(Continued)

far and I guess it's rape. I did it. You obviously didn't want any part of it."

The Idaho Code defines forcible rape as follows:

> Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with the perpetrator's penis accomplished with a female under any one (1) of the following circumstances:
>
> . . .
>
> (3) Where she resists but her resistance is overcome by force or violence. I.C. § 18-6101(3).

The statute only requires "resistance." It does not differentiate between physical or verbal resistance. . . . Whether the evidence establishes the element of resistance is a fact-sensitive determination based on the totality of the circumstances, including the victim's words and conduct. Based on the plain language of I.C. § 18–6101(3), we hold that the extrinsic force standard applies in Idaho. Section 18–6101(3) defines forcible rape as "penetration, however slight," "[w]here [a woman] resists but her resistance is overcome by force or violence." Were we to construe "force" as encompassing the act of penetration itself, it would effectively render the force element moot. . . . [W]e conclude that some force beyond that which is inherent in the sexual act is required for a charge of forcible rape.

We hold that there is insufficient evidence to support a charge of forcible rape. . . . By her own admission, A.S. "didn't respond" physically, or even verbally, to Jones' advances—she "just froze." Idaho's forcible rape statute expressly requires resistance. Satisfying this element with inactivity strains the definition of resistance, essentially nullifying the resistance requirement. Though studies have shown that "freezing up" is indeed a legitimate, understandable reaction of victims of sexual assault, this Court has no authority to jettison the resistance requirement—modifying this State's statutes is the Legislature's province alone. As the statute is plainly written, some quantum of resistance is required, and A.S. did not resist Jones' advances on May 28. There was insufficient evidence on the element of resistance to support the conviction of forcible rape I so we need not consider the issue of force. The conviction . . . is accordingly reversed.

[We recognize] that many women demonstrate "psychological infantilism"—a frozen fright response—in the face of sexual assault. . . . The "frozen fright" response resembles cooperative behavior. . . . Indeed, . . . the "victim may smile, even initiate acts, and may appear relaxed and calm." . . . Subjectively, however, she may be in a state of terror. [Also] the victim may make submissive signs to her assailant and engage in propitiating behavior in an effort to inhibit further aggression. . . . These findings belie the traditional notion that a woman who does not resist has consented. They suggest that lack of physical resistance may reflect a "profound primal terror" rather than consent.