STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Case No. 070403231

State of Minnesota,

Plaintiff,

vs.

Larry Edwin Craig,

Defendant.

MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW PLEA OF GUILTY

INTRODUCTION

The motion by the Defendant Larry Craig (hereinafter "Defendant") to withdraw his plea must be denied by this Court. The essence of the Defendant's motion is that the Court should allow him to withdraw his plea because he was under the strain of a newspaper investigation and purportedly relied on the arresting officer's statements relating to a potential outcome. There is nothing about the circumstances of the Defendant's plea that comes close to surpassing the high bar of "manifest injustice" that must be reached for the Defendant to be granted the rare relief of plea withdrawal. The Defendant's plea to the elements of the crime of disorderly conduct is sufficient. In addition, denial of the Defendant's motion prevents further politicking and game playing on the part of the Defendant in relation to his plea.

The Defendant unequivocally pled guilty to the crime of disorderly conduct. The Court should deny the Defendant's motion and uphold the plea that the Defendant made to this Court.

STATEMENT OF FACTS

Underlying Incident

On June 11, 2007, Sergeant Karsnia, an officer with the Metropolitan Airports Commission (hereinafter "MAC") Police Department was engaged in a plain-clothes detail aimed at curbing lewd conduct from occurring in the main men's public restroom of the Northstar Crossing area of the Minneapolis-St. Paul International Airport. (Renz Aff., Ex. A at 1 (hereinafter "Police Rep."). The MAC Police Department had received civilian complaints regarding sexual activities in the airport public restrooms and had made numerous arrests of individuals in relation to such activities. (*Id.*) Sergeant Karsnia entered an unoccupied stall in the back of the restroom, at which time some, but not all, of the stalls were occupied. (*Id.*)

While seated in the bathroom stall, Sergeant Karsnia observed that there was an older white male, later identified as the Defendant in this matter, standing outside of Sergeant Karsnia's stall. (Police Rep. at 1.) The Defendant was standing about three feet away and Sergeant Karsnia observed the Defendant looking through the crack in the door of the stall Sergeant Karsnia was occupying. (*Id.*) Sergeant Karsnia further observed the Defendant look down at his hands, fidget with his fingers, and then look through the crack in the stall again. (*Id.*) The Defendant continued to repeat this cycle for two minutes and with enough repetition and length that Sergeant Karsnia was able to observe the color of the Defendant's eyes. (*Id.*)

Sergeant Karsnia noticed that the person in the stall immediately to the *left* of Sergeant Karsnia vacated the stall. (Police Rep. at 1.) Sergeant Karsnia observed the Defendant enter that stall and place his roller bag in front of the stall door. (*Id.*)

Sergeant Karsnia's experience in conducting similar details in the past was that individuals attempting to or engaging in lewd conduct use their bags to block the view from the front of the stall. (*Id.*) Sergeant Karsnia observed that approximately a minute later, the Defendant tapped his right foot, which Sergeant Karsnia, again from prior experience in conducting similar details, recognized as a signal often used by persons attempting to engage in lewd conduct in the restroom stalls. (*Id.*) Sergeant Karsnia observed the Defendant tap his toes several more times and move his foot closer to the foot of Sergeant Karsnia. (*Id.*) Sergeant Karsnia moved his foot up and down slowly. (*Id.*) Sergeant Karsnia observed the Defendant then move his right foot within the space of Sergeant Karsnia's stall and positioned his foot so that it was touching Sergeant Karsnia's foot. (*Id.*)

Sergeant Karsnia then observed the Defendant swipe his left hand under the stall divider for a few seconds. (Police Rep. at 1.) Sergeant Karsnia observed that the swiping motion went from the front of the stall back towards the back wall. (*Id.*) Sergeant Karsnia further observed that the Defendant's palm was facing up as the Defendant guided his hand along the stall divider. (*Id.*) At this time, Sergeant Karsnia observed the Defendant's finger tips within Sergeant Karsnia's stall. (*Id.* at 1-2.) Sergeant Karsnia then observed the Defendant swipe his hand again using the same motion from the front to the back of the stall along the divider. (Id. at 2.) During this second swipe, Sergeant Karsnia observed more of the Defendant's fingers within Sergeant Karsnia's stall. (*Id.*) Sergeant Karsnia then observed the Defendant swipe his hand a third time in a motion from the front of the stall to the back (*Id.*) On the third intrusive swipe into Sergeant Karsnia's stall, the Defendant had swiped his hand even

further than the previous times, so much so that Sergeant Karsnia observed that the hand with which the Defendant was making this signaling motion was the Defendant's left hand as he could see the Defendant's gold wedding ring on his ring finger. (*Id.* at 2.) After the third time that Defendant made the swiping motion into Sergeant Karsnia's stall, Sergeant Karsnia held his police identification down by the floor to make it observable to the Defendant and pointed towards the exit of the stall. (*Id.* at 2.) In response, the Defendant exclaimed "No!" (*Id.*) Sergeant Karsnia again pointed to the exit, at which point the Defendant exited the stall and did not flush the toilet. (*Id.*) Sergeant Karsnia observed that not all of the stalls were occupied. (*Id.*)

Sergeant Karsnia identified the Defendant by the Defendant's driver's license, which identification matched the name on the United States Senator business card that the Defendant handed to Sergeant Karsnia contemporaneously exclaiming "What do you think about that?" (Police Rep. at 2.) Sergeant Karsnia conducted a post-*Miranda* interview in which the Defendant admitted that his foot may have touched Sergeant Karsnia's foot and that he is unable to take his gold wedding ring off of his left-hand ring finger. (*Id.*) The Defendant was photographed, fingerprinted and released pending formal complaint. (*Id.* at 2-3.) The Defendant was never handcuffed. (*Id.* at 5.)

Interactions with Police and Prosecution After Incident

On June 22, 2007, the Defendant personally returned to the police operations center at the airport and spoke to a police officer. (Police Rep. at 4.) The Defendant spoke to the police officer in a demeaning and agitated manner. (*Id.*) The Defendant told the officer that he had been drug down to the police operations center on a prior occasion and had been handcuffed, fingerprinted and interviewed. (*Id.*) The Defendant

told the officer that he needed contact information so that the Defendant's lawyer could speak with someone. (*Id.*) Sergeant Karsnia, who happened to be on duty, then spoke with the Defendant by phone and the Defendant demanded the information for the prosecutor's office, which Sergeant Karsnia provided. (*Id.* at 5.)

On June 25, 2007, the Defendant left a voicemail for MAC prosecuting attorney Chris Renz, in which he asked for a return phone call regarding an incident that had occurred a few weeks earlier at the airport. (Renz Aff. ¶ 9.) On June 25, 2007, Mr. Renz called and spoke with the Defendant who asked a number of questions regarding the process that would be undertaken and the status of his case. (*Id.* ¶ 10.) The Defendant asked Mr. Renz what his options would be and Mr. Renz explained that it likely would be possible that the Defendant could plead guilty to a charge of disorderly conduct, and the interference of privacy charge would be dismissed, so long as a review of the file and the Defendant's criminal history did not reveal anything that would change that offer. (*Id.*) Mr. Renz informed the Defendant that the summons and complaint would be sent by mail and, upon receipt, the Defendant or his attorney should then contact Mr. Renz. (*Id.*) Mr. Renz completed and executed the Complaint on the same day and had it issued to the address requested by the Defendant. (*Id.*; Compl.)

The Complaint was signed by Sergeant Karsnia. (Compl.) The Complaint was signed by Judge Gina M. Brandt on July 2, 2007. (*Id.*) The Summons was issued to the Defendant on July 3, 2007 with an arraignment date of July 25, 2007. (Summons.)

On July 17, 2007, the Defendant again left a voicemail for Mr. Renz in which he stated that he had received the summons and wished to talk about his options in proceeding. (Renz Aff. ¶ 12.) Mr. Renz spoke with the Defendant on that same date

and explained that in exchange for a plea of guilty to the disorderly conduct charge, with a stayed jail sentence and payment of a fine, the interference with privacy charge would be dismissed. (*Id.* ¶ 13.) A substantial portion of Mr. Renz's conversation with the Defendant was spent on the Defendant's inquiries as to the details of the manner in which the plea of guilty would be processed, what persons would see it, and where it ultimately would be filed. (*Id.*) Mr. Renz explained to the process to the Defendant, including the fact that the plea would be filed with the Court and the conviction would be a matter of public record. (*Id.*) The Defendant told Mr. Renz that he felt he was in a difficult situation as the result of the public office he held, in response to which Mr. Renz said that he appreciated that difficulty and for that reason the Defendant should consult with an attorney. (Renz Aff. ¶ 14.) Mr. Renz also told the Defendant that the plea offer was a similar offer to the offers made to other defendants with similar charges. (*Id.* ¶ 13.) The Defendant asked that the plea offer for the disorderly conduct be sent to the same address as the summons and complaint so that he could review it with an attorney. (*Id.* ¶ 14.) Mr. Renz told the Defendant that he would postpone the Defendant's July 25, 2007 arraignment date for two weeks for purposes of allowing the Defendant to review the petition and return the plea agreement. (*Id.*)

On July 20, 2007, Mr. Renz sent the Defendant a letter and the plea petition. (Renz Aff. ¶ 15, Ex. B.) The letter from Mr. Renz asked that the Defendant review the document and, if he chose to, review the same with legal counsel. (*Id.*) The letter explained the manner in which the plea petition needed to be executed, including information regarding the Defendant's attorney, if he consulted with one, that needed to be entered in a particular paragraph. (*Id.*) The letter also explained that if the

Defendant did not consult or was not represented by an attorney, he needed to affirmatively indicate the same by circling a portion of the plea petition. (*Id.*) The letter further explained that the offer in the petition was that the Defendant would plead guilty to disorderly conduct and there would be a sentence of stayed jail time and a fine, a portion of which would be stayed. (*Id.*) The letter explicitly stated: "Agreeing to the Petition will result in a conviction for Disorderly Conduct appearing on your criminal record." (*Id.*)

On July 27, 2007, the Defendant left a third voicemail for Mr. Renz stating he had questions regarding the petition. (Renz Aff. ¶ 16.) Mr. Renz spoke with the Defendant on July 31, 2007 regarding to whom the money order should be made payable and the need to have the executed plea agreement to Mr. Renz in the very near future to ensure it could be entered on the continued arraignment date—August 8, 2007. (*Id.* ¶ 17.)

On August 3, 2007, the Defendant left a fourth voicemail for Mr. Renz explaining that he had sent the plea by express mail and asked that Mr. Renz call him if Mr. Renz had any questions. (Renz Aff. ¶ 18.)

During all telephone conversations with and voicemails from the Defendant, Mr. Renz observed that the Defendant's manner was calm and collected, and the Defendant's questions intelligent and methodical. (*Id.* ¶ 19.) Mr. Renz did not observe signs of urgency, panic or overt emotion in any of his interactions with the Defendant. (*Id.*) In his conversations with the prosecution, the Defendant never referenced any statement or perceived promises by Sergeant Karsnia or his reliance thereon. (*Id.* ¶ 20.)

Mr. Renz received the plea petition shortly thereafter. (Renz Aff. ¶ 21.) The plea petition that Mr. Renz received was signed on every page with a signature that appeared to be the Defendant's. (Plea Petition.) The signed plea petition stated that the Defendant was "pleading guilty to the offense of Disorderly Conduct as a Misdemeanor." (*Id.* ¶ 2.) The signed plea petition stated that the Defendant was pleading guilty to the charge of disorderly conduct because on June 11, 2007 in the restroom at the Minneapolis-St. Paul International Airport, the Defendant engaged in conduct which the Defendant knew or should have known tended to arouse alarm or resentment which conduct was physical (versus verbal) in nature. (*Id.* ¶ 3.) The signed plea petition stated: "I understand that the court will not accept a plea of guilty from anyone who claims to be innocent" and "I now make no claim that I am innocent of the charge to which I am entering a plea of guilty." (*Id.* ¶¶ 4, 5.) The plea petition stated that the plea agreement included the Defendant pleading guilty to the charge of disorderly conduct. (*Id.* ¶ 11.) The plea petition also included a paragraph in which the Defendant circled "am not" to affirmatively indicate he was not represented by an attorney. (*Id.* ¶ 7.) The plea petition included a place for an attorney's information to be provided along with a statement as to what the attorney explained to the Defendant, but those spaces were left blank. (Plea Petition at 3.) All of those assertions by the Defendant within the plea petition were preceded by language clarifying that the Defendant was making those statements to this Court. (Plea Petition at 1.)

The plea petition received by Mr. Renz was accompanied by a note that was handwritten on a plain piece of paper thanking Mr. Renz for his "cooperation," as well as a United States Postal Service money order in the amount of the executed fines and

costs. (Renz Aff. ¶ 21, Ex. C.) Mr. Renz took the signed plea petition and money order and entered them with the Court clerk on August 8, 2007, the date of the Defendant's continued arraignment. (*Id.* ¶ 22.)

STANDARD FOR WITHDRAWAL OF PLEA

A criminal defendant does not have an absolute right to withdraw a plea of guilty. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). Rule 15.05 of the Minnesota Rules of Criminal Procedure provides the limited circumstances within which a plea may be withdrawn:

> Subd. 1. To Correct Manifest Injustice. The court shall allow a defendant to withdraw a plea of guilty upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice. Such a motion is not barred solely because it is made after sentence. If a defendant is allowed to withdraw a plea after sentence, the court shall set aside the judgment and the plea.

Courts generally disfavor allowing guilty pleas to be withdrawn. *See Chapman v. State*, 162 N.W.2d 698, 700 (Minn. 1968) (stating there is a general policy that favors the finality of judgments that attaches once a plea is entered). The policy favoring finality of judgment exists because courts are "not disposed to encourage accused persons to 'play games' with the courts at the expense of already overburdened calendars and the rights of other accused persons awaiting trial' by setting aside judgments of conviction based upon pleas made with deliberation and accepted by the court with caution." *Id.* (quoting *Everett v. United States*, 336 F.2d 979, 984 (D.C. Cir. 1964)).

As long as a plea is accurate, voluntary and intelligent, there is no manifest injustice. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). A plea is accurate when it is supported by a sufficient factual basis to conclude that the defendant's conduct "falls within the charge" to which he is pled guilty, *State v. Iverson*, 664 N.W.2d 346, 349

(Minn. 2003), and voluntary when it did not result from improper pressures or inducements, *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000). A plea is intelligent when the defendant comprehended the charges, his rights, and the direct consequences of his decision. *Alanis*, 583 N.W.2d at 577. Direct consequences are those that flow definitely, immediately, and automatically from the guilty plea. *State v. Washburn*, 602 N.W.2d 244, 246 (Minn. Ct. App. 1999) (citing *Alanis*, 583 N.W.2d at 578). Consequences are collateral when they are not definite, immediate, or automatic, but imposed by a body beyond the control of the court. *See State v. Rodriguez*, 590 N.W.2d 823, 825 (Minn. Ct. App. 1999); *Alanis*, 583 N.W.2d at 578; *Washburn*, 602 N.W.2d at 246.

The burden is on the defendant to demonstrate that the refusal to allow him to withdraw his plea is manifestly unjust. *State v. Munger*, No. A06-1563, 2007 WL 2417094, *2 (Minn. Ct. App. Aug. 28, 2007) (citing *State v. Christopherson*, 644 N.W.2d 507, 510 (Minn. Ct. App. 2002)).

LAW AND ARGUMENT

I. THE DEFENDANT'S PLEA WAS ACCURATE, VOLUNTARY AND INTELLIGENT AND THEREFORE THERE IS NO MANIFEST INJUSTICE THAT WOULD WARRANT PLEA WITHDRAWAL.

A. The Defendant's Plea Was Accurate in that the Defendant Pled Guilty to the Elements of the Crime, Regardless of Statements Made at Irrelevant Points in Time.

1. The Defendant inappropriately focuses on the Defendant's statements made immediately following the arrest and after the "story broke," but not on the time in question—the time the plea was entered.

The essence of a majority of the Defendant's motion is that because the Defendant felt pressure from a local newspaper investigation, he pled guilty, but wasn't

really guilty so the Court should allow him to withdraw his plea. In support of the contention that he is not guilty, the Defendant cites his statements immediately after arrest in his post-*Miranda* interview (6/11/07) and his statements since news of his arrest and plea became public (8/28/07-present). Allowing a plea of guilty to be withdrawn as a result of this pattern of indecision would result in a majority of all pleas of guilt to be withdrawn. The position of the Defendant can be boiled down to the following: when immediately confronted with the allegations, the Defendant denies them; when offered a plea agreement, the Defendant readily admits allegations to constitute the offense; when a later collateral consequence is suffered as a result of the plea, the Defendant reverts to denying the allegations. Scores of defendants, just like the Defendant in this case, are offered plea agreements every day in which they plead guilty to offenses, the substance of which they initially denied at the time of the arrest. That a defendant initially denies the allegations can not possibly serve as reason to allow a defendant to withdraw a plea of guilty. The consequence of allowing this rationale to carry the day is that multitudes of pleas would need to be overturned, as the manifest injustice requirement would be met whenever individuals change their mind because they didn't like the outcome. The Court must avoid condoning such a meritless rationale for a motion to withdraw a plea. The rationale clearly does not satisfy the requirement of manifest injustice and therefore the Court should deny the Defendant's motion.

2. *That the Defendant pled guilty to the elements of the crime, rather than a recitation of the police report, does not invalidate the plea or warrant withdrawal.*

The Defendant's admission that he engaged in physical conduct that he knew or should have known tended to arouse alarm or resentment in the Northstar Crossings bathroom at the Minneapolis-St. Paul International Airport is sufficient to support the plea for disorderly conduct. A court's analysis as to a plea's accuracy is whether there are sufficient facts on the record to support a conclusion that defendant's conduct falls within the charge to which he pleads guilty. *State v. Vieburg*, 404 N.W.2d 312, 314 (Minn. Ct. App. 1987) (citing *Kelsey v. State,* 298 Minn. 531, 532, 214 N.W.2d 236, 237 (1974)). The requirement of accuracy is to ensure that the defendant is guilty of a crime at least as serious as that to which he is entering his plea. *Munger*, 2007 WL 2417904, *3 (citing *Beaman v. State*, 301 Minn. 180, 183, 221 N.W.2d 698, 700 (1974)). It is proper to deny a motion to withdraw a plea if the record supports the conclusion that the defendant committed an offense at least as serious as the crime to which the defendant is pleading guilty. *Lundin v. State*, 430 N.W.2d 675, 679 (Minn. Ct. App. 1988). In situations where a defendant enters a plea to certain underlying facts which themselves are not per se elements of the offense, the Court has to make a determination of application – whether those facts constitute the elements of the crime – which can be subjective in nature. Conversely, where a defendant, like the Defendant in this case, admits to the very elements of the offense, there can be no doubt that the statute applies and has been violated.[1] The Court does not have to engage in a further

[1] In addition, it deserves noting that the elements to which the Defendant pled guilty are not elements containing legalese or complicated concepts. Rather, the elements are factual in their nature and can easily be understood by a layman. The Defendant admitted to engaging in physical conduct that Defendant knew or should have known would tend to arouse alarm or resentment. Perhaps an argument,

degree of application to easily conclude that the Defendant admitted guilt to the elements of the offense of disorderly conduct. The Defendant, by any objective analysis, has pled guilty to the elements that constitute the crime and was therefore properly adjudged guilty. The Court should not allow the Defendant to attempt to withdraw his plea on the basis that there was not a sufficient factual basis when the Defendant pled guilty to the essential elements of the offense.

As an example, defendants charged with careless driving under Minn. Stat. § 169.13 often plead guilty by simply admitting that they drove in a manner which could have endangered persons or property, without going into the details of their driving conduct. Those pleas are properly proffered by defendants, as well as their attorneys, and accepted by the Court on a routine basis. In those cases, like the Defendant's, the elements of the crime to which the plea is being made are factual in their nature and uncomplicated. Is the Court prepared to rule that in all of those cases there hasn't been a sufficient basis for a plea to be accurate? Holding that such a plea would be invalid, which is precisely what the Defendant is asking that the Court do in this case, would be illogical and antithetical to the finality of a plea of guilty. In addition, there are thousands of pleas entered in District Courts in Minnesota in which the factual inquiry of a defendant is constituted by the elements of the offense. The Defendant in this case pled guilty to the elements of the offense. There can be no more clarity as to the fact that the offense was committed by the Defendant's own admission. The Court should

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such as the one made by Defendant, would have some application were the crime, for example, racketeering and the elements pled to conspiracy and coercion, elements which themselves are complicated, legalistic, and could require further factual underpinning.

not allow the Defendant to withdraw his plea based on the Defendant's argument that the factual basis for the plea was insufficient.

3. *That the Defendant committed the crime of disorderly conduct is clear from the conduct described in the police report.*

Because the Defendant pled guilty to the elements of the offense, the Court does not need to engage in reviewing the police report to determine if the underlying conduct reported violates the disorderly conduct statute. However, even were the Court to go through the exercise, the conduct described in the police report constitutes the crime to which the Defendant accurately and intelligently pled.[2]

The statute prohibiting disorderly conduct states that if one engages in conduct that they know or have reasonable grounds to know would *tend* to arouse alarm or anger or resentment in others, that person is guilty of a misdemeanor. Minn. Stat. § 609.72, subd. 1(3). First, the Defendant stood outside of the stall occupied by the Sergeant and stared for two minutes at the Sergeant repeatedly through the crack in the stall door from a distance of approximately three feet, which itself is conduct that certainly would tend to arouse alarm or resentment in others, in addition to constituting the crime of interference with privacy. After entering the stall adjacent to the Sergeant, the Defendant tapped his right foot, which was recognized by the Sergeant as a sign of people wishing to engage in lewd conduct. The Defendant did not move his foot only once as a result of his "wide stance." Rather, the Defendant began by tapping his foot and moving it closer to the space of the Defendant's stall, then the officer moved his

[2] Were the Court to engage in such a review of the conduct, the Court should be mindful that police reports are tools used by police to "summarize the circumstances" leading up to and at the time of the arrest. *Carradine v. State*, 511 N.W.2d 733, 736 (Minn. 1994). The evidence of the conduct is typically an officer's testimony that details the events summarized in the police report. *See Id.* While the conduct of the Defendant in the instant case appears to have been well detailed in the police report, the evidence to support that conduct would include the testimony of the arresting officer that could supplement and/or enhance the written report.

foot up and down slowly, at which point the Defendant made a second furtive movement towards the officer crossing under the stall barrier into the officer's stall space and touched the foot of the officer. The conduct of the Defendant did not stop there, but continued with the Defendant's guiding his left hand along the stall divider front to back with the Defendant's palm facing up. The Defendant repeated this stroking pattern three times, with increasing amounts of the Defendant's hand on the officer's side of the stall divider, in fact so far that the Defendant's wedding band was visible. This sequence of conduct by the Defendant wherein the Defendant intruded into the physical space of the stall occupied by another is not constituted by one accidental movement, but is a series of invasions with different parts of the Defendant's body occurring over a period of minutes. The conduct is clearly such that it would tend to arouse alarm, anger or resentment in others, namely persons using the adjacent stall, and the Defendant knew or should have known that it would. The conduct of the Defendant clearly constitutes disorderly conduct and therefore the plea is accurate. There is no manifest injustice to support withdrawal of the plea and therefore the Defendant's motion should be denied.

Moreover, the Defendant's description of his conduct and whether the conduct amounts to disorderly conduct ignores some key facts which are further indication that the Defendant's conduct was such that he knew or should have known that it would arouse alarm or resentment in others. The Defendant's description blindly concentrates on only that which the Defendant initially admitted; but for reasons set forth in other portions of this memorandum, that should not be the lens through which the Court analyzes the plea because the appropriate focus is on the conduct to which the

Defendant admitted at the time of the plea. The attempts by the Defendant to paint his conduct as innocent in an attempt to convince the Court that his plea of guilty was a mistake fails to account for a number of key facts which themselves point to the Defendant's guilt. The Defendant exclaimed "No!," in obvious response to being caught committing illegal, rather than innocuous, conduct when the officer held down his identification. The pattern of hand motion along the stall divider occurred over a course of several minutes. It was the Defendant's left hand that the Sergeant observed motioning along the stall divider. The Defendant admitted to engaging in the patterned conduct recognized as a manner in which sex is solicited when in the post-Miranda interview, without a prompting question, he tells the officer "you solicited me." Lastly, the Defendant's explanation for his hand being down underneath the stall divider—that he was picking up a piece of toilet paper in a heavily trafficked public restroom—stretches the bounds of credibility, particularly considering: the hand observed underneath the divider was palm up and the one opposite the side it was observed (left hand-right side); and Sergeant Karsnia noted that he observed no paper on the ground. The Defendant's conduct, particularly when including the entirety of the events, clearly shows that the Defendant engaged in conduct that he knew or should have known, as he pled, would tend to arouse alarm or resentment in others.

In order to determine that the conduct does not constitute disorderly conduct, the Court would have to decide that the conduct in its entirety would not tend to arouse alarm, anger or resentment in another person. Clearly, a person using the restroom for its intended purpose would be angered, alarmed or have resentment were the person in the adjacent stall to move their foot over until it was on top of the innocent users' foot

only to be followed by the left hand of the offender stroking the bottom-side of the stall divider with increasing amounts of the offender's hand intruding into the stall of the innocent user. The Court should be hard-pressed to find that such conduct can not fall within the bounds of the disorderly conduct statute. Clearly the Defendant's conduct was disorderly and sufficient to support the charge to which the Defendant pled. The plea was accurate as the underlying facts constitute the crime. There is no manifest injustice and the Defendant's plea should not be withdrawn.

Inquiry into the Defendant's conduct as described in the police report is unnecessary to decide the Rule 15.05 motion, as the admission to the crime's elements is sufficient to render the plea accurate. However, even were such an inquiry made, the conduct of the Defendant constitutes the crime of disorderly conduct. The plea is accurate and the Defendant's motion should be denied.

4. The plea in the instant case is not analogous to pleas that have been allowed to be withdrawn because of an incorrect factual basis.

The Defendant's case does not present circumstances like those previous wherein Minnesota courts have allowed withdrawal of the plea. In the cases in which plea withdrawal has been allowed, the circumstances have been far more extenuating and compelling than in the case at bar. The facts of those limited cases, by courts' own admission, have been "highly unusual." *Shorter v. State*, 511 N.W.2d 743, 746 (Minn. 1994). Circumstances determined to have warranted plea withdrawal are: entire elements essential to the crime are missing, *Munger v. State*, 2007 WL 2417094 at *5; statements inconsistent with the plea were made at the time of the plea, *Beaman v.*

State, 301 Minn. 180, 221 N.W.2d 698 (1974)[3]; the facts to which a defendant pled were regarding an entirely different incident on a different date, *Bolinger v. State*, 647 N.W.2d 16 (Minn. Ct. App. 2002); or a combination of incomplete police investigation, inadequate factual basis, and new witnesses corroborating a defendant's story, *Shorter*, 511 N.W.2d at 743. The circumstances of the Defendant's plea are very different, and far less compelling, than the circumstances of those cases in which courts have determined there are highly unusual facts giving rise to the rare relief of plea withdrawal. First, the essential elements of a plea to disorderly conduct are present in the Defendant's plea for the reasons previously detailed. Second, the Defendant did not make statements at the time of his plea that were inconsistent with the plea; rather, as previously set out, the inconsistent statements were made reactively to the arrest and months later reactively to the plea becoming public. Last, the events to which the Defendant pled are the precise events of the incident in question that led to the charge. There are no corroborating witnesses overlooked as a result of an incomplete police investigation. Therefore, the Defendant's case is not like those in which this State's courts have allowed plea withdrawal. And unlike those cases, the Court should not grant the Defendants' motion for withdrawal; there is no manifest injustice to support such a decision.

[3] On page 15 of his memorandum, the Defendant suggests that the *Beaman* decision allowed for withdrawal of plea based on claims of innocence and available defenses. However, this explanation fails to include the primary factor on which the Court based its conclusion that manifest injustice was present and plea withdrawal warranted—the defendant made statements at the time of the plea that were inconsistent with that plea. *Beaman*, 301 Minn. at 183, 221 N.W.2d at 700. No such inconsistent statements at the time of the plea, or for that matter near, were made here.

B. The Defendant's Plea Was Voluntary and the Pressures Suggested by the Defendant as Having Resulted in His Plea Should Not Serve as a Basis for Plea Withdrawal.

The Defendant's plea was voluntary as none of the pressures cited by the Defendant as bases for his plea rise to the level of making the plea involuntary. The voluntariness requirement insures that a guilty plea is not entered because of any "improper pressures or inducements." *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989) (holding that it was proper to deny the motion to withdraw the plea, despite the imposition of a five year conditional release term that the defendant did not expect). Courts look at whether "a plea rests, in any significant degree, on a promise or agreement of the *prosecutor*, so that it can be said to be part of the inducement or consideration." (emphasis added) *Santobello v. New York*, 404 U.S. 257, 262 (1971). In the instant case, there were no improper pressures or inducements that would make the plea involuntary. The pressures felt by the Defendant from a newspaper investigation were not improper and were no greater than the pressures on many defendants in the criminal system, whose pleas stand. Second, the Defendant's interactions with members of the police department, including with the Sergeant whose statements he now claims he relied upon in making his plea, contradict any suggestion that the Defendant would rely on the Sergeant's statements. Third, the deliberate process through which the Defendant considered and entered his plea of guilty contradicts the assertion that the pressure or inducements he raises improperly caused him to plead guilty. Last, the Defendant has not made any indication, nor is there any basis for the same, that there was a promise or inducement by the prosecutor that was not followed.

The Defendant's plea was voluntary and therefore there was no manifest injustice and the motion should be denied.

1. *The manifest injustice standard is not implicated, much less satisfied, by the Defendant having felt pressure from an investigation by a newspaper in Idaho.*

The thrust of the Defendant's motion is that the pressure from an investigation by the *Idaho Statesman* newspaper propelled him to plead guilty to a crime though he wasn't actually guilty. However, this should not be allowed to serve as a basis for withdrawing a plea of guilty. Innumerable defendants in the criminal justice system have a litany of pressures, beyond their immediate criminal charge, bearing down on their decision to plea. The context of many criminal matters is inevitably laden with pressures, including family pressures, financial strain, employment concerns and addiction, among others. While from certain perspectives, these pressures may seem minor in comparison with the pressures claimed by the Defendant, they are real pressures that face a substantial number of defendants who have criminal matters and are no less minor to those defendants. Were the Court to allow the Defendant to withdraw his plea on the questionable basis that he felt pressure from an investigation by a local newspaper, the Court would be determining either: 1) that the Defendant's pressures as a United States Senator trump the pressures felt by ordinary citizens who similarly make the decision to plead guilty; or 2) that the Court is prepared to make a case-by-case subjective determination of whether other pressures in a defendant's life made it difficult to also deal with the decision to plead guilty to such an extent that the Court is going to allow withdrawal of the plea. The Court should avoid either result, the former being inequitable and the latter being a procedural nightmare, by denying the

motion of the Defendant, which at its core asks the Court to allow the Defendant to withdraw his plea because he felt pressure from a newspaper investigation. This self-perceived pressure does not render the Defendant's plea involuntary or constitute manifest injustice. The Court should deny the Defendant's motion.

2. *There are no grounds to suggest that the plea was involuntary or manifestly unjust in the Defendant's contention that the statements of the arresting police officer in the interview of the Defendant led the Defendant to his decision to plead guilty.*

Woven into the Defendant's contentions that the newspaper investigation pressured him to plead guilty is the suggestion that the statements by the arresting police officer also led him to plead guilty.[4] The Defendant's claim that the statements by the police officer on the date of the Defendant's conduct cajoled him into pleading do not mesh with: 1) the Defendant's attitude towards and interactions with police officers; 2) the warnings by the prosecutor that this case would be a part of the Defendant's criminal record; or 3) the Defendant's recognition of the prosecutor's office as the body which had the ability to make plea offers regarding the outcome of the Defendant's case. In addition, the Defendant has failed to provide the Court with any caselaw to support his assertion that suggestions by a police officer regarding anticipated penalties for an offense should serve as grounds to withdraw a guilty plea. The Defendant states that he "chose to plead guilty to a crime he did not commit based in part on the law enforcement officer's inaccurate statements that doing so would ensure that the alleged actions would not be made public." (Rule 15.05 Mot. Withdraw at 9.) The Defendant

[4] It is important to note from the outset that a review of the transcript of the post-*Miranda* interview shows that the Sergeant's statement was not, as the Defendant now claims, that the matter would never be made public; but rather, that Sergeant Karsnia's practice was that he does not call the media or do anything similar. (*See* Rule 15.05 Mot. Withdraw, Ex. C at 3.)

states that he was "induced to accept a plea based on Officer Karsnia's assurances that the matter would not be made public if he acquiesced to the Officer's demands -- an unfulfilled promise that proved devastating."[5] (*Id.* at 9-10.) In addition to the fact that these assertions are further attempts by the Defendant to avoid any responsibility for his own actions, as was the suggestion that the *Idaho Statesman* pressure led him to plead, these assertions do not evidence that the Defendant's plea was involuntary or unintelligent.

a. The Defendant's interactions with various police officers indicate a pattern of confrontation with the officers, rather than a relationship in which the Defendant would rely on an officer's statements for purposes of making the weighty decision to plead guilty.

The interactions between the Defendant and the police officers, both during the post-*Miranda* interview and on a subsequent occasion, were not indicative of a relationship that would foster reliance by the Defendant on the representation of the police officers in making his decision to plead guilty to a crime. The statements by the Defendant during the taped interview demonstrate obvious tension and adversity between Sergeant Karsnia and the Defendant, including the Defendant saying: "I'm not gonna fight you" and "You saw something that didn't happen." In fact, the Defendant himself in his motion papers describes Sergeant Karsnia's comments as "insulting." (Rule 15.05 Mot. Withdraw at 5.)

When the Defendant came to the police operations center on June 22, 2007 and spoke with an officer with whom the Defendant had no previous contact, the Defendant

[5] The assertion by the Defendant in his motion that the promise was unfilled suggests that Officer Karsnia acted inappropriately and/or divulged information regarding the arrest and/or plea to the public. However, there is no foundation to this bald assertion provided by the Defendant in his motion papers. The Court should ignore this implication as it appears to be made in the hope that the appearance of impropriety would provide some merit to the Defendant's motion.

described to that officer his initial interaction with the airport police as one in which he was "drug down" to an office, handcuffed, fingerprinted, and interviewed. (Police Rep. at 3.) From that officer's perspective, as detailed in the report which was made long before the Defendant's decision to plead guilty to a crime and before this motion, the Defendant was "agitated and demeaning." (*Id.*) When Sergeant Karsnia spoke with the Defendant on this same subsequent occasion, he described the Defendant as demanding, as well as pointing out that the Defendant had been exaggerative, if not untruthful, about the prior occurrences (particularly the allegation of handcuffing). (*Id.* at 4.)

None of these interactions, including on the day that the Defendant engaged in the disorderly conduct and the day of his subsequent follow-up visit to the airport police, demonstrate a circumstance in which it is reasonable to believe that the Defendant would rely on the officer's statements in making his decision to plead guilty. In a motion in which the Defendant carries the burden, this assertion of reliance is contradicted by the record and is not sufficient to constitute manifest injustice that would warrant allowing withdrawal of the plea. The Court should deny the Defendant's motion.

b. The prosecution's admonition that the Defendant would have a criminal record as a result of a plea contradicts any reasonable belief by the Defendant that the matter would not be made public.

The statements by the police officer, upon which the Defendant claims he relied in entering a plea of guilty, appear to be in relation to the publicizing of this matter and the ability to conclude this matter with a fine. First, to the extent that the reliance was on the statement that the matter could be concluded with a fine, that statement was correct in terms of the executed portion of the sentence. Second, to the extent that the

Defendant is claiming that the officer's statement, that he does not, as a matter of course, call the media, led the Defendant to believe that the matter would never be public, that assumption is an aggrandizement of the statement by the officer and is not reasonable, especially considering the subsequent communications between the Defendant and the prosecution. Not only is the Defendant's reliance questionable for all the reasons set forth in the preceding subpart, but any claimed belief by the Defendant that the matter would never become public was unreasonable at the point that the Defendant received the letter from the prosecution enclosing the plea agreement. The letter clearly stated: "Agreeing to the Petition will result in a conviction for Disorderly Conduct appearing on your criminal record." (Renz Aff., Ex. B.) In addition to the letter, the prosecution made clear in oral conversations with the Defendant the process by which the plea would be processed, including being entered into the Court system and made part of the Court's public record. (Renz Aff. ¶ 13.) Therefore, even were the Court to believe that the Defendant relied on the initial statements by Sergeant Karsnia to the Defendant regarding the likely outcome of an executed fine and the Sergeant's practice to not call the media, any suggested reliance would have been quashed by the obviousness of potential public exposure pointed out by the prosecution in its correspondence to and conversations with the Defendant. Therefore, there is no basis for the Court to find manifest injustice in the plea of guilt by the Defendant. The Court should deny the Defendant's motion.

c. The Defendant's contention that he relied on representations of Sergeant Karsnia made at the time of his arrest in his decision to plead guilty is thwarted by the Defendant's obvious recognition that it was the prosecution which controlled the plea offers as to the outcome of the case.

The Defendant's suggestion that he pled guilty to a crime that he did not commit based on the law enforcement officers' statements is also contradicted by his obvious understanding that the outcome of the case rested with the prosecutor. Eleven days after the Defendant's arrest on June 11, 2007, during which Sergeant Karsnia made the statement that he does not call the media regarding arrests, the Defendant personally returned to the police operations center at the airport and spoke with Sergeant Karsnia. (Police Rep. at 3, 4.) However, the Defendant did not speak with Sergeant Karsnia regarding the case outcome and the supposed promises of Sergeant Karsnia which the Defendant claims were the basis for his plea. (*Id.* at 4.) Instead, the Defendant asked for the prosecution's contact information. (*Id.*) In speaking with the prosecution on three occasions, the Defendant never mentioned the representation by Sergeant Karsnia, either as stated by Sergeant Karsnia in the report or as the Defendant describes it in his motion papers, or that he was relying upon it. (Renz Aff. ¶ 20.) After negotiations with the prosecution and the resulting plea agreement that the Defendant executed, which included stayed jail time, the Defendant did not contact Sergeant Karsnia or tell the prosecutor of the alleged promise perceived by the Defendant. Even after conversations with the prosecution in which the Defendant was told the plea would be in court files that were public record and the cover letter from the prosecution explaining that the plea would result in a conviction on the Defendant's criminal record, the Defendant neither raised Sergeant Karsnia's "representations" with the prosecution

nor contacted Sergeant Karsnia regarding the same. The Defendant's actions and the record facts make clear that the Defendant understood the prosecution was in charge of plea negotiations as to the case outcome. The Defendant's claimed reliance on Sergeant Karsnia's statements is unfounded and can not serve as a basis on which to find manifest injustice. The Court should deny the Defendant's motion.

d. Statements by the police as to the likely outcome of a criminal proceeding do not and should not serve as bases for withdrawal of the plea.

It is the burden of the Defendant to show that refusing to allow him to withdraw his plea would result in manifest injustice. *State v. Munger*, No. A06-1563, 2007 WL 2417094, *2 (Minn. Ct. App. Aug. 28, 2007) (citing *State v. Christopherson*, 644 N.W.2d 507, 510 (Minn. Ct. App. 2002)). The Defendant has provided no legal authority to suggest that statements by police as to a likely outcome of a charge would serve as a basis for withdrawing a plea to that charge, much less when that plea is made after lengthy considerations, multiple conversations with the prosecution and the opportunity to seek counsel. In addition to the fact that the Defendant's claim of reliance on the officer's suggestion of a potential criminal outcome is contradicted by the Defendant's own stance towards the officers, there is no legal foundation to suggest that the police officer's statement that a fine would be the ultimate outcome or that the officer did not intend to call the media is a basis to withdraw the Defendant's plea. The Defendant's motion to withdraw his plea should be denied.

3. *The considered and deliberate process by which the Defendant pled guilty precludes any claims that there were pressures that would make the plea involuntary or manifestly unjust so as to warrant withdrawal.*

The Defendant's contention that outside pressures were the force that caused him to plead guilty to a crime are not borne out by the manner in which the plea was entered. The Defendant's plea of guilty was entered by mail. Unlike a plea that is entered in open court, where a defendant is placed, to some degree, on-the-spot in discussions with the prosecutor or in discussions with a defense attorney who has conversed with the prosecutor, a plea by mail allows a defendant the time to carefully consider the plea. In the instant case, the Defendant was completely informed as to that which he was pleading guilty. First, there was no doubt that the Defendant was pleading guilty to a crime: "I understand that I am entering a plea of guilty to a misdemeanor charge for which the maximum sentence is a $1000.00 fine and/or 90 days imprisonment." (Plea Petition ¶ 6.) Second, it was clear that the Defendant would have a criminal record as a result of the plea: "Agreeing to the Petition will result in a conviction for Disorderly Conduct appearing on your criminal record." (Renz Aff., Ex. B.) Third, it was clear that the Defendant was admitting to engaging in physical conduct in a bathroom that would tend to arouse alarm or resentment. (Plea Petition ¶ 3.) Fourth, the title of the crime and the statutory cite for the crime were clearly set forth, both in the petition, as well as in the Complaint. (*Id.* ¶ 2; Compl.) Fifth, the plea agreement, particularly coupled with the letter from the prosecutor, made clear that the Defendant was giving up constitutionally-protected trial rights and that an attorney could counsel the Defendant and provide the information on the form. (*See generally* Plea Petition and Renz Aff., Ex. B.) Not only were all of these items covered by the plea

agreement and cover letter, but those documents were sent on July 20, 2007. (Renz Aff. ¶ 15.) The Defendant spoke with the prosecution about the plea petition on July 31, 2007. (*Id.* ¶ 17.) In fact, the Defendant spoke with the prosecution on 3 different occasions and could have had any questions or concerns answered to the extent they were appropriate and within the prosecution's ethical bounds. (*Id.* ¶¶ 10, 13, 17.) In speaking to the Defendant, the Defendant's tone was calm and his questions intelligent and methodical. (Renz Aff. ¶ 19.) Nothing in the prosecution's conversations with the Defendant indicated urgency, panic, or confusion. (Renz Aff. ¶ 19.) Even allowing for a delay due to the speed of mail, the Defendant had a week after receipt to contemplate the plea, to review the plea, to look up the cited statutory provisions, to speak with counsel or other advisors, and/or to weigh the consequences of pleading guilty to a crime. After discussions with the prosecution, but before mailing the plea on August 3, the Defendant had even more time to consider his alternatives and make a considered decision. In fact, in contrast to persons facing similar charges and personally appearing in Court, the Defendant was under far less pressure. The Defendant not only had all of this time, but he also had the luxury of making the decision in his own surroundings over 1000 miles away. The Defendant's suggestions that he "panicked and chose to plead to a crime he did not commit" "faced with the pressure of an aggressive interrogation" by a local newspaper are belied by the process of pleading by mail. (*See* Rule 15.05 Mot. Withdraw at 9.) The Defendant's plea was perfectly voluntary. The Court should be mindful of the considered and deliberate nature of the Defendant having entered his plea by mail.

The Defendant's contentions that his panic drove him to a guilty plea are not supported by the facts in the record due to the length of time during which this purported panic would have had to last.[6] The Defendant was arrested on June 11, 2007. (Police Rep. at 1-2.) The Defendant pled guilty by executing the plea petition on August 1, 2007 and mailing it to the prosecution shortly thereafter. (Plea Petition; Renz Aff. ¶ 21.) Between his arrest and his plea, the Defendant had three phone conversations with the prosecution in which the Defendant's options were explained and regarding which the Defendant asked numerous questions all in a tone that appeared measured and non-panicked. (Renz Aff ¶¶ 10, 13, 17.) On August 27, 2007, the media reported on the Defendant's arrest and plea. On the next day, the Defendant made a statement that he had overreacted (he never mentioned panic). (Renz Aff., Ex. D.) On September 1, 2007, the Defendant's period of panic apparently came to an end as he reportedly retained attorneys to look into the case to withdraw the plea. (Renz Aff., Ex. F.) In order to believe the Defendant's claim that panic drove him to his plea, the Court would have to believe that this state of panic lasted over a period of a month and a half. To believe that the panic was also the reason he did nothing to withdraw or question his plea until September 1, 2007, the Court would have to believe the panicked state lasted for nearly three months. Panic, on top of not being a recognized basis on which a plea can be withdrawn and not being consistent with the deliberative sequence of events of the plea by mail, is simply not a state that could reasonably last for such an extended period of

[6] The Defendant's Affidavit claims that he was so gripped by a state of panic on the day of his arrest that he decided he would plead guilty to any charge lodged against him. (Craig Aff. ¶ 12.) The affidavit statements undercut the Defendant's argument that had a judge undertaken a full inquiry, the Defendant would not have pled guilty. Either: 1) the Defendant was so gripped by panic that he would have made any and all admissions necessary to get the plea over with and therefore even allocution before a judge would have resulted in a plea (*see* Craig Aff. ¶ 12); or 2) he was not, in fact, so panicked as of the date of his initially scheduled arraignment as to falsely admit to purportedly false charges, in which case his plea that he made on a date subsequent to when he would have appeared in court, is clearly voluntary.

time and over the course of multiple conversations with the prosecutor held in a measured and intelligent manner. As a factual and practical matter, the record should preclude panic from being a basis for withdrawal of the Defendant's plea, in addition to its legal insufficiency. The Court should deny the Defendant's motion.

C. The Defendant's Plea Was Made Intelligently, Following Warnings, Waivers, Time for Consideration, Encouragement to Seek Counsel, and Repeated Statements of Guilt to the Court.

The Defendant's plea was made intelligently. A plea is intelligent when the defendant comprehends the charges, his rights and the direct consequences of his actions. *Alanis v. State*, 583 N.W.2d 573, 578 (Minn. 1988). In the instant case, the Defendant was fully apprised of the charges made against him, as they were fully set forth in the Complaint he was sent, as well as referenced in the plea petition he executed. The exchange of communications between the prosecution and the Defendant, particularly the plea petition and accompanying correspondence, clearly apprised the Defendant of his rights and the direct consequences of his actions. The goals of the process that the Defendant urges the Court to adopt were satisfied in the document process of mailing in the plea petition. The plea petition leaves no uncertainty that the Defendant understood what he was doing and understood he was pleading guilty to a crime. The Defendant, as provided in detail in previous sections of this memorandum, had the luxury of time and distance to give the matter its due consideration and determined that he was guilty and so pled. Lastly, the Defendant's position as a United States Senator, particularly coupled with all of these other reasons that the Defendant's plea was intelligent, leaves no doubt that there is no manifest

injustice that would warrant withdrawal of the Defendant's plea. The Defendant's motion should be denied.

1. *The procedure that the Defendant claims would have precluded the innocent from professing guilt is the same procedure, substantively, that was realized by the written documents and requiring a tailored and individualized inquiry is a facial attack on pleas by mail.*

The Defendant suggests that the plea should be withdrawn because there was not an examination by the Court of the Defendant's understanding of a plea, or a "judicial intervention" to ensure that the Defendant understands the plea agreement. (Rule 15.05 Mot. Withdraw at 8-9.) The Defendant further proposes that a court should elicit information to understand whether a defendant fully understands that he waived his right to challenge the use of statements made prior to being read his *Miranda* warning. (*Id.* at 9.) The judicial "intervention" or "inquiry" that the Defendant claims needs to be made in every case was made, in this case, through the documentation sent to and executed by the Defendant. The cover letter to the plea agreement explicitly states: "If you *understand* the contents of the Petition and agree thereto, please sign..." (emphasis added) (Renz Aff., Ex. B.) That sentence of the letter is followed with a sentence regarding reviewing the plea petition with an attorney. (*Id.*, Ex. B.) Moreover, the plea petition is rife with statements by the Defendant that he understood what he was doing:

- "I *understand* the charge(s) made against me";
- "I *understand* that the court will not accept a plea of guilty from anyone who proclaims to be innocent";
- "I *understand* that I am entering a plea of guilty";

- "I *understand* that I have the following constitutional rights, which I knowingly, voluntarily and intelligently" waive;
- "*Understanding* the above I am entering my plea"; and
- "I *understand* that I am giving up my right to be present at the time of sentencing"

(emphases added) (Plea Pet. ¶¶ 2, 4, 6, 9, 10, 13.) The Defendant's claim that more was needed of the Court or other persons to ensure that he understood the plea is difficult to comprehend considering the litany of assurances and affirmations the Defendant made to this Court that he did understand multiple aspects of the plea, including the charges, that he was pleading guilty to a crime, rights he was waiving, and the agreement with the prosecution. (*See generally* Plea Pet.) Furthermore, Paragraph 9 of the plea petition, in addition to setting forth other rights the Defendant was waiving by entering the plea, includes: "the right to a pretrial hearing to contest the admissibility of evidence obtained from a search or seizure and/or information I offered to the police in the form of written or oral statement." (Plea Pet. ¶ 9.) While the *Miranda* case is not specifically mentioned, certainly the form provides warning that there are opportunities to challenge the admissibility of evidence, specifically including oral statements given to the police, which rights are being waived by entering a plea. The Defendant signed the page of the petition containing the waiver of that right, as he did the other portions of the plea petition. The subjects of judicial inquiry that the Defendant claims should have been made in this case were satisfied by the documentation exchanged between the Defendant and the prosecution, namely the plea petition executed by the Defendant. There is no manifest injustice in that the inquiry was made by documentation rather than

in person. The procedure that took place in relation to the Defendant's plea ensured that the Defendant's plea was intelligent. The Court should deny the Defendant's motion to withdraw his plea.

Not only are the subjects of judicial inquiry urged by the Defendant sufficiently covered by the documents in this instance, but any more detailed and tailored questioning of a defendant also is generally impractical as to pleas by mail. Requiring more would all but eliminate the ability for a defendant to plead guilty by mail, as the individual circumstances and tailored warnings advocated by the Defendant would be impossible to provide to every pro se defendant that makes their own decision to enter a plea by mail. The Court should consider the implications in requiring as detailed analysis as suggested by the Defendant and should recognize that the assurances advocated by the Defendant were provided in the exchange of documentation between the prosecution and the Defendant. Therefore, the Court should find that the plea was made intelligently and deny the Defendant's motion.

2. *The Defendant's repeated statements in the plea petition that he was guilty and was not innocent reinforce the intelligence with which the Defendant made the plea.*

As further evidence of the sufficiency and intelligence of the Defendant's plea, it warrants noting that the Defendant made unequivocal statements to the Court via the plea petition that he was pleading guilty to a crime. In fact, the plea petition states:

- "I am pleading guilty to the offense of Disorderly Conduct as a misdemeanor."
- "I am pleading guilty to the charge of Disorderly Conduct..."
- "I understand that the court will not accept a plea of guilty from anyone who claims to be innocent."

- "I now make no claim that I am innocent of any charge to which I am entering a plea of guilty."
- "I understand that I am entering a plea of guilty to a misdemeanor charge."
- "I am entering my plea of guilty freely and voluntarily..."
- "I am entering my plea of guilty based on the following..."

(Plea Petition ¶¶ 2, 3, 4, 5, 6, 10, 11.) For the Defendant to now make a claim that he did not actually sufficiently plead to a crime, or that he did not understand that what he pled to constitutes a crime, is ludicrous considering the litany of occasions in the plea petition alone in which he clearly stated that he was not innocent and he was pleading guilty.[7] In addition to those statements adopted by the Defendant by virtue of his execution of the plea petition, the prosecution's letter to the Defendant enclosing the petition explicitly warned: "Agreeing to the Petition will result in a conviction for Disorderly Conduct appearing on your criminal record." (Renz Aff., Ex. B.) The Court should avoid allowing the Defendant to withdraw his guilty plea on a claim that it was not entered intelligently in light of the clear statements to the Court by the Defendant that he was guilty of the crime of disorderly conduct and was not innocent. The plea was made intelligently and there is no basis for manifest injustice to support its being overturned.

3. *The Defendant's background and position indicate that the plea was entered intelligently.*

The Defendant is hardly of the stature to feign ignorance as to the commitment he undertook in pleading guilty to a crime. The Defendant holds a college degree and

[7] Despite these repeated admissions to being guilty of a crime, Defendant claims that "*all* of the statements in which Senator Craig has described his conduct have constituted claims of innocence and denials of any wrongdoing." (emphasis in original) (Rule 15.05 Mot. Withdraw at 8.) This claim by Defendant in his memorandum apparently is not inclusive of the plea petition itself being a statement by the Defendant, though the petition was executed by him on every page.

has even pursued graduate studies. Biography of Defendant on his Senate website, *available at* http://craig.senate.gov/lec_biography.cfm (attached as Ex. E to Renz Aff.). Most pertinently, the Defendant has been a United States Congressman for nearly 30 years. *Id.* As a United States Representative and Senator, the Defendant has written, argued, debated, and voted on laws of this country. In fact, during his tenure, the Defendant has sponsored or co-sponsored at least 10 bills in the area of criminal law. S. 152, 108th Cong. (2003); S. 153, 108th Cong. (2003); S. 184, 107th Cong. (2001); S. 185, 107th Cong. (2001); S. 3, 105th Cong. (1997); S. 454, 105th Cong. (1997); S. 455, 105th Cong. (1997); S.J. Res. 44, 105th Cong. (1998); S. 891, 103rd Cong. (1993); S.1151, 102nd Cong. (1991). As a United States Representative and Senator, the Defendant no doubt has had extensive interactions with and has access to numerous attorneys and counselors in the legal profession. The Court should be mindful of the Defendant's background and experience for purposes of determining that his decisions to plead guilty were intelligent and made by an obviously educated and knowledgeable individual. The Court should deny the Defendant's motion to withdraw his plea.

II. THE DEFENDANT'S ATTEMPT TO WITHDRAW HIS PLEA IS NOTHING MORE THAN THE DEFENDANT'S OWN DISAPPOINTMENT WITH THE MANNER IN WHICH THE MATTER TURNED OUT FOR HIM, AN INSUFFICIENT REASON TO ALLOW WITHDRAWAL OF A PLEA.

A plea's validity can not be collaterally attacked merely because the Defendant ends up believing he received a bad deal. *Bradshaw v. Stumpf*, 545 U.S. 175, 186 (2005) (citing *Brady v. United States*, 397 U.S. 742, 757 (1970)). The policy favoring finality of judgment exists because courts want to avoid defendants manipulating or play[ing] games with already overburdened courts by withdrawing pleas made with

deliberation. *Chapman v. State*, 282 Minn. 13, 16, 162 N.W.2d 698, 700 (Minn. 1968) (quoting *Everett v. United States*, 336 F.2d 979, 984 (D.C. Cir. 1964)).

Even the Defendant's own statements chart a course as to the manner in which the Defendant is attempting to manipulate this Court's system and "play games." Until his plea of guilty became public, the Defendant did not proclaim any concern, remorse, or regret with having accepted the plea agreement that afforded him the ability to plead guilty to the lesser of the two charges, have a stayed jail sentence, and pay a portion of the total fine. It was only after the plea became a political liability for the Defendant that he began indicating to the public that he intended to pursue withdrawal of the plea. It is clear from this sequence of events that the Defendant had hoped that he could plead guilty and that the plea would not be discovered by the media or public. The Defendant chose to plead guilty and consciously took that risk. The Defendant's current pursuit of withdrawal of his guilty plea is reactionary, calculated, and political. The Defendant should not be allowed to manipulate this State's system of justice by entering a plea of guilty, thus finalizing the case with the exception of stayed conditions, and then attempt to withdraw that same plea when the fallout from it is greater than the Defendant anticipated. The State finds no case where "buyer's remorse" is a valid basis for plea withdrawal. The Court should deny the Defendant's motion.

This motion was made because of the Defendant's distaste for the collateral consequences that arose when the Defendant's plea became public. Courts do not allow withdrawal of a plea where the motion is made because a defendant did not understand the collateral consequences of the plea. *Alanis v. State*, 583 N.W.2d 573, 578 (Minn. 1998). Consequences are collateral when they are not definite, immediate,

or automatic. *Alanis*, 583 N.W.2d at 578 (holding that deportation is a collateral, versus direct, consequence and though severe is an insufficient basis for a plea withdrawal); *see also e.g. State v. Rodriguez*, 590 N.W.2d 823, 825 (Minn. 1989) (holding that loss of right to possess firearm was a collateral consequence and therefore withdrawal of plea on that basis was inappropriate). The Defendant may be displeased with the collateral consequences of his having had pled guilty, namely the political and public perception consequences. However, just as not understanding such consequences is not a basis for claiming a plea was not intelligent, so also it should not be allowed by this Court to spur withdrawal of the plea in the Defendant's case. The Court should deny the Defendant's motion.

III. THE MOTION FOR PLEA WITHDRAWAL BY THE DEFENDANT IS NOT TIMELY AS THE TIMING EVIDENCES THE DEFENDANT'S LACK OF DILIGENCE IN PURSUING WITHDRAWAL ONLY ON THE OCCASION OF POLITICAL BACKLASH.

"While there is no established time limit barring motions for withdrawal of a guilty plea, such motions should be 'made with due diligence, considering the nature of the allegations therein.'" *Black v. State,* 725 N.W.2d. 772, 776 (Minn. Ct. App. 2007) (citing *Chapman v. State*, 282 Minn. 13, 17, 162 N.W.2d 698, 701 (1968)). Though there is a nominal amount of flexibility with the rule as to the time within which such a motion can be made, "[c]riminal defendants do not have an absolute right to withdraw a guilty plea ...." *Alanis v. State,* 583 N.W.2d 573, 577 (Minn. 1998) (quotation omitted). In determining whether a motion to withdraw is timely, courts consider factors that include: the court's interest in preserving the finality of convictions; the defendant's diligence, or lack thereof, in seeking a withdrawal; and prejudice to the state's case caused by the delay. *Black*, 725 N.W.2d at 776. Two of the three factors considered as to the

timeliness of such a motion compel the denial of the Defendant's motion to withdraw his plea on the grounds that the withdrawal is untimely.

A. The Court's Interest in Preserving the Finality of Convictions Is In Direct Conflict with Allowing the Defendant to Withdraw His Plea.

After the Defendant's public announcement that he regretted his plea, the prosecution office of the Metropolitan Airports Commission received at least one phone call from a defendant seeking to pursue withdrawal of his plea. (Renz Aff. ¶ 23.) Clearly, the interest of preserving the finality of convictions will be contravened if the Court allows withdrawal of the Defendant's plea in this instance, as the deluge of individuals, both alike and unlike the Defendant in terms of the crimes to which they have pled, will seek similar relief. The public nature of this withdrawal will cause innumerable defendants to seek similar relief and will be a disservice to the finality of convictions in which the Court has an interest. Of particular concern to the Court should be the granting of such relief on dubious grounds, as addressed in previous sections of this memorandum. Convicted defendants will perceive that such relief is available even on questionable grounds and that decision would thereupon spawn multitudes of similar motions. For these reasons, the Defendant's motion should be denied on the grounds that it is not timely.

The delay in the Defendant's motion until he could better ascertain the political consequences of his plea underscores the inappropriateness of granting the Defendant's motion. Where a defendant does not withdraw his plea immediately after deciding he should not have pled, but rather waits to determine the consequences of that plea, courts consider the motion to be untimely. *See State v. Antos*, No. A06-132, 2006 WL 3490821, *2-*3 (Minn. Ct. App. Dec. 5, 2006) (finding that where defendant

seeks withdrawal only after being arrested for violating the terms of his probation, the judicial interest in the finality of convictions calls for holding that the motion to withdraw the plea is untimely). This was not a situation where the day, or even the week, following the Defendant's mailing in his plea of guilt, he thought about his plea, decided it was inaccurate or unintelligent and did everything within his power to reverse course. Instead, the arrest and plea become public and in reaction, the Defendant stated that he regretted that he had pled guilty and he should have sought counsel. The Defendant then announced that he planned to seek withdrawal of his plea, but waited in filing his motion to determine the consequences of waning and waxing public opinion, the support of his fellow politicians, and committees of the legislature. Allowing the Defendant to wait until the consequences of his plea materialize before filing his motion to withdraw is contradictory to the Court's interest in the finality of convictions and encourages others to seek similar relief only after the consequences of their plea play out. For this reason, the Court should deny the Defendant's motion to withdraw his plea as untimely.

B. The Defendant Has Not Been Diligent in Seeking a Withdrawal of His Plea but Instead Has Waited in an Apparent Attempt to Gauge the Public Response to His Arrest and Political Turmoil.

The Defendant has failed to seek the remedy of withdrawal of the plea with sufficient diligence, but instead has engaged in political calculations, and therefore the Defendant's motion should be denied as untimely. As set forth by the Supreme Court of this State, there is a policy favoring the finality of judgment and that policy exists because:

> [Courts] are not disposed to encourage accused persons to 'play games' with the courts at the expense of already overburdened calendars and the rights of other accused persons awaiting trial' by setting aside judgments of conviction based upon pleas made with deliberation and accepted by the court with caution.

Chapman v. State, 282 Minn. 13, 16, 162 N.W.2d 698, 700 (Minn. 1968) (quoting *Everett v. United States*, 336 F.2d 979, 984 (D.C. Cir. 1964)). Just as that policy, and the reasons therefor, weigh against withdrawal of the plea, they also provide a basis for denying the Defendant's motion on the grounds that it is not timely. The Defendant has not been diligent in seeking the relief that is provided sparingly by the Minnesota Rules of Criminal Procedure. Instead, the Defendant appears to be playing games with the plea and its finality by publicly disclaiming guilt in the matter in which he pled guilty and stating that he intends to attack those charges while waiting to file motion papers or schedule a hearing with this Court. The Court should foreclose this gamesmanship by finding that the Defendant's motion is untimely and therefore denying the motion.

While the time between the Defendant's entry of his plea and motion to withdraw is not as long as in other cases where such a motion was considered timely, Courts have held that periods less than two months are enough to consider a motion to be untimely. *See State v. Andren*, 358 N.W.2d 428, 431 (Minn. Ct. App. 1984)[8]. For the reasons of the Defendant's lack of diligence and the Court's interest in the finality of pleas, the Court should deny the Defendant's motion as untimely. This decision is appropriate not because the raw amount of time between plea and motion is itself

[8] The cited decision of *State v. Andren*, 358 N.W.2d 428 (Minn. Ct. App. 1989), references the dates of November 18, 1984 sentencing and a motion filing of January 11, 1984. The sentencing date is in error and should read November 18, 1983. Not only is this clear from a logistical perspective, but a prior Court of Appeals decision in the same case appropriately explains that the sentencing occurred on November 18, 1983 and the motion to withdraw was filed January 11, 1984. *State v. Andren*, 350 N.W.2d 404 (Minn. Ct. App. 1984). Therefore, the final *State v. Andren* decision, which was cited, stands for the proposition that motions to withdraw pleas can be considered untimely even where filed less than 2 months after sentencing. 358 N.W.2d 428, 431 (Minn. Ct. App. 1984).

necessarily substantial, but rather because the sequence and timing are contrary to the considerations of timeliness in the contexts of these motions. That the time between the plea and the motion is between one and two months should not deter the Court from properly finding that the motion is untimely considering other decisions where similarly short periods have been considered untimely by other courts of this State. The Court should deny the Defendant's motion on the basis of its timeliness, as well as its lack of substantive merit.

CONCLUSION

The Defendant has failed to meet his burden of establishing manifest injustice that would warrant withdrawal of the plea. This showing is not possible because the Defendant's plea was accurate, voluntary, and intelligent. Therefore, the Court should deny the Defendant's motion on the basis that there is no manifest injustice. The real basis for the Defendant's motion—his displeasure with the outcome—is not an appropriate basis for relief sought. The Court should also deny the Defendant's motion as untimely because it was sought only as a political reaction.

The Court should deny the Defendant's motion and appropriately uphold his plea of guilt to disorderly conduct.

Respectfully Submitted,

Dated: September 24, 2007

By _____

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