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7 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA,**
8 **COUNTY OF SAN JOAQUIN**

9 PEOPLE OF THE STATE OF CALIFORNIA,) Case No.: CR-2016-0015689
10 Plaintiff,))
11 vs.)) **PEOPLE'S RESPONSE TO**
12 LYLE BURGESS,)) **DEFENDANT'S MOTION TO SET**
13 Defendant.)) **ASIDE INFORMATION**
14)) **(PENAL CODE SECTION 995)**
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DATE: February 5, 2018
TIME: 8:30 a.m.
DEPT: 7B

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19 **STATEMENT OF THE CASE**

20 The defendant was charged by way of Felony Complaint filed November 22, 2016 with
21 one count of a felony violation of Penal Code section 288.5(a), Continuous Sexual Abuse of a
22 Child, against victim Jane H. Doe (D.O.B. 10/12/2010). A preliminary hearing was held on
23 November 1, 2017 before the Honorable William D. Johnson after which the defendant was held
24 to answer on four counts of Penal Code section 288(a). The defendant pled not guilty to the
25 subsequently filed Information. The defendant contends that there was not enough evidence at
26 the preliminary hearing to hold him to answer on Counts 1 through 4.

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2 **RELEVANT FACTS**

3 The victim's father [REDACTED] worked for the Defendant Lyle Burgess for more than
4 twenty years. (Preliminary Hearing Transcript (PHT) 55: 3-11). Several times a month, the
5 victim and her father visited the Defendant's home in San Joaquin County beginning when she
6 was approximately five years old. (PHT 56: 1-4; 57: 16-22). The Defendant also owned a cabin
7 in Calaveras County. (PHT 56: 5-10). The victim and her family visited the Defendant's cabin
8 November 11th through the 13th of 2016. (PHT 59: 2-8). While at the cabin, the victim's mother
9 [REDACTED] observed the Defendant's hand down the back of the victim's pants touching her "bum".
10 (PHT 60: 14-28; 61: 1). When she observed this, she moved into the kitchen for a better look
11 and she noticed that the Defendant moved his hand away. She testified, "As I was in the kitchen
12 and I saw that, I don't know if it's because he knew I was behind or whatever, but I saw his hand
13 slowly, it wasn't fast, slowly come out of her pants and then come to the backside of her shirt of
14 her lower back and just go like this". (PHT 61: 10-14). Upon seeing this, [REDACTED] immediately
15 picked up her daughter and took her upstairs. (PHT 61:27-28). On Saturday evening, [REDACTED]
16 was coming up the stairs in the cabin when she saw the victim with the Defendant. She saw the
17 victim standing in front of the Defendant. He had his legs open and she was leaning backwards
18 against him between his legs. She saw the Defendant's hands down the front of the victim's
19 pants. (PHT 63: 14-22). She testified that the Defendant's hand was all the way inside the
20 victim's pants and that his fingers "had to have been on her private parts". (PHT 64: 18-25).
21 [REDACTED] immediately removed her daughter from the situation and talked to her husband about
22 what she saw. A couple hours later, [REDACTED] talked to her daughter about people touching her in
23 her private areas. (PHT 66: 7-9). She asked the victim if anyone had ever touched her there and
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1 the victim disclosed that the Defendant had touched her. (PHT 67: 2-6). The victim disclosed
2 that the Defendant had touched her vagina and backside every time she went to his house. (PHT
3 67: 2-16). That evening, [REDACTED] discussed the situation with her husband. Early the following
4 morning, the Defendant approached [REDACTED] and [REDACTED] and asked if he did something wrong.
5 (PHT 68:7-24). The Defendant admitted to “doing things” with the victim for approximately
6 two months. (PHT 69: 4-5). The Defendant apologized, stated he wanted to keep talking about it
7 and that he would do anything to fix it. (PHT 69: 8-10). Later that same day, the Defendant
8 again admitted to touching the victim for the past two months. He told [REDACTED] and [REDACTED] that he
9 wanted to work things out, he wanted to fix things and he wanted to keep talking to them. (PHT
10 70: 4-20). [REDACTED] understood “work things out” to mean that they should keep it between them
11 and not contact law enforcement. (PHT 70: 20-25). A third conversation occurred at the
12 Defendant’s home a couple days after they returned from the cabin. During that conversation
13 with [REDACTED] and [REDACTED], the Defendant offered a college scholarship or payment. (PHT 74: 7-12).
14 After the last meeting, the Defendant left two voicemail messages for [REDACTED] and [REDACTED]. He told
15 them he wanted to keep talking to them . . . “we can work this out, we can set something up”.
16 (PHT 78: 7-13). The Defendant confronted [REDACTED] at work and told him that he felt “guilty” about
17 happened and that he (the Defendant) was having a hard time sleeping. (PHT 127: 15-19). The
18 Defendant apologized over and over again. The Defendant told [REDACTED] that he would do anything
19 to make it up them and suggested creating a college fund or giving a donation to a charity. (PHT
20 128: 1-13).

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24 During the preliminary hearing, the victim Jane H. Doe testified that she is seven years
25 old and that her birthday is October 12th. (PHT) 10: 18-25). She knows the Defendant because
26 her father works for him. (PHT 14: 17-18). She testified that she went to the Defendant’s house

1 with her father while he did some work there. (PHT 14: 24-26). While at the Defendant's house,
2 the Defendant touched her "pee-pee" "three or five" times on "different days and different
3 times". (PHT 18: 2-22; 19: 18-21). She testified that the Defendant also touched her "pee-pee"
4 once while she was at the Defendant's cabin. (PHT 20: 2-3).

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6 At the conclusion of the preliminary hearing, the prosecutor asked the court for holding
7 orders on four counts of 288(a) based upon the evidence that came out during the hearing. The
8 Defendant is now challenging that holding order on all counts alleging there was not enough
9 evidence relating to the Defendant's intent in this case.

10 LAW AND ARGUMENT

11 Penal Code section 995 provides that an information "shall be set aside" if the Defendant
12 has been "committed without reasonable or probable cause." Probable cause exists if a person of
13 ordinary caution or prudence would be led to believe and conscientiously entertain a strong
14 suspicion of the guilt of the accused. (*Rideout v. Superior Court* (1967) 67 Cal.2d 471, 474.)

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16 But, in determining a motion brought pursuant to Penal Code section 995, neither the
17 superior court nor the appellate court may reweigh the evidence or substitute its judgment for
18 that of the committing magistrate as to the weight of the evidence or credibility of witnesses.
19 (*People v. Block* (1971) 6 Cal.3d 239, 245; *People v. Hall* (1971) 3 Cal.3d 992, 996; *People v.*
20 *Plengsangtip* (2007) 148 Cal.App.4th 825, 835.) " 'And if there is some evidence in support of
21 the information, the court will not inquire into the sufficiency thereof.' (*People v. Block, supra*;
22 *Rideout v. Superior Court, supra*, 67 Cal.2d at p. 474.) Thus, an information should be set aside
23 only when there is a total absence of evidence to support a necessary element of the offense
24 charged. (*People v. Superior Court (Jurado)* (1992) 4 Cal.App.4th 1217, 1226; *Somers v.*
25 *Superior Court* (1973) 32 Cal.App.3d 961, 963.)
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1 “[A]lthough there must be *some* showing as to the existence of each element of the
2 charged crime such a showing may be made by means of circumstantial evidence supportive of
3 reasonable inferences on the part of the magistrate.” (*Williams v. Superior Court* (1969) 71
4 Cal.2d 1144, 1148.) “Every legitimate inference that may be drawn from the evidence must be
5 drawn in favor of the information.” (*Rideout v. Superior Court, supra*, 67 Cal.2d at p. 474;
6 *Caughlin v. Superior Court* (1971) 4 Cal.3d 461, 464-465; *People v. Superior Court (Jurado)*,
7 *supra*, 4 Cal.App.4th at p. 1226.) In short, an information should not be set aside pursuant to
8 Penal Code section 995 if there is some rational ground for assuming the possibility that an
9 offense has been committed and the accused is guilty of it. (*People v. Slaughter* (1984) 35
10 Cal.3d 629, 637; *People v. Hall, supra*, 3 Cal.3d at p. 996; *Rideout v. Superior Court, supra*.)
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13 I. **THERE WAS SUFFICIENT EVIDENCE PRESENTED TO PROVE THAT**
14 **THE DEFENDANT HAD THE REQUIRED INTENT ALLEGED IN**
15 **COUNTS ONE THROUGH FOUR.**

16 CalCrim 1110 states, in relevant part:

17 “To prove that the defendant is guilty of this crime, the People must prove that:

- 18 1. The defendant willfully touched any part of a child’s body either on the bare
19 skin or through the clothing;
- 20 2. The defendant committed the act with the intent of arousing appealing to, or
21 gratifying the lust, passions, or sexual desires of himself or the child;
- 22 3. The child was under the age of 14 years at the time of the act”.

23 This Court should deny the Defendant’s motion to dismiss Counts One through Four. The
24 evidence presented at the preliminary hearing was sufficient to demonstrate that the Defendant’s
25 touching of Jane H. Doe was a “lewd or lascivious act” and not an innocuous touching. Even an
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1 objectively innocuous act such as “tickling” or “horsing around” can be sexual in nature if the
2 totality of the circumstances indicates that it was the Defendant’s intent to satisfy or arouse his
3 sexual desires. Those circumstances are present in this case, given it was unreasonable for the
4 Defendant to touch an unrelated five or six year old girl on her vagina and buttocks, his
5 admissions and apologies, and his offers to pay college expenses or donate to charity to keep the
6 facts of the abuse outside the realm of law enforcement.
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8 California Penal Code section 288(a) forbids any lewd or lascivious act upon any part of
9 the body of a child under the age of 14 with the intent of arousing the perpetrator’s or the child’s
10 sexual desires. For almost a century, § 288 has been interpreted to require no particular form of
11 physical contact. The crime occurs whenever the trier of fact determines, based on all the
12 circumstances, that an underage child was “touched” with the requisite sexual intent. A
13 construction permitting conviction for any and all sexually motivated contact is supported by the
14 relevant statutory language and apparent legislative intent. (*People v. Martinez* (1995) 11 Cal.
15 4th 434, 438.) The only way to determine whether a particular touching is permitted or
16 prohibited is by reference to the actor’s intent as inferred from all the circumstances. (*People v.*
17 *Martinez* (1995) 11 Cal.4th 434, 450.) These circumstances include the charged act, other
18 charged or admitted lewd acts, the relationship between the Defendant and the victim, any
19 coercion, bribery or deceit used to avoid detection or to obtain the victim’s cooperation, and the
20 Defendant’s extrajudicial statements. (*People v. Martinez* (1995) 11 Cal.4th 434, 445; *In re Paul*
21 *C.* (1990) 221 Cal.App.3d 43, 54.) A “lewd or lascivious act” is defined expansively and does
22 not restrict the manner in which such contact can occur or require that specific or intimate body
23 parts be touched. (*People v. Martinez* (1995) 11 Cal.4th 434, 442.) The touching need not be
24 sexual in character nor must the lust, passions or sexual desires of either party actually be
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1 aroused, appealed to, or gratified. (*People v. Nothnagel* (1960) 187 Cal.App.2d 219, 225)
2 Conviction under the statute has never depended upon contact with the bare skin or “private
3 parts” of the defendant or the victim. (*People v. Martinez* (1995) 11 Cal.4th 434, 444.)

4 The purpose of the perpetrator in touching the child is the controlling factor and each
5 case is to be examined in the light of the intent with which the act was done. If the intent of the
6 act, although it may have the outward appearance of innocence, is to arouse the sexual desire of
7 the perpetrator or the child, it stands condemned by the statute. (*People v. Hobbs* (1952) 109 Cal.
8 App. 2d 189, 192.) Whether a touching was “innocuous” or “lewd or lascivious” necessarily
9 depends on the defendant’s intent, not the sexual standards of an objectively reasonable person.
10 (*People v. Levesque* (1995) 35 Cal. App. 4th 530, 540.) The lewd character of an activity cannot
11 logically be determined separate and apart from the perpetrator’s intent. It is common knowledge
12 that children are routinely cuddled, disrobed, stroked, examined, and groomed as part of a
13 normal and healthy upbringing. On the other hand, any of these intimate acts may also be
14 undertaken for the purpose of sexual arousal. (*People v. Martinez* (1995) 11 Cal.4th 434, 450.)
15 The statute recognizes that children are “uniquely susceptible” to such abuse as a result of their
16 dependence upon adults, smaller size, and relative innocence. (*People v. Scott* (1994) 9 Cal.4th
17 331, 341-342.) A touching should not escape punishment simply because it might not be
18 considered a means of sexual gratification by members of the mainstream population. (*People v.*
19 *Martinez* (1995) 11 Cal.4th 434, 452.) In order to determine whether a touching is permitted or
20 prohibited under the statute, the trier of fact must establish the intent of the Defendant at the time
21 the touching occurred. (*People v. Hobbs* (1952) 109 Cal. App. 2d 189, 192.) This intent is drawn
22 from the totality of the circumstances surrounding each incident. (*People v. Scott* (1994) 9
23 Cal.4th 331, 341-342.) Not only did the circumstances indicate in this case that it was
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1 inappropriate for the Defendant to touch an unrelated five or six year old girl on the vagina and
2 buttocks, but he admitted the touching to her parents and offered compensation in order to keep
3 them from reporting the incidents to law enforcement. It is important for the court to consider all
4 of the circumstances and evidence together to determine whether the Defendant had the requisite
5 intent. In this case, the evidence shows that he did.

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7 The only way to determine whether a particular touching is permitted or prohibited is by
8 reference to the actor's intent as inferred from all the circumstances. (*People v. Martinez* (1995)
9 11 Cal.4th 434, 450.) These circumstances include the charged act, other charged or admitted
10 lewd acts, the relationship between the Defendant and the victim, any coercion, bribery or deceit
11 used to avoid detection or to obtain the victim's cooperation, and the Defendant's extrajudicial
12 statements. (*People v. Martinez* (1995) 11 Cal.4th 434, 445; *In re Paul C.* (1990) 221
13 Cal.App.3d 43, 54.) All of the evidence presented in this case shows that the Defendant
14 committed the acts with the requisite sexual intent. His intent can be inferred not only by the
15 touching of the victim's vagina and buttocks that occurred, but also by his admissions, and offers
16 of compensation on multiple occasions to avoid detection. Therefore, the information should not
17 be set aside.

18
19 **CONCLUSION**

20 For the above reasons, the People ask this court to deny the Defendants' Motion to Set
21 Aside Information in this case.

22
23 Dated: January 31, 2018

24 Respectfully submitted,
25 TORI VERBER-SALAZAR
26 District Attorney


KATHLEEN A. MURRAY
Deputy District Attorney

1 The People of the State of California,)
2)
3) Plaintiff,) PROOF OF SERVICE BY FAX
4) CCP 1013a, 2015.5
5) v.) CRC 2009(I)
6)
7) LYLE BURGESS)
8) CR-2016-0015689)
9)
10) Defendant(s)
11)

12 I, Michelle A Vargas, declare that I am employed in the County
13 of San Joaquin; I am over the age of eighteen years and not a party
14 to the within entitled cause; my business address is 222 E. Weber
15 Avenue, Room 202, Stockton, CA 95202.

16 On 02/01/2018 at 10:00am, by use of facsimile machine,
17 telephone number (209) 468-2436, I served a copy of the within
18 document(s): PEOPLE'S RESPONSE TO DEFENDANTS MOTION TO SET ASIDE
19 INFORMATION, on the parties in the within action by transmitting by
20 facsimile machine to the following:

21 ATTORNEY GREG DAVENPORT, (209) 475-4951

22 The facsimile machine used complied with the California Rules
23 of Court, rule 2003(3) and no error was reported by said machine.
24 Pursuant to California Rules of Court, rule 2005(I), I further
25 caused said machine to print a record of the transmission, a copy
26 of which is attached to this declaration.

27 I declare under penalty of perjury under the laws of the State
28 of California that the foregoing is true and correct.

Dated: February 1, 2018

