

1 JEFFREY F. ROSEN, DISTRICT ATTORNEY
BAR NUMBER 163589
2 CHERIE BOURLARD, DEPUTY DISTRICT ATTORNEY
BAR NUMBER 132044
3 COUNTY GOVERNMENT CENTER, WEST WING
70 West Hedding Street
4 San Jose, CA 95110

5 Attorneys for The People

6 SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

7 PEOPLE OF THE STATE OF CALIFORNIA,) NO. C1122508
8)
9 Plaintiff,) NOTICE OF
10 v.) APPLICATION FOR
11 CHRISTINA JEAN BRAY and)
JIMMY LEE BRAY Defendants.)
12)

13 NOTICE IS HEREBY GIVEN that on January 9, 2011 at 2:00 pm, or as soon thereafter
14 as the matter may be heard in the above-entitled court, the People will apply to the court to order
15 a conditional examination of victim NICK BELLANE pursuant to Penal Code section 1335 et
16 seq. The People request that the conditional examination take place as soon as possible, or
17 during and at the preliminary hearing and that the examination be digitally videotaped for
18 potential use at preliminary hearing and/or trial at a later date.

19 This application will be based on the files and records herein, the attached Declaration,
20 Memorandum of Points and Authorities, and other evidence as may be presented at said hearing.

21 Dated: January 4, 2012

Respectfully submitted,

22 JEFFREY F. ROSEN, DISTRICT ATTORNEY

23 By: _____

24 CHERIE BOURLARD
Deputy District Attorney

1 JEFFREY F. ROSEN, DISTRICT ATTORNEY
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6 SUPERIOR COURT OF CALIFORNIA
7 COUNTY OF SANTA CLARA

8	PEOPLE OF THE STATE OF CALIFORNIA,)	NO. C1122508
)	
9	Plaintiff,)	DECLARATION IN SUPPORT OF
)	APPLICATION FOR
10	v.)	CONDITIONAL EXAMINATION
)	
11)	
12	CHRISTINA JEAN BRAY and)	
	JIMMY LEE BRAY Defendants..)	
	_____)	

13
14 I, Cherie Bourlard, declare:

15 I am an attorney licensed to practice law in the State of California;

16 I am a Deputy District Attorney employed by the County of Santa Clara, and I am
17 assigned to prosecute this case; DEFENDANTS are charged with committing various felony
18 violations, including Penal Code section 368(d) (Elder Theft);

19 The victim in the case, NICK BELLANE, is aged 96;

20 His testimony is material to the prosecution of this matter, as he is the main victim of the
21 above charged theft-related offenses. He is also a percipient witness to the charged crimes. The
22 People are requesting to obtain digital/videotaped testimony of the elder victim by conditional
23 examination in preparation for or at a future preliminary hearing and/or trial date. Therefore, the
24 People request the court to order a conditional examination of the alleged victim and authorize

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the testimony to be digitally videotaped, either at the preliminary hearing, or some other time as ordered, for potential use at the preliminary hearing and/or trial.

I declare under penalty of perjury the forgoing is true and correct and that this declaration was executed at San Jose, California.

Dated: January 4, 2012

Respectfully submitted,
JEFFREY F. ROSEN, DISTRICT ATTORNEY

By: _____
CHERIE BOURLARD
Deputy District Attorney

1 JEFFREY F. ROSEN, DISTRICT ATTORNEY
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2 CHERIE BOURLARD, DEPUTY DISTRICT ATTORNEY
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4 San Jose, CA 95110

5 Attorneys for The People
6

7 SUPERIOR COURT OF CALIFORNIA
8 COUNTY OF SANTA CLARA

9 PEOPLE OF THE STATE OF CALIFORNIA,) NO. C1122508
10)
11 Plaintiff,) MEMORANDUM OF POINTS
12 v.) AND AUTHORITIES IN SUPPORT
13) OF MOTION FOR CONDITIONAL
14 CHRISTINA JEAN BRAY and) EXAMINATION
JIMMY LEE BRAY Defendants.)
_____)

15 **PENAL CODE SECTION 1335 ET SEQ. PERMITS THE**
16 **COURT TO ORDER A CONDITIONAL EXAMINATION**
17 **OF A MATERIAL WITNESS WHO MAY BECOME**
UNAVAILABLE FOR TRIAL.

18 Pursuant to Penal Code section 1336(a), the court may order a conditional examination
19 where a material witness may become unavailable to attend the trial. That section provides:
20 “When a material witness for the defendant, or for the people, is about to leave the state, or is so
21 sick or infirm as to afford reasonable grounds for apprehension that he or she will be unable to
22 attend the trial or is a **person 65 years of age or older**, or a dependent adult, the defendant or the
23 people may apply for an order that the witness be examined conditionally.”
24

1 A conditional examination is appropriate in this case due to the ages of the herein
2 described victim, aged 96.

3 **TO PRESERVE THE VICTIM'S TESTIMONY FOR LATER**
4 **USE, THE COURT SHOULD PERMIT THE**
5 **CONDITIONAL EXAMINATION TO BE DIGITALLY**
6 **VIDEOTAPED PURSUANT TO PC SECTION 1343.**

7 At the conditional examination, the court should permit the People to record the
8 testimony of victim NICK BELLANE on digital videotape. The recording will preserve the
9 victim's testimony for use at the preliminary hearing and/or trial in the event he is unavailable to
10 testify. Penal Code section 1343 authorizes the court to permit such a recording as follows: "The
11 testimony given by the witness shall be reduced to writing and authenticated in the same manner
12 as the testimony of a witness taken in support of an Information. Additionally, the testimony
13 may be video-recorded."

14 **CONCLUSION**

15 In short, because of the victim's age, 96, the court should order a conditional examination
16 of the elderly victim *as soon as possible*. The examination should be recorded on digital
17 videotape to preserve her testimony for possible use at a later date. Such a procedure will protect
18 the rights of the People and Defendant to preserve evidence that is essential in this case.

19 Dated: January 4, 2012

20 Respectfully submitted,

21 JEFFREY F. ROSEN, DISTRICT ATTORNEY

22 By: _____

23 Cherie Bourlard
24 Deputy District Attorney

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6 SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

7 PEOPLE OF THE STATE OF CALIFORNIA,) NO. C1122508
)
8 Plaintiff,) ORDER FOR
) CONDITIONAL EXAMINATION
9 v.)
)
10 CHRISTINA JEAN BRAY and)
11 JIMMY LEE BRAY Defendants.)
_____)

12 GOOD CAUSE APPEARING by the Declaration of Deputy District Attorney CHERIE
13 BOURLARD in support of an application for conditional examination of the victim herein, NICK
14 BELLANE,

15 THE COURT FINDS AND IT IS HEREBY ORDERED THAT:

- 16 1. A conditional examination is appropriate in this case due to the age of the victim;
- 17 2. The conditional examination shall take place during the Preliminary Hearing, at Hall of
18 Justice at Santa Clara County Superior Court 190 W. Hedding St., San Jose, California;
- 19 3. The conditional examination shall be reduced to writing and a transcript produced and shall
20 also be digitally videotaped pursuant to Penal Code section 1343 for possible use at a preliminary hearing
21 and/or trial.

22 Dated: _____, 2012

23 _____
Judge of the Superior Court

24

PROOF OF SERVICE

STATE OF CALIFORNIA) **People v. Christina Jena Bray & Jimmy Lee Bray**
COUNTY OF SANTA CLARA) **Docket No. C1122508**

I am a citizen of the United States and am employed in the County of Santa Clara, State of California. I am over the age of eighteen years, and not a party to the above-entitled action.

My business address is: Office of the District Attorney, 70 West Hedding Street, West Wing, San Jose, CA 95110.

On January 5, 2012, I served the following documents:

Notice for Application of Conditional Examination, Declaration in Support of Application of Conditional Examination, Memorandum in Support of Application and Order for Conditional Examination, and Proposed Order for Conditional Examination

on defendant C.Bray personally in said action by personally delivering it to his attorney of record:

**Public Defender
San Jose**

And on defendant J.Bray personally in said action by personally delivering it to his attorney of record:

**Alternate Defender
San Jose**

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

Executed on January 5, 2012, at San Jose, California.

CHERIE BOURLARD