DISTRICT COURT OF WASHINGTON
FOR CLARK COUNTY

CITY OF VANCOUVER, STATE OF WASHINGTON, Fort Vancouver Regional Library	
	No. 4A0910367 Criminal Trespass I
vs.	
Jared Essig,	
	Amended Demurrer and Affirmative Defense Motion to Dismiss without Prejudice
Defendant, pro se Volunteer reference librarian, pro publica	12/16/2025

I. Motion and Summary Legal Argument with Points and Authorities

Comes now the defendant to amend and restate his **Demurrer** RCW 10.40.110(3)&(4) to a **defective charging information** CrR 2.1(a)(1) which **fails to allege facts constituting a crime**, and asks this Court for **dismissal without prejudice** CrRLJ 8.3(c),

arguing that the City **has not undertaken to show essential elements** of the crime of trespass **as required** by the court in State v. Green, 157 Wn. App. 833, 843 (2010)***:*** that the conditions placed on the defendant's remaining in a public building were **"lawful conditions";**

and arguing moreover that **its key witness undermines its key police report in essential points** implying that the City **cannot meet the burden of proof required by its own defective charging information.**

The defendant therefore has an **affirmative defense** RCW 9A.52.090(2), in that the **public library was open to the public at the time,** and that **he complied with all "lawful conditions"** on his remaining there, and was **justified in not complying with an unlawful order** to leave the premises, based on unlawful conditions, as the court determined in Brown v. Louisiana, 383 U.S. 131 (1966).

Administrative due process was absent, failing the test given in Mathews v. Eldridge (424 U.S. 319, 1976), subjecting him to arbitrary action and depriving the reading public of his voluntary contribution to the library.

The remainder of this legal brief includes an II. Evidentiary Summary, III. Legal Argument, and IV. Conclusion and Prayer for relief.

II. Evidentiary Summary

At the evidentiary hearing on November 20th, Complainant librarian Lee Anna O'Neill when directly asked in cross-examination, specifically denied that the Defendant had engaged in "verbal abuse," as had been alleged in hearsay upon hearsay contained in Officer Whitney's police report - information on which the prosecutor has relied in bringing charges. **Both parties now stipulate** that the basis for the order of exclusion was the Defendant's verbal "**accusatory" tone and manner in "accusing" the librarian of censorship and unlawful denial of service**—the exercise of protected speech and petitioning activity. Both parties stipulate that the **defendant walked away, and that the librarian raised her voice from across the room, ordering him to "come back here", which he declined** to do. That a library patron refrain from criticizing library collection policy is not a "lawful condition" on his remaining, nor that he retract the criticism once given (which the defendant testifies to having been asked of him), nor that he comply with an order of specific performance to "come back here" when the librarian calls to him from across the room, as she herself reluctantly admitted on cross-examination.[1] The City prosecutor has not alleged that any other "condition", whether lawful or not, was violated, but has relied on vague insinuations and mere possibilities that new and more sinister colorations of these facts might emerge in testimony or that the defendant could be intimidated into accepting a pre-trial offer: the defendant has **not been adequately "informed of the nature and cause"** of the charges against him, because they are fundamentally defective. The charges are defective, because he in fact did not do anything wrong.

Moreover, **administrative due process was absent**, subjecting him to arbitrary action. The library has declined to respond to his emailed appeals and requests for administrative process in pursuit of civil compromise, and has instead altered the published library "Rules of Conduct" to remove guarantees of equitable treatment and courteous and good service, that he as a library patron has relied on. The ex post facto rulemaking attempts to justify the inequitable treatment and the rude denial-of-service of which he complained. In doing so it exaggerates the authority of staff beyond the statutory grant, and diminishes the rights of the public, amounting to an encroachment on the public domain.

III. Legal Argument: Failure to Allege a "Lawful Order"

The Charging Information for Criminal Trespass in the First Degree (RCW 9A.52.070) is fatally defective because it fails to allege, and the facts now establish the impossibility of alleging, the **"lawful condition"** necessary to sustain the charge against a citizen in a public facility at a time when it is open to the public.

A. Demurrer for Failure to allege facts constituting a crime, RCW 10.40.110(4)

A demurrer is proper when the facts charged do not constitute a crime.

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1 Refusing an arbitrary, non-safety directive does not constitute the *disruptive conduct* that would typically justify a non-speech-based exclusion from a public forum. Unlike public school teachers, librarians are given no authority to compel patrons to attend events, read specific books, sit for tests, make presentations, do their homework, etc. and have no authority to assign grades or limit future access based on the quality, or the "politeness and courtesy" of such unnecessary performance.

1. **Essential Element Missing:** The crime of Criminal Trespass I requires proof that the Defendant "knowingly entered or remained **unlawfully**." Where the premises are a public library at time when it is open to the public, the determination of "unlawfully remaining" requires a showing that the order of exclusion was based on a **"lawful condition"** such as an FVRL library rule of conduct, else the defendant is presumed to have an affirmative defense per **RCW 9A.52.090(2)**
2. **The *State v. Green* Mandate:** The Washington Court of Appeals requires the State to prove the order of exclusion **"constituted a lawful condition on [the defendant's] presence." *State v. Green, 157 Wn. App. 833, 843 (2010)***. This lawful condition, as the factual predicate for the State's entire case, is an **essential element** of the crime in this context - the court held in *Green* - and therefore must be alleged in the charging information per CrR 2.1(a)(1), which requires a "**definite written statement of the *essential facts* constituting the offense charged**"
3. **Application:** The facts now confirmed by the Complainant show that the order was based on the **content of protected speech** (an accusation/complaint) and on an **unlawful order of specific performance** to "*come back here*", not on a violation of a neutral, time-place-manner rule or a rule against violent/disruptive conduct or verbal abuse. An order predicated on suppressing protected speech or compelling unnecessary performance is an **unconstitutional condition**, and a statutorily unsupported condition, and is therefore, as a matter of law, **not a "lawful condition."** The library patron and defendant was justified in civil disobedience and noncompliance with the unlawful order, as the court found in Brown v. Louisiana, 383 U.S. 131 (1966).
4. **Burden of Proof rests with the State** to prove that the conditions placed on the defendant were lawful, as the appeals Court held in the *Green* decision, and that the defendant was not in compliance with those conditions when the entry or choice to remain, was made. Else the **RCW 9A.52.090(2)** provides an affirmative defense - the defendant cannot be required to guess at the charges against him or exhaust all possible insinuations in order to prove himself innocent.
5. **Conclusion:** Because the State's own primary witness undermines the allegations in the police report, and because no further information has yet established the lawfulness of the exclusion order as a based on a "**lawful condition**" of entering or remaining in a public building, the State has failed to allege an **essential element** of the crime of trespass, rendering the Charging Information fundamentally defective, and requiring dismissal.

B. Due Process and Necessity of a Bill of Particulars

The Defendant's right to prepare a defense is prejudiced by the State's failure to identify the *lawful* basis for the exclusion order, as required by CrR 2.1(a)(1) when interpreted in the light of **State v. Green**, and as requested in Defendant's motion for a Bill of Particulars per CrRLJ 2.4(e)

1. **Preparation of Defense:** Without the allegation of a **"lawful condition"** (i.e., the non-speech-related, specific FVRL rule violation that justified the exclusion), the Defendant is left to guess at the actual alleged offense which made his patronage of the library a crime. The Defendant cannot properly prepare the **Affirmative Defense** (RCW 9A.52.090(2) – compliance with all lawful conditions) unless the State first identifies the allegedly **lawful condition** that was violated.
2. **Librarian's notice of trespass is not a judicial order**: The notice of trespass issued by a school district or a library, is "not a judicial order and was not issued with the same

procedural protections as a judicial order", therefore "not entitled to the same deference as a judicial order", as the court found in Green.

3. **Lack of Notice:** The State cannot use the vagueness of the underlying facts, or the mere possibility that new revelations of misconduct might emerge at trial, to shield a constitutionally infirm charge. The due process clauses of both constitutions require that the Defendant be **informed of the nature and cause** of the accusation against him. Where the facts now show the accusation relates to protected speech, the State must clarify the non-speech element of offense that it is alleging, in order to satisfy the appellate Court's holding in *Green,* and must give the Defendant constitutionally required notice by reducing this allegation to writing in an amended charging information.

C. Administrative Due Process absent

1. Appeal rights for school board decisions are given in RCW 28A.645.010, cited in the decision in Green. Analogous FVRL appeal rights are published on the FVRL website[2], and similarly a defendant must be informed of those rights and have an opportunity to be heard before the government can take his liberty or property interests.[3][4] But because the defendant was subjected to an impulsive, unreviewable exclusion order, and not informed of his appeal rights by the librarian, the security guards, or the police before his arrest, he had no choice but to refuse the apparently unlawful order and suffer arrest in order to obtain a hearing before the District Court and prove his innocence. Had he acquiesced at the time to the unlawful order, his acquiescence could have been construed as an admission of guilt, a waiver of rights and privileges, or a symptom of mental instability, and used to impeach him in future administrative proceedings or courts of public opinion. This lack of due process in administrative procedure does not survive the test of ***Mathews v. Eldridge* (424 U.S. 319, 1976)** in that it fails to shield the individual from *arbitrary action*, it deprives him of substantial rights to petition for redress which are essential to public interest activity, and because there is no substantial governmental or public interest at stake in an instance where there is no threat to persons or property, but only a threat of *lese-majesté* against government employees.[5][6] The lack of administrative due process is inconsistent with the Court's reasonable expectations of administrative bodies, handed down in *Green* and in other cited precedents.
2. The library has declined to respond to his emailed appeals and requests for administrative process in pursuit of civil compromise, as required by their own published appeals policy[7], and has instead altered the published library "Rules of Conduct" to remove specific guarantees of equitable treatment and good service that he as a library patron has relied on and cited in his appeals, and has instead added vague and overbroad requirements on Patrons for "politeness and courtesy".[1] For a detailed policy version and legal analysis, see the recently filed "REQUEST FOR DECLARATORY

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2 FVRL Appeal Rights of Patrons Policy https://www.fvrl.org/about/policies/appeal-rights

3 Bryant v. Joseph Tree, Inc. 119 Wn.2d 210, 224, 829 P.2d 1099 (1992)

4 Bang D. Nguyen v. Department of Health, Medical Quality Assurance Comm'n, 144 Wn2d 516, 522-23, 29 P.3d 689 (2001)

5 Gourley v. Gourley, 158 Wn. 2d 460, 467, 145 P.3d 1185 (2006)

6 Soundgarden v. Eikenberry, 123 Wn.2d 750, 768, 871, P.2d 1050 (1994)

7 FVRL Appeal rights, ibid. "An Administrative Team member will respond to the complaint within 14 calendar days. If the response from the Administrative Team member is not satisfactory, the patron may appeal to the Executive Director in writing. The Executive Director will respond within 14 calendar days."

JUDGEMENT AND EQUITABLE RELIEF, with VERSION ANALYSIS of FVRL LIBRARY RULES OF CONDUCT" which has the both longstanding version and the recently amended version attached as exhibits. The ex post facto rulemaking attempts to justify the inequitable treatment and denial-of-service of which he complained to administrators, rather than correcting it and working toward civil compromise in the public interest. In doing so it exaggerates the authority of staff beyond the statutory grant, and diminishes the rights of the public, amounting to a subtle but substantial encroachment on the public domain. Moreover, it is bad-faith governance of the library, suggesting that the governance deficits diagnosed by the library advocate and now defendant, are not confined to this case but are widespread or systemic in nature.

IV. Conclusion and Prayer for Relief

The Charging Information fails to allege an essential element of the crime as required by Court Rules as interpreted by the Washington Court of Appeals. The facts now confirmed by sworn testimony underscore the legal impossibility of the State proving its case on the basis of its current information.

WHEREFORE, the Defendant, Jared Essig, **invites the prosecutor to move this court to dismiss the charges without prejudice, pursuant to CrRLJ 8.3(a)**; and if he is able to do so, file an amended information stating the lawful conditions and rules of conduct he intends to adduce, and the facts he intends to prove at trial, which would render the exclusion order a "lawful" order, as originally asked in defendant's request and motion for a Bill of Particulars filed nearly a year ago. Failing that, prays this Court to enter an Order:

1. Allowing this **amended Demurrer** to the Charging Information; and thus
2. **Dismissing the case without prejudice,** as also provided by CrRLJ 8.3(c), requiring the Prosecuting Attorney to file an Amended Information only if it can allege misconduct that establishes the order of exclusion was a **lawful order** based on a **lawful condition;** that is to say, that the order was based on a provable offense by the defendant against a specific, constitutional, and statutorily supported FVRL Rule of Conduct, which **essential element** of offense can be reduced to writing and **predicated in the charging information**.
    a. In the event, the defendant reserves his right to move for dismissal with prejudice, pursuant to CrRLJ 8.3(b), due to police, prosecutorial, and/or judicial misconduct - as alleged in the original demurrer and hybrid motion for dismissal. But if the court is now prepared to make a factual finding and a legal determination on these allegations, it may do so now and sua sponte, if the honorable Court were to consider such a course to be in the interest of justice and of preserving the integrity of the judicial system.
3. Set out a hearing date for further proceedings - after 90 days or such other period of time as may be agreeable to the parties and fitting in the estimation of the court - whereupon the charges may be **dismissed with prejudice if no amended information is filed** by the prosecutor. The court may wish to **set over** until such time consideration of the defendants **motions for declaratory judgement, equitable relief, and investigation of alleged governmental misconduct**.

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