience intimate partner violence,¹⁰ continued contact with the perpetrator is not only possible, it is extraordinarily common. A pioneering study of college students found that 42% of women who have been sexually assaulted had subsequent sexual relations with the perpetrator.¹¹ A similar study of college students a decade later found that “[t]hirty-two percent [32%] of the victims [in the study] indicated that they had continued the relationship with their attacker; 25% of victims continued to have sex with the man after the event.”¹² Consistent with these findings, the 2007 Campus Sexual Assault Study found that under two thirds of victims avoided or attempted to avoid the perpetrator following an assault.¹³

¹⁰ ASSOCIATION OF AMERICAN UNIVERSITIES, AAU CAMPUS SURVEY ON SEXUAL ASSAULT AND SEXUAL MISCONDUCT xviii (2015), available at https://www.aau.edu/uploadedFiles/AAU_Publications/AAU_Reports/Sexual_Assault_Campus_Survey/AAU_Campus_Climate_Survey_12_14_15.pdf (finding that 12.8% of female undergraduates experienced intimate partner violence since enrolling in college).

¹¹ Mary P. Koss, *Hidden Rape: Incidence, Prevalence, and Descriptive Characteristics of Sexual Aggression in a National Sample of College Students*, in *SEXUAL ASSAULT* (A. W. Burgess ed., 1988).

¹² Melissa J. Layman, et al., *Unacknowledged Versus Acknowledged Rape Victims: Situational Factors and Posttraumatic Stress*, 105 *JOURNAL OF ABNORMAL PSYCHOLOGY* 124, 128 (1996).

¹³ CHRISTOPHER P. KREBS, ET AL., *THE CAMPUS SEXUAL ASSAULT STUDY*, *supra*, at 5-27 (finding that 64% of victims avoided or attempted to avoid the perpetrator following an assault).

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C. There Are Many Explanations For Post-Assault Sexual Contact; Such Contact Does Not Mean An Assault Did Not Occur.

Continued sexual contact with an assailant may seem counterintuitive to some, but recent academic and policy studies offer some insight into why a sexual assault victim might have subsequent sexual contact with her attacker.

One common explanation consistent with the facts here is trauma. It is well established that sexual assault – whether or not it is recognized as such by the victim – is a traumatic experience with profound psychological consequences.¹⁴ In the acute phase of post-traumatic stress disorder (“PTSD”) which includes the hours and days after the assault, the victim is often “unable to effectively answer questions regarding how and why the event happened and what meaning and implications the event has for a person’s life. This disequilibrium causes the person to experience a sense of crisis that lasts as long as the person needs to organize and develop a coherent meaning system in relation to the assault.”¹⁵ During this acute phase immediately following a trauma, counterintuitive victim responses are especially common, as the victim struggles to explain, contextualize, and adapt to her changed circumstances.¹⁶

¹⁴ Indeed, the victim in this case was diagnosed with PTSD following the incident. AR 623-25.

¹⁵ Victoria E. White Kress, et al., *Responding to Sexual Assault Victims: Considerations for College Counselors*, JOURNAL OF COLLEGE COUNSELING, Fall 2003 124, 125.

¹⁶ PATRICIA L. FANFLIK ET AL., NATIONAL DISTRICT ATTORNEYS ASSOCIATION, VICTIM RESPONSES TO SEXUAL ASSAULT: COUNTERINTUITIVE OR SIMPLY ADAPTIVE? 10 (2007), available at http://www.ndaa.org/pdf/pub_victim_responses_sexual_assault.pdf (“It is during this time of disequilibrium that a victim’s reactions may not make senses to most individuals.”).

(footnote continued)

In cases of intimate partner assault (which, as discussed above, make up a large proportion of campus sexual assaults), survivors may try to cope with the experience through denial and re-framing of the event as something other than an assault, such as a “miscommunication.”¹⁷ A 2013 study of campus sexual assault found “[g]reater acquaintance with the perpetrator” to be “associated with labeling sexual assault experiences as a serious miscommunication,” rather than rape.¹⁸ In such situations, survivors may experience cognitive dissonance at the notion that a partner would cause her harm.¹⁹ Behavior that might otherwise be difficult to comprehend, such as continued intimacy with the assailant, therefore “seems reasonable because the victim does not conceptualize the sexual offense as such.”²⁰ Further, framing an assault as a “miscommunication” may “provide the victim with the belief that she can avoid

¹⁷ *Id.* at 4; ASSOCIATION OF AMERICAN UNIVERSITIES, AAU CAMPUS SURVEY ON SEXUAL ASSAULT AND SEXUAL MISCONDUCT iv (2015), available at https://www.aau.edu/uploadedFiles/AAU_Publications/AAU_Reports/Sexual_Assault_Campus_Survey/AAU_Campus_Climate_Survey_12_14_15.pdf (denial, shock, minimization and self blame are common responses to sexual assault).

¹⁸ Lindsay M. Orchowski, et. al., Factors Associated With College Women’s Labeling of Sexual Victimization, Violence and Victims, 28(6) 940, 948 (2013). *See also*, Koss et al., *Stranger and Acquaintance Rape*, *supra*, at 2 (“It may take the woman who is acquainted with her offender longer to perceive that an interaction is progressing to rape, due to her greater investment in not labeling the situation as rape.”).

¹⁹ *Id.* A recent qualitative study on intimate partner violence in Australia asked interviewees: “How did you make sense of your relationship when your partner was raping you? The most common answer was, ‘I didn’t make sense of it.’” WOMEN’S HEALTH GOULBURN NORTH EAST, INTIMATE PARTNER RAPE 47 (2008).

²⁰ PATRICIA L. FANFLIK ET AL., NATIONAL DISTRICT ATTORNEYS ASSOCIATION, VICTIM RESPONSES TO SEXUAL ASSAULT: COUNTERINTUITIVE OR SIMPLY ADAPTIVE? 13 (2007), available at http://www.ndaa.org/pdf/pub_victim_responses_sexual_assault.pdf.

(footnote continued)

subsequent victimization by communicating more assertively.”²¹ But a PTSD-induced reframing of how the victim characterizes the assault does not change the fact that the victim was assaulted.

Similarly, survivors may “seek out their assailants in an attempt to master their situations or to regain control over their lives.”²² Women who have been sexually assaulted frequently feel they are not in control or that they have been robbed of their sexual agency.²³ Victims may attempt to reclaim their sense of control by making an affirmative choice to engage in sex – even a choice as seemingly counterintuitive as engaging in sex with their attacker.²⁴

Survivors also may continue to interact with their perpetrators in order to avoid other people finding out about the assault, out of fear of humiliation, blame, and social alienation. Here, for example, there was evidence that Ms. Roe saw her attacker again not because she wanted to, but because they were previously scheduled to attend an event

²¹ Lindsay M. Orchowski, PhD, et. al., Factors Associated With College Women’s Labeling of Sexual Victimization, Violence and Victims, 28(6) 940, 942 (2013).

²² JENNIFER GENTILE LONG, THE NATIONAL CENTER FOR THE PROSECUTION OF VIOLENCE AGAINST WOMEN, EXPLAINING COUNTERINTUITIVE VICTIM BEHAVIOR IN DOMESTIC VIOLENCE AND SEXUAL ASSAULT CASES 2 (2004) available at <http://www.ncdsv.org/images/Explaining%20Counterintuitive%20victim%20behavior.pdf>.

²³ *Id.*

²⁴ Meg Garvin, et al., *Victims’ Rights Compel Action to Counteract Judges’ and Juries’ Common Misperceptions About Sexual Assault Victims’ Behaviors*, VIOLENCE AGAINST WOMEN BULL. 3 (June 2014), available at <https://law.lclark.edu/live/files/17491-countering-common-misperceptions-of-sa-victims> (“[I]t is not unusual for victims to initiate or maintain post-assault contact with perpetrators, particularly where the perpetrator was known to the victim before the assault, as a way to take control of and try to understand and normalize what happened to them.”).

and she “didn’t want to explain [to her sorority sisters] what happened.” AR 299.

Victims often avoid abruptly cutting off their relationships with their attackers in order to hide the fact that an assault has occurred and avoid having to answer difficult questions from friends and family.

All of the above explanations are consistent with the experiences of Amici in their work with survivors of sexual assault. Although these responses to assault may seem illogical or counterintuitive, they are consistent with the literature exploring the reasons why campus sexual assault is chronically underreported. According to the Department of Justice’s Campus Climate Survey, only 12.5% of rape incidents among college students are reported by victims to any official, including school staff and administration, crisis centers in and beyond the school, campus police, and local law enforcement.²⁵ Survivors do not report assaults for multiple reasons, including their perception that the incident was not serious enough to report; shame or fear that the victim would be blamed for the assault; and continued feelings for their attacker.²⁶ These reactions also help to explain

²⁵ BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PUB. NO. NCJ 249545, CAMPUS CLIMATE SURVEY VALIDATION STUDY FINAL TECHNICAL REPORT 107 (2016), available at <http://www.bjs.gov/content/pub/pdf/ccsvsfr.pdf>.

²⁶ BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PUB. NO. NCJ 249545, CAMPUS CLIMATE SURVEY VALIDATION STUDY FINAL TECHNICAL REPORT 92-92, 111-12 (2016), available at <http://www.bjs.gov/content/pub/pdf/ccsvsfr.pdf> (The most common reason reported in the Campus Climate Survey for not reporting both rape and sexual battery to an official was: “that the victim did not need assistance, did not think the incident was serious enough to report, or did not want any action taken,” with the second most common reason being that the survivor feared others would think she was at fault.); ASSOCIATION OF AMERICAN UNIVERSITIES, AAU CAMPUS SURVEY ON SEXUAL ASSAULT AND SEXUAL MISCONDUCT iv (2015), available at (footnote continued)

why many survivors continue to interact with, and even be sexually intimate with, their perpetrators after being raped or assaulted.

D. By Relying On Its Own Incorrect and Preconceived Notions About How Assault Survivors Should React, the Superior Court Improperly Perpetuated a Harmful Myth.

The reasons that a victim of sexual assault may engage in subsequent sexual relations with the perpetrator are as varied and as complicated as human relationships themselves. *See People v. Adair*, 550 N.W.2d 505, 510 (Mich. 1996) (remanding to the trial court to consider whether subsequent sexual contact was admissible and noting that “there may be other human emotions intertwined with the relationship that may have interceded, leading to consensual sexual relations in spite of an earlier sexual assault”). Whatever the reasons a particular victim might continue sexual contact with her assailant, two points are undeniable. First, it is empirical fact that a substantial number of sexual assault victims do, in fact, engage in subsequent sexual relations with their attacker. Second, the reasons for this are unpredictable and depend on the particular facts of the case. But subsequent sexual contact cannot be construed as evidence that the victim must have been lying about being assaulted. The superior court’s conclusion here that if an assault truly had occurred, the victim would not have any consensual sexual contact with the perpetrator afterwards, is contradicted by empirical reality. Worse, the superior court’s erroneous assertion perpetuates a common rape myth that makes prosecutions more difficult and harms survivors of sexual assault.

https://www.aau.edu/uploadedFiles/AAU_Publications/AAU_Reports/Sexual_Assault_Campus_Survey/AAU_Campus_Climate_Survey_12_14_15.pdf

Myths like the one endorsed by the superior court have a profound negative effect on victims of sexual assault and those who counsel them. As a report from the National District Attorneys Association put it, “[u]nchallenged rape myths perpetuate feelings of guilt, shame and self-blaming tendencies for victims.”²⁷ These feelings of guilt, shame, and self-blaming likely contribute both to under-reporting of sexual assault and to the failure of victims to seek treatment – which in turn is associated with poorer mental health results, maladaptive and self-destructive behavior, and an increased risk of revictimization.²⁸

Even when victims do report assaults to law enforcement, rape myths like the one endorsed by the superior court hamper effective responses. As explained in a report by the National Center for the Prosecution of Violence Against Women, a division of the American Prosecutors Research Institute, “the behaviors of sexual assault victims – particularly nonstranger sexual assault victims— [] frequently conflict with the behavior the public expects.”²⁹ Certain behaviors, such as engaging in consensual sex with the

²⁷ PATRICIA L. FANFLIK ET AL., NATIONAL DISTRICT ATTORNEYS ASSOCIATION, VICTIM RESPONSES TO SEXUAL ASSAULT: COUNTERINTUITIVE OR SIMPLY ADAPTIVE? 20 (2007), available at http://www.ndaa.org/pdf/pub_victim_responses_sexual_assault.pdf (citing B.R. Burkhart & M. Fromuth, *The victim: Issues in Identification and Treatment*, in ACQUAINTANCE RAPE: ASSESSMENT, TREATMENT, AND PREVENTION (T.L. Jackson ed. 1996)).

²⁸ *Id.* at 3-14.

²⁹ JENNIFER GENTILE LONG, THE NATIONAL CENTER FOR THE PROSECUTION OF VIOLENCE AGAINST WOMEN, EXPLAINING COUNTERINTUITIVE VICTIM BEHAVIOR IN DOMESTIC VIOLENCE AND SEXUAL ASSAULT CASES 2 (2004) available at (footnote continued)

perpetrator, “are particularly counterintuitive to the type of behavior the public would expect from a ‘real victim’ and, without explanation, are easily transformed into reasons to doubt a victim’s account of her assault.” Such myths, when left unchecked, “can cause judges and jurors to disbelieve a victim’s allegations,” hampering prosecutions and other responsive action.³⁰ As the National District Attorneys Association put it, “[u]nfortunately, when a rape does not meet the stereotypical scenario or definition (i.e., deranged stranger, sudden violent attack at night, wielding a weapon, and penile/vaginal penetration), these rapes are often looked upon with more skepticism. Rape myth acceptance within juries is pervasive and appears to contribute to persistently low conviction rates.”³¹

The trial court could and should have based its factual findings on the facts before it rather than on a pernicious preconceived notion about how a “real” sexual assault victim would react. Those notions are not just false, they palpably harm survivors of sexual assault and hinder law enforcement in the already herculean task of effectively prosecuting sex crimes. This Court should reject the superior court’s reliance on these false notions of how a victim of sexual assault should behave.

<http://www.ncdsv.org/images/Explaining%20Counterintuitive%20victim%20behavior.pdf>.

³⁰ *Id.* at 1.

³¹ PATRICIA L. FANFLIK ET AL., NATIONAL DISTRICT ATTORNEYS ASSOCIATION, VICTIM RESPONSES TO SEXUAL ASSAULT: COUNTERINTUITIVE OR SIMPLY ADAPTIVE? 20 (2007), available at http://www.ndaa.org/pdf/pub_victim_responses_sexual_assault.pdf.

IV. CONCLUSION

For the reasons set forth above, Amici urge the Court to hold that the trial court erred in concluding that Ms. Roe's subsequent sexual contact with Mr. Doe was evidence that Ms. Roe consented to Mr. Doe's actions on the morning of February 1.

Dated: August 2, 2016

Respectfully Submitted,

/s/ Katherine K. Huang

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CERTIFICATE OF WORD COUNT

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