

IN THE IOWA DISTRICT COURT OF SIOUX COUNTY

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STATE OF IOWA,

State,

vs.

PAUL ROBERT DORR,

Defendant.

NO. SMSM026797

**REPLY MEMORANDUM IN  
SUPPORT OF DEFENDANT'S  
MOTION  
TO DISMISS**

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COMES NOW the Defendant Paul Dorr, and for his Reply Memorandum in Support of his Motion to Dismiss state:

**INTRODUCTION**

The State asserts that Dorr's claim is that the "Orange City 'police have never *charged* anyone with a crime [related to Orange City] Library books.'" The State asserted that Dorr's "claim" above stated is "dishonest and disingenuous." *State's Resistance*, P. 2. However, the State's citation of Dorr's defense is not accurate. The State has misrepresented the facts—critical facts—that support Dorr's defense.

Further, the theft cases and criminal mischief cases/analysis the State has advanced are irrelevant and unrelated to the facts of Dorr's case. Accordingly, the State's arguments must be rejected and the case against Dorr dismissed.

**ARGUMENT**

Dorr's argument begins with the factual assertion that no one else *who checked books out from the library* and failed to return them has been charged with a crime. This is true and not disputed. Dorr repeatedly stressed this central part of his defense:

- "no one else who has failed to return books to the library has been charged with a similar crime." *Dorr Memo, P. 1.*
- "Not one other incident has been identified in which the City of Orange City initiated criminal charges against a person who checked books out from the Library, and failed to return them." *Dorr Memo, Pp. 1-2.*
- "Nothing to date has been found in which a person's failure to return books to the Library resulted in a criminal charge of any kind." *Dorr Memo, P. 3.*
- "the police have never charged anyone with a crime for failing to return or destroying checked out Library books." *Dorr Memo, P. 3*
- "Orange City has never criminally charged a person for failing to return checked out library books, or for damaging them." *Dorr Memo, P. 9.*
- "Mr. Dorr was treated unlike other library patrons who had not returned books ...". *Dorr Memo, P. 12.*

Dorr's argument is that the State has not treated him like other citizens who "checked books out" and failed to return them. The Library has a policy of providing patrons who have checked out books a procedure for due process. And as a "state actor" is obligated to follow that process. The State incorrectly summarized Dorr's argument:

- The "police have never *charged* anyone with a crime [related to Orange City] Library books." *State's Resistance to Defendant's Motion to Dismiss, p. 2, par. 4.*

However, the actual words Dorr used, at p. 3 of his Memorandum were:

- "the police have never charged anyone with a crime for failing to return or destroying checked out Library books." P. 3

Rather than address Dorr's defense, the State has misrepresented it, and then the State relies on cases that are factually irrelevant to Dorr. The two incidents the State relies on—Incidents 12000036 and the second Incident (without number)—were not incidents where the person charged "checked out" the library books; rather, the Library patron who was charged simply stole them. This factual distinction is crucial and dispositive.

If Paul Dorr had stolen the books admittedly he would not have the selective prosecution defense. However, he checked them out having lawful possession of them under routine library bailment principles, and then did not return them. Accordingly, the State's theft analysis is irrelevant and the State has admitted as much by stating: "Taking property with the intent to permanently deprive the owner thereof (theft) is distinctly different from intentionally destroying another's property (criminal mischief)." *State's Resistance to Defendant's Motion to Dismiss*, p. 4. Dorr agrees completely, and this makes the State's theft analysis completely irrelevant. The irrelevance of the State's argument is made clear by its own choice of headings, which states: "Criminal Mischief, not Theft." *State's Resistance to Defendant's Motion to Dismiss*, p. 3. Because criminal mischief is different from theft, the State's reliance on two theft cases to disprove Dorr's defense that he was selectively prosecuted, actually backfires on the State.

The State's criminal mischief analysis is also irrelevant unless the incidents it cited at page 4 of the Resistance deal with a library patron checking out books and not returning them. But the State also seems to have admitted those criminal mischief cases have nothing to do with library books because it stated: "[t]here are no records showing any referral, investigation, charges, or prosecutorial discretion exercised in any way, related to criminal mischief and this Library." *State's Resistance to Defendant's Motion to Dismiss*, pp. 3-4. The State further elaborated: "the Defendant's [Dorr] charge of criminal mischief is the first of its kind originating from the Orange City Library at least since 2010." *State's Resistance to Defendant's Motion to Dismiss*, p. 3. The State has virtually admitted that its criminal mischief cases have nothing to do with Dorr. The State has treated Dorr differently—and worse—than all other persons who have checked books out of the Library. The State's arguments are without merit.

In its zeal to prosecute Dorr the State cannot mislead by falsely stating Dorr's position, and it cannot rely on irrelevant cases. Dorr checked out books and did not return them. Dorr pointed to three other situations where Library patrons checked out books and failed to return them. None of them were charged with crimes. The State relies on two cases where the charged persons stole books and were charged with theft. Those cases have nothing to do with Dorr's situation.

Under what other circumstances has a similarly situated person been criminally prosecuted without first going through the Library's administrative process? If Dorr did not publicize his political protest, would he have been similarly charged? Additionally, Dorr has been denied due process by a governmental entity and now is faced with criminal charges. When analyzing Paul Dorr's situation along with the other situations where a person failed to return properly checked out Library books, Paul Dorr has been selectively prosecuted. Though it is a small sample size, Dorr has been treated differently than all other persons who have checked out books and not returned them.

### CONCLUSION

The charge against Defendant Paul Dorr for simple misdemeanor, criminal mischief, should be dismissed because to prosecute Mr. Dorr constitutes selective prosecution, an illegal violation of his First Amendment Right of Free Speech and Religious Liberty rights, and a violation of his Due Process rights.

DATED: June 21, 2019

  
Paul Robert Dorr, Defendant  
(Pro se)