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7 Superior Court of California, 1111 3rd Street, Napa CA 95559
8 **Master Calender Court of Judge Bennet**
9 <http://www.napa.courts.ca.gov/> 707-299-1170 Chambers Court Admin: 707-299-1110
10 Criminal/ traffic fax 707 253-4673

11 County of Napa, Monique
12 Langhorn, DDA, Gary
13 Leiberstein, elected
14 prosecutor, 931 Parkway
15 Mall Napa CA 94559 707
16 253 4211, Fax: 707 253
17 4041 dba People of
18 California
19 v
20 Buzz Owen Vieau, sui
21 juris, incorrectly sued as
22 BUZZ OWEN VIEAU.

Case Number CR 112, 221
Prisoner Identification Number 1991 00 305-02
Document #5681 version 1
First Defense Document in this case.
**Notice of Demurrer. Notice of intent to file 1538.5 and 995.
Demurrer on the Basis that there is no valid allegation that
defendant drove.**
Demand to Remove Prisoner Identification Number from all court pleadings
but especially those that will be seen by the jury of the judge.
Demand to immediately dismiss this case for improper defendant or amend
the complaint to show my name property - not in all caps.
Memorandum of Authorities
Proof of service.
Four Exhibits.
Date: 20 March 2003. Thursday
Time: 8:30 a.m.
Dept: E

23 **How many legs does a sheep have if you call the tail a leg?
24 Just 4. Calling it a leg does not make it a leg.**

25 **Notice of Demurrer. Notice of intent to file 1538.5 and 995.**

26 Prosecutor Langhorn, please take note that on the venue listed above, I will ask the court to sustain
27 my demurrer as more fully set forth below. This is a preliminary memorandum of authorities. I reserve the
28 right to upgrade it consistent with the rules regarding time for service.

_____ - Buzz Vieau Thursday, February 20, 2003

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Memorandum of Authorities [Page 4](#)
This complaint is invalid. It is not sworn as required in PC 959 subsection 3. [Page 5](#)
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Demurrer

I demur to the complaint as follows. I was sleeping - not driving. The Mercer opinion and others take the sensible approach that the legislature said "driving". I was not driving in my sleep. I was parked and sleeping. In Mercer and many cases the driver was sleeping with the engine running. The demurrer must be based on the complaint. The officer's sworn complaint is the only complaint of a percipient witness. Despite the statutes in the penal code, a prosecutor may not plead what is untrue merely to force the defendant to trial.

The demurrer is an ancient process designed to save time.

Prosecutor Langhorn has perjured herself.

----- Buzz Vieau Thursday, February 20, 2003

1 **Tables of Authorities Cited herein:**

2 **Cases cited herein:**

2 Henslee v. Department of Motor Vehicles [Page 4](#)

3 Mercer v. Department of Motor Vehicles (1991) 53 Cal.3d 753 , 280 Cal.Rptr. 745; 809 P.2d 404
4 [Page 4](#)

5 Music v. Department of Motor Vehicles(1990) 221 Cal.App.3d 841 , 270 Cal.Rptr. 692 Where, as here, the
6 officer does not personally observe the driving element of the offense, a warrantless arrest for drunk driving
7 is invalid. [Page 4](#)

8 Padilla v. Meese (1986)184 Cal.App.3d 1022. Where, as here, the officer does not personally observe the
9 driving element of the offense, a warrantless arrest for drunk driving is invalid.
10 [Page 4](#)

11 **Statutes cited herein:**

12 PC 959 subsection 3: “. . . If a complaint, that it is made and subscribed by some natural person and sworn
13 to before some officer entitled to administer oaths.” [Page 5](#)

14 Vehicle Code 23152. (a) It is unlawful for any person who is under the influence of any alcoholic beverage or
15 drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle. . . . [Page 4](#)

1 **Memorandum of Authorities**

2 Even if the prosecution proves everything that the officer said, there is no crime. Let's take a look at
3 the statute:

4 Vehicle Code 23152. (a) It is unlawful for any person who is under the
5 influence of any alcoholic beverage or drug, or under the combined
6 influence of any alcoholic beverage and drug, to drive a vehicle.

7 The 4 corners of the complaint demonstrate that an element of the crime is missing. I was not driving.
8 Sleeping is not driving.

9 Several courts have held that observed volitional movement of a vehicle is
10 required before a person's driving privilege may be suspended or revoked
11 for refusal to submit to chemical testing. (E.g., **Music v. Department of**
12 **Motor Vehicles** (1990) 221 Cal.App.3d 841 [270 Cal.Rptr. 692] [Music].) By
13 contrast, the present Court of Appeal, claiming support for its view in
14 **Henslee v. Department of Motor Vehicles** (1985) 168 Cal.App.3d 445
15 [214 Cal.Rptr. 249] [Henslee], holds that observed movement of a vehicle
16 is not required as a condition of suspension or revocation of driving
17 privileges for failure to submit to testing. We conclude the **Music** approach
18 correctly interprets the statutes, and accordingly we reverse the decision of
19 the Court of Appeal. -**Mercer v. Department of Motor Vehicles** (1991) 53
20 Cal.3d 753 , 280 Cal.Rptr. 745; 809 P.2d 404

21 Sleeping is not driving. That is my point. Also, there is no evidence that I had previously been driving
22 while under the influence. The officer relates in his typed narrative in the exhibit that I pointed out my office
23 to him. I was parked at my office. I had been drinking at my office. I only came out to my car because the
24 heat was not working at my office.

25 "Where, as here, the officer does not personally observe the driving element
26 of the offense, a warrantless arrest for drunk driving is invalid." - **Padilla v.**
27 **Meese** (1986) 184 Cal.App.3d 1022, and **Music v. Department of Motor**
28 **Vehicles** (1990) 221 Cal.App.3d 841 , 270 Cal.Rptr. 692

29 The officer says in his report that I was sleeping in a reclined position. This was the situation in the
30 reported case:

31 "Officer, was the defendant in control of the vehicle? No. What was he
32 doing. The defendant was sleeping in a reclined position in the drivers seat.

33 "

34 Officer Helfrich says that I asked many times to show him my office. I wanted to
35 prove that I was not driving drunk. I merely came out to my truck to sleep. It reminds me of

1 these words from the *Music* case:

2 "[Counsel]: Did Mr. Music ask you any questions as to why you were making
3 him do this when in fact he was not driving the vehicle but sleeping? Officer
4 O'Connor: As I recall he did. He was concerned with what and I told him that
5 his vehicle was in the road, his vehicle was running." - *Music v Dept of
Motor Vehicles*(1990) 221 Cal.App.3d 841 , 270 Cal.Rptr. 692

6 Although the penal code may seem to permit groundless bald accusations, the constitution does not
7 permit it and the state may not legislative fiat supervene a constitutional thing. The statute is unconstitutional
because it violates the constitution.

8 The only complaint is sworn and valid is that of the officer in exhibit 1 and it alleges no drunk driving!
9 **This complaint is invalid. It is not sworn as required in PC 959 subsection 3.**

10 Although Monique Langhorne committed perjury by this lying complaint she failed to adequately plead
as specified in PC 959 subsection 3 which states:

11 959. The accusatory pleading is sufficient if it can be understood therefrom: 1. That it is filed
12 in a court having authority to receive it, though the name of the court be not stated. 2. If an
13 indictment, that it was found by a grand jury of the county in which the court was held, or if
14 an information, that it was subscribed and presented to the court by the district attorney of
15 the county in which the court was held. **3. If a complaint, that it is made and subscribed
by some natural person and sworn to before some officer entitled to administer oaths.**

16 **Proof of Service**

17 I, (print name) _____, declare the following under penalty of perjury: On Thursday,
18 February 20, 2003 I personally handed this demurrer to the receptionist at the prosecutor's office at the
address shown in the caption. Thereafter I filed it with the clerk of the court.

19 Signed _____ Thursday, February 20, 2003
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List of Exhibits

Please note that no traffic ticket was issued in this case.

Exhibit 1: **Sworn complaint** by arresting officer Helfrich (phone number 707 253 4451)that the car was “parked”. No traffic offense is listed; those boxes remain unchecked. No ticket was issued. Defendant was “reclined back” and “sleeping”

Exhibit 2: NAPA police department DUI interview. In the box labeled “Where did you start driving from” the officer has written n/a meaning “not applicable” because defendant was not driving. Similarly 2 other driving questions are marked n/a and one is ignored.

Exhibit 3: Page 1 of typed narrative of Arresting Officer. “The Nissan was parked. . . engine was running. . . it appeared the person inside. . . was sleeping. . .asked how long he had been parked. . . he told me for a while. . .”

Exhibit 4:Page 2 of Complaint in this case. Prosecutor commits perjury and swears that Defendant was driving. She was not a percipient witness and her only evidence is the statement of the only officer at the scene and he swears that defendant was not driving but sleeping.