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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF MENDOCINO

10 PEOPLE OF THE STATE OF CALIFORNIA, ) Case No.: SCUJ-CRCR-2019-33411-1  
11 Plaintiff, ) PEOPLE'S OPPOSITION TO BAIL PENDING  
12 ) APPEAL  
13 )  
14 vs. ) Date: January 12, 2022  
15 GINA RAE BEAN, ) Time: 1:30 PM  
16 Defendant. ) Dept.: G  
17 )

18 As cited by the Defense request, Penal Code section 1272 and 1272.1, govern the trial court's  
19 discretion to grant bail pending appeal. The grant of bail pending appeal is a matter of discretion versus  
20 a matter of right. (Penal Code §1272(3)) Penal Code section 1272.1 reads:

21 Release on bail pending appeal under subdivision (3) of Section 1272 shall  
22 be ordered by the court if the defendant demonstrates all the following:

- 23 (a) By clear and convincing evidence, the defendant is not likely to flee.  
24 Under this subdivision the court shall consider the following criteria:  
25 (1) The ties of the defendant to the community, including his or her  
employment, the duration of his or her residence, the defendant's family  
26 attachments and his or her property holdings.  
(2) The defendant's record of appearance at past court hearings or  
27 of flight to avoid prosecution.  
(3) The severity of the sentence the defendant faces.

1 (b) By clear and convincing evidence, the defendant does not pose a  
2 danger to the safety of any other person or to the community.  
3 Under this subdivision the court shall consider, among other factors,  
4 whether the crime for which the defendant was convicted is a violent  
5 felony, as defined in subdivision (c) of Section 667.5.

6 (c) *The appeal is not for the purpose of delay and*, based upon the record  
7 in the case, *raises a substantial legal question* which, if decided in favor  
8 of the defendant, is likely to result in reversal.

9 For purposes of this subdivision, a "*substantial legal question*" means a  
10 *close question, one of more substance than would be necessary to a*  
11 *finding that it was not frivolous*. In assessing whether a substantial legal  
12 question has been raised on appeal by the defendant, the court shall not be  
13 required to determine whether it committed error.

14 In making its decision on whether to grant defendants' motions for bail  
15 under subdivision (3) of Section 1272, the court shall include a brief  
16 statement of reasons in support of an order granting or denying a motion  
17 for bail on appeal. The statement need only include the basis for the order  
18 with sufficient specificity to permit meaningful review. Cal. Penal Code §  
19 1272.1 (emphasis added)

20 The Defendant has filed a notice of appeal. Neither in that notice, nor in the Defendant's moving  
21 papers here, does the Defendant identify any issues on appeal beyond a broad claim of insufficiency of  
22 evidence supporting the charge. While the defendant has an absolute right to file an appeal, exercise of  
23 that right does not thereby give rise to a "close question." There were, in fact, stipulations of fact  
24 regarding causation and identity. The only issue was one of knowledge. The defendant testified in her  
25 own defense and in order to be convicted, her version of events must have been discarded by the trier of  
26 fact, here the trial court. With the stipulations, sufficiency of the evidence comes down, not to the  
27 quantum of admitted prosecution evidence, but the credibility of the defendant's testimony.

Findings of fact are reviewed by the Appellate Court under the "substantial evidence" test. Under  
this test "the power to judge the credibility of the witnesses, resolve any conflicts in the testimony,  
weigh the evidence and draw factual inferences, is vested in the trial court. On appeal all presumptions  
favor the exercise of that power, and the trial court's findings on such matters, whether express or  
implied, must be upheld if they are supported by substantial evidence." (*People v. Lawler* (1973) 9  
Cal.3d 156, 160; *People v. Glaser* (1995) 11 Cal.4th 354, 362.) "[I]t is the exclusive province of the

1 trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which  
2 a determination depends." (*People v. Thornton* (1974) 11 Cal.3d 738, 754)

3 The issue of insufficiency of the evidence, in light of the standard on appeal for that claim, and  
4 with the trial court serving as the trier of fact does not raise a substantial legal question. The defendant's  
5 motion fails under the (c) subsection of 1272.1. If all of the subsections are not demonstrated, then the  
6 motion for bail must be denied.

7 **CONCLUSION**

8 For the above-stated reasons, the People respectfully ask this Court to deny bail and impose all  
9 the conditions of the Defendant's sentencing including county jail.

10  
11  
12 Dated: January 3, 2022

Respectfully submitted,

13 C. DAVID EYSTER  
14 DISTRICT ATTORNEY

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16 \_\_\_\_\_  
17 Eloise Kelsey  
18 Deputy District Attorney

1  
2 **PROOF OF SERVICE**  
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4 I the undersigned, hereby declare that I am over the age of eighteen years and not a  
5 party to the within action. I am employed by the Mendocino County District Attorney, 700 S.  
6 Franklin Street, Fort Bragg, California.

7 On the date indicated below, I served a true copy of the People's Opposition to Bail  
8 Pending Appeal in the manner described below to:  
9

10 Mark Kalina  
11 Po Box 2523  
12 Mendocino, CA. 95460  
13 Business Fax (707) 964-7744

- 14  BY MAIL: The above-referenced true copies were placed in a sealed envelope  
15 with postage thereon fully prepaid addressed to the above party and such envelope was  
16 placed for collection and deposit with the United States Postal Service on the date listed  
17 below at Fort Bragg, California.
- 18  PERSONAL SERVICE: By personally delivering a true copy thereof to the person  
19 and/or representative listed above.
- 20  FACSIMILE: In addition to above, a courtesy copy was faxed to the party listed above.

21 Executed on January 5, 2022 in Fort Bragg, California.

22 I declare under penalty of perjury under the laws of the State of California, that the  
23 foregoing is true and correct.  
24

25 \_\_\_\_\_  
26 Lindsay King  
27 Legal Secretary  
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