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FILED  
TULARE COUNTY SUPERIOR COURT  
VISALIA DIVISION

OCT 27 2020

STEPHANIE CAMERON, CLERK  
BY: 

Attorneys for Defendant

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF TULARE

11 PEOPLE OF THE STATE OF  
12 CALIFORNIA,

13 Plaintiff,

14 vs.

15 WILLIAM J. BURDEN,

16 Defendant.

) Case No. VCM 401126

)

)

)

) NOTICE OF DEMURRER TO THE  
COMPLAINT BY DEFENDANT

) BURDEN

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)

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19 To: The District Attorney of the County of Tulare and the deputy district attorney  
20 assigned to this case:


21 NOTICE IS HEREBY GIVEN that on Tuesday, October 27, at 10:00 am in Department  
22 3, or as soon thereafter as this matter may be heard, Defendant William Burden (hereinafter  
23 "Defendant") will demur to the Complaint filed in this action based upon the following grounds:  
24

25 1) That the complaint does not substantially conform to the Penal Code § 950 and 952  
26 requirements relating to a statement of the offense.  
27  
28

1           2) That the offenses complained of occurred outside the jurisdiction of the Court. (Penal  
Code § 1004)

2           Proceeding on the Complaint as currently drafted would violate due process of law.

3  
4  
5 Dated: 10-27-2020

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8 MARGUERITE MELO, ESQ.  
Attorney for Defendant

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11                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

12           This demurrer is based upon two separate basis: uncertainty in the complaint alleging a  
13 violation of Penal Code Section 653M(a), and the alleged crime occurred outside the jurisdiction  
14 of California courts.

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16           The operative language is as follows:

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18                           On or about January 20, 2020, in the County of Tulare, the  
19 crime of Annoying Telephone Calls, in violation of Penal Code  
20 Section 653M(a), a misdemeanor, was committed by William  
21 Joseph Burden, who did unlawfully, and with intent to annoy,  
22 telephones or make contact by means of an electronic  
23 communications device with E.N., and address to or about the  
24 other person any obscene language or addresses to he other person  
any threat to inflict injury to E.N. or property of the person  
addressed or any member of his or her family, is guilty of a  
misdemeanor. Nothing in this subdivision shall apply to telephone  
calls or electronic contacts made in good faith.

25           The complaint on its face alleges multiple ways, or theories a defendant could be  
26 convicted.

27           Due process of law requires that an accused by advised of the charge(s) against him in  
28 order that he may have a reasonable opportunity to prepare and present his defense and not be

1 taken by surprise by evidence at his trial. *Sallas v. Municipal Court* (1978) 86 Cal.App.3d 737,  
2 742. When a statute allows multiple factual theories allowing the prosecution to prove its case,  
3 the defendant is “entitled to be advised with some particularity which of the several available  
4 factual theories the People would rely upon.” *LaMadrid v. Superior Court* (1981) 118  
5 Cal.App.ed 786, 791.  
6

7       The Court in *LaMadrid* upheld the defendant’s demurrer to a complaint that simply  
8 tracked the statutory language for vehicular manslaughter-that “defendant did, while driving a  
9 vehicle, unlawfully and without malice kill Mark Lackie, in the commission of an unlawful act  
10 not amounting to a felony without gross negligence, and in the commission of a lawful act which  
11 might product death, in an unlawful manner without gross negligence.” *Id.* At 789. This case  
12 presents the same legal argument as *LaMadrid* because the prosecution has simply alleged the  
13 language of the statute: that the defendant, “with intent to annoy, telephones or make contact by  
14 means of an electronic communications device with E.N., and address to or about the other  
15 person any obscene language or addresses to he other person any threat to inflict injury to E.N.  
16 or property of the person addressed or any member of his or her family”. There are multiple  
17 possible theories that the government/prosecution may be alleging: did defendant telephone E.N.  
18 and communicate a threat? Did he threaten E.N. by use some other communication device? Did  
19 he address “obscene” language towards her? If so, what specifically was the “obscene”  
20 statement?” Or did defendant threaten to harm the property of E.N. or some member of his/her  
21 family? Or perhaps the threats were made to E.N. about members of his/her family? There are  
22 so many possible permutations that it is unfair amounting to a due process violation to allow the  
23 current complaint to stand.  
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      Assuming for argument’s sake that the prosecution is proceeding on an “obscenity” basis,

1 then the exact language is of paramount importance.

## 2 JURISDICTION

3 Independent of the vagueness of the language of the complaint as currently drafted, this  
4 case is brought for acts that occurred outside the jurisdiction of the Court.

5  
6 As an offer of proof, at the date and time alleged in the complaint, the evidence will show  
7 that the Defendant was on a foreign-flagged vessel (Bermuda), outside the territorial jurisdiction  
8 of the United States (and California) and on the high seas.

9 The penal code describes the jurisdictional limits of the Court:

10  
11 778. When the commission of a public offense, commenced without  
12 the State, is consummated within its boundaries by a defendant,  
13 himself outside the State, through the intervention of an innocent or  
14 guilty agent or any other means proceeding directly from said  
15 defendant, he is liable to punishment therefor in this State in any  
16 competent court within the jurisdictional territory of which the offense  
17 is consummated.

18 Perhaps, if Defendant had committed the offenses within the geographic jurisdiction of  
19 the United States, California's long-arm statute might confer jurisdiction to the court. However,  
20 that is not the case.

21 Jurisdiction for crimes that occur at sea, are reserved for the country of the flag of the  
22 vessel. In this case, Bermuda.

23 Foreign flagged vessels on the high seas, such as in this case, enjoy exclusivity of flag-  
24 State jurisdiction, namely, that ships on the high seas, are, as a general rule, subject to the  
25 exclusive jurisdiction and authority off the State whose flag they lawfully fly. This principle is  
26 firmly rooted in the axioms of State equality and of the freedom of the seas. Thus it is generally  
27 accepted that no State can interfere with the shipping of another State unless the interfering State  
28

1 possesses an exceptional right clearly vested by customary law or pursuant to a particular treaty  
2 regime.<sup>1</sup>

3 If any American court has jurisdiction, it is only the federal court. The special maritime  
4 and territorial jurisdiction of the United States is defined in Section 7 of Title 18 of the US Code:  
5 18 U.S. Code § 7. Special maritime and territorial jurisdiction of the United States defined  
6

7 The term “special maritime and territorial  
8 jurisdiction of the [United States](#)”, as used in this title, includes:

9 (1) The high seas, any other waters within the admiralty  
10 and maritime jurisdiction of the [United States](#) and out of the  
11 jurisdiction of any particular State, and any vessel belonging in  
12 whole or in part to the [United States](#) or any citizen thereof, or to any  
13 corporation created by or under the laws of the [United States](#), or of  
14 any State, Territory, District, or possession thereof, when such vessel  
is within the admiralty and maritime jurisdiction of the [United States](#)  
and out of the jurisdiction of any particular State.

15 (8) To the extent permitted by international law, any  
16 foreign vessel during a voyage having a scheduled departure from or  
17 arrival in the [United States](#) with respect to an offense committed by  
or against a national of the [United States](#).

### 18 **CONCLUSION**

19 The complaint and declaration do not provide Constitutionally adequate notice of what  
20 Defendant Burden supposedly did to E.N. Accordingly, the demurrer should be granted and the  
21 prosecution should be ordered to either file a more precise complaint listing exactly what it is  
22 Defendant is alleged to have done in violation of the law, or dismiss this complaint.  
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28 <sup>1</sup> See generally D. P. O’Connell, *The International Law of the Sea*, Vol. II (ed. I. A. Shearer), Oxford, Clarendon Press, 1984, p. 796 ; R. Jennings and A. Watts, *Oppenheim’s International Law*, 9th ed., London, Longman, 1992, p. 737.

1 Further, the complaint itself is brought for actions that allegedly occurred outside the  
2 jurisdiction of the State of California. Defendant is prepared to offer competent evidence at a  
3 hearing on this demurrer if the People will not concede the location of the foreign-flagged vessel  
4 at the time of the alleged crime.  
5

6 Respectfully,  
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8 LAW OFFICES OF MELO AND SANSFIELD LLP  
9 Attorneys for Defendant W. Burden  
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11 By: Marguerite Melo  
12 Marguerite Melo, Esq.  
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