STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Larry Edwin Craig,

Defendant.

ORDER

27 CR 07-043231

The above-entitled matter came before Judge Charles A. Porter, Jr. on September 26, 2007 for a hearing on Defendant's Motion to Withdraw Plea. Christopher P. Renz, Esq. and Ryan Wood, Esq. appeared for the State of Minnesota. Thomas M. Kelly, Esq., William R. Martin, Esq. and Kathleen H. Sinclair, Esq. for the Defendant. The American Civil Liberties Union, Teresa J. Nelson, Esq., filed an *amicus curiae* memorandum but did not appear for oral argument.

Based upon the evidence adduced, the argument of counsel, and all of the files, records, and proceedings herein,

IT IS ORDERED:

1. Defendant's Motion to Withdraw Plea is hereby **DENIED**.

2. The State's Motion to Strike Memorandum of Law of American Civil Liberties Union is **DENIED**.

3. The attached memorandum is incorporated herein.

BY THE COURT:

Dated: 10-4-07

Charles A. Porter, Jr.
Judge of District Court

MEMORANDUM

FACTS

This case is presently before the Court on Defendant Larry Edwin Craig's ("the Defendant's") Motion to Withdraw Plea. Various grounds are asserted both in oral argument and in his brief in support of this request. The principal arguments are that the plea was not accurate, voluntary, and intelligent, that the factual basis for the plea contained in the petition is insufficient to support a conviction and that the plea was coerced by the promises or threats of the initial investigating officer. The Defendant concedes for the purpose of this motion, that the facts contained in the Complaint and in the affidavits and statements of the two Metropolitan Airport Commission ("MAC") Police Department officers are true.

On June 11, 2007, the Defendant was traveling through the Minneapolis-St. Paul International Airport ("the airport") on a layover between flights. At 12:13 p.m., the Defendant entered the main men's public restroom in the Northstar Crossing area of the airport. The Defendant stood approximately three feet outside one particular stall, looked through the crack in the stall door, then looked down at his hands, fidgeted with his fingers, then looked into the stall again, repeating this cycle for approximately two minutes. The stall's occupant, MAC Police Sergeant Dave Karsnia ("Sgt. Karsnia"), observed Defendant's behavior over a long enough period and with sufficient detail to determine that the Defendant had blue eyes.

When the stall adjacent to Sgt. Karsnia on his left became vacant, the Defendant entered it and placed his roller bag in front of the stall door. Approximately one minute later, the Defendant tapped his right foot several times and moved his foot closer to Sgt.

Karsnia's left foot. The Sergeant then moved his foot up and down slowly. Allegedly in response, the Defendant then moved his right foot within the space of the adjacent, occupied stall, positioning his foot so that it was touching Sgt. Karsnia's foot.

The Defendant then swiped his left hand, palm up, along the bottom of the stall divider from front to back three times. During each swipe, the Defendant's fingers entered the inside of Sgt. Karsnia's stall, and each time the Defendant's fingers were increasingly more exposed. On the third swipe, Sgt. Karsnia observed a gold ring on the Defendant's ring finger. Sgt. Karsnia then held his police identification under the stall divider. The Defendant said, "No!"

Sgt. Karsnia signaled for the Defendant to exit the stall. The Defendant was reluctant to go, and demanded to see Sgt. Karsnia's credentials again. Sgt. Karsnia again showed the Defendant his police identification. The Defendant asked what was going to happen. Sgt. Karsnia said they would speak in private. Initially the Defendant still refused to go, but eventually left the stall when he was told by Sgt. Karsnia that he was under arrest. When he exited, the Defendant did not flush the toilet. Sgt. Karsnia noted that some of the stalls were then un-occupied. Sgt. Karsnia had also noted empty stalls, at 12:00 noon, when he first entered his stall. The Defendant was arrested at approximately 12:22 pm; he was never handcuffed or otherwise restrained.

Sgt. Karsnia led the Defendant to the airport's Police Operations Center ("POC"), while again assuring the Defendant that they would speak in a private area. Upon arrival at the interview room in the POC, for safety reasons and as a matter of MAC PD standard procedure, Sgt. Karsnia asked the Defendant to leave his bags outside of the interview room. During this exchange, Sgt Karsnia also asked the Defendant to produce his

driver's license. The Defendant agreed to leave his roller bag outside, but brought his two-strap bag into the interview room, ostensibly because his identification was in the bag. Upon sitting down in the interview room, the Defendant handed Sgt. Karsnia his business card, which identified him as a United States Senator and said, "What do you think about that?" Sgt. Karsnia responded by placing the business card on the table and repeating his request for the Defendant's driver's license. The Defendant ultimately produced his Idaho driver's license.

Prior to giving the Defendant his *Miranda* warnings, Sgt. Karsnia and the Defendant engaged in some conversation, including Sgt. Karsnia saying he was not going to bring the Defendant to jail and the Defendant replying, "You solicited me." Craig Memo. Ex. C at 3. The Defendant also expressed a concern about making his flight. Post-*Miranda*, the Defendant said he understood his rights and wished to talk at that time. The Defendant denied soliciting Sgt. Karsnia, but admitted his foot entered Sgt. Karsnia's stall and that it came into contact with Sgt. Karsnia's foot, but opined that this was because the Defendant has a wide stance when sitting on a toilet. The Defendant further admitted his hand was near the floor, but explained that he was picking up a piece of toilet paper off of the ground behind him. Sgt. Karsnia observed that there was no toilet paper on the ground at the time. The Defendant further admitted he "was glancing" into the stall next to Sgt. Karsnia's because he saw the occupant stand up and thought the stall would become vacant. At one point during the interrogation, Sgt. Karsnia said, "You're gonna [sic] have to pay a fine and that will be it. Okay. I don't call media. I don't do any of that type of crap." *Id.* at 5. At separate times during the interrogation, the Defendant accused Sgt. Karsnia of soliciting and entrapping him. The Defendant also

said he did not want to go to court, and indicated that he was not going to fight Sgt. Karsnia in court. The interrogation concluded at 12:36 p.m.

Ten days later, on June 22, 2007, the Defendant returned to the airport's POC station and spoke with MAC PD Officer Adam Snedker and Sgt. Karsnia. According to Officer Snedker, the Defendant was "agitated and demeaning." Renz Aff. Ex. A at 4 of 5. The Defendant asked about the status of his case, to which Sgt. Karsnia replied that his complaint would be completed in the next week. The Defendant also requested the prosecutor's contact information so his lawyer could speak with the prosecutor.

The Defendant spoke with MAC Prosecuting Attorney, Chris Renz, several times via telephone in late June and July. On June 25, 2007, the Defendant asked Mr. Renz many questions about the procedure and his options. Mr. Renz responded that it appeared likely, from a cursory review of the file, that the Defendant could plead to misdemeanor disorderly conduct and have the gross misdemeanor interference charge dismissed. Mr. Renz agreed to send the summons and complaint to the Defendant's Washington, D.C. address, and informed the Defendant that either he or his attorney should contact him regarding resolution of the case.

On June 25, the same day as the first telephone conversation, a Complaint was completed and executed, charging the Defendant with gross misdemeanor interference with privacy pursuant to Minnesota Statutes section 609.746, subdivision 1(c) and misdemeanor disorderly conduct pursuant to Minnesota Statutes section 609.72, subdivision 1(3).

The Defendant next contacted Mr. Renz on July 17, 2007, acknowledging he had received the "summons" and wanting to talk about his options. Mr. Renz again said that

the Defendant could plead to the disorderly charge with the interfering charge being dismissed. Such a plea would require an agreement to a sentence of ten days in jail and $1,000 fine, with all ten days and $500 of the fine stayed for one year on the condition that the Defendant have no same or similar violations. The plea process was again explained, including how the plea would be entered and highlighting that the petition and conviction would be public records. The Defendant expressed concern about having the facts and charges made public in light of his position as a United States Senator. Once again, Mr. Renz advised the Defendant to consult an attorney. The Defendant asked to have the plea offer paperwork mailed to him at his home address in Washington, D.C. so he could have it reviewed by an attorney. In all of their pre-plea conversations, the Defendant's demeanor was calm and methodical. The Defendant has not alleged in his motion papers, that in any of his conversations with Mr. Renz he denied the allegations or expressed to him that he was not guilty.

Mr. Renz mailed the offer and petition as requested, and agreed to obtain a continuance of the arraignment date from July 25 to August 8, 2007, in order for the Defendant to have time to consider the offer and to consult an attorney. The cover letter accompanying the petition contains instructions on how to fill out the petition and explains the offer. The letter also states: "Agreeing to the Petition will result in a conviction for Disorderly Conduct appearing on your criminal record." Renz Aff. Ex. B at 1 of 2.

On July 27, 2007, the Defendant left a voicemail with questions regarding the petition. On July 31, Mr. Renz responded and told the Defendant to whom the money order for the fine should be made payable. He also reminded the Defendant that the

continued arraignment date was fast approaching. The Defendant called on August 3 to say that he had mailed the executed Petition to Plead Guilty that day by express mail. It arrived in advance of the August 8, 2007 arraignment date. Along with the signed petition was a handwritten note from the Defendant, thanking Mr. Renz for his "cooperation." Renz Aff. Ex. C.

On August 8, 2007, Fourth Judicial District Judge Gary Larson, accepted the Plea by Mail dated August 1, 2007, in which the Defendant agreed to plead guilty to the charge of misdemeanor disorderly conduct pursuant to Minnesota Statutes section 609.72, subdivision 1(3). The Defendant accepted a sentence of 10 days of jail time and a fine of $1,000, with 10 days and $500 stayed for one year on the conditions that the Defendant not commit any same or similar offenses and tendered a money order to pay the unstayed fine amount of $500 plus the $75 surcharge, for a total of $575. The charge of gross misdemeanor interference with privacy, Minnesota Statutes section 609.746, subdivision 1(c), was by the agreement, dismissed. By submitting his plea using the Petition and presenting the $575 money order, the Defendant expressly waived his right to be present for the entry of the plea. Judge Larson granted the petition, accepted the plea, and imposed the negotiated sentence without signing or initialing the plea petition. The Defendant concedes that when he accepted the guilty plea, Judge Larson had access to the official court file, which included the Complaint.

The Defendant now moves to withdraw his guilty plea on the grounds that the plea was not accurately, voluntarily, or intelligently made, and that the evidence is insufficient to support the conviction. The Defendant argues that if one ignores the contents of the plea petition, he has consistently maintained his innocence. The State

opposes Defendant's motion on the grounds that the plea was accurately, voluntarily, and intelligently made, that the evidence does support the conviction, and that the motion to withdraw is untimely. The American Civil Liberties Union ("ACLU") has filed an *amicus curiae* brief, arguing a conviction on the facts of this case violates the free speech guarantees of the First Amendment.

LEGAL ANALYSIS

Minn.Stat. §609.72 Disorderly Conduct

The Defendant pled guilty to the misdemeanor offense of disorderly conduct, which is defined, in relevant part, as follows:

> **Subdivision 1. Crime.** Whoever does any of the following in a public or private place, . . . knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct, which is a misdemeanor:
>
> * * *
>
> (3) Engages in offensive, obscene, abusive, boisterous, or noisy conduct . . . tending reasonably to arouse alarm, anger, or resentment in others.

Minn.Stat. §609.72, subd. 1(3). Disorderly conduct is not a specific intent crime. "Specific intent means that the Defendant acted with the intent to produce a specific result, whereas *general intent* means only that the Defendant intentionally engaged in prohibited conduct." *State v. Vance*, 734 N.W.2d 650, 656 (Minn. 2007) (emphasis in original). Disorderly conduct is in fact a general intent crime because the statute requires that the defendant do an act (or engage in speech) with either the actual or imputed knowledge that his or her action would offend a reasonable person, but does not require that the defendant actually intend that the person be so alarmed, offended, etc. The statute does not require that the Defendant act with the intent to offend.

Standard for Withdrawal

As an initial matter, in Minnesota, a criminal defendant does not have an absolute right to withdraw a guilty plea. *Shorter v. State*, 511 N.W.2d 743, 746 (Minn. 1994). "Public policy favors the finality of judgments and courts are not disposed to encourage accused persons to 'play games' with the courts by setting aside judgments of conviction based upon pleas made with deliberation and accepted by the court with caution." *Kaiser v. State*, 641 N.W.2d 900, 903 (Minn. 2002) (internal quotation omitted). In his oral presentation, Defendant's counsel, William Martin, wisely conceded this point.

There are two different standards for withdrawal, depending on whether the motion is made before or after sentencing. The court may allow a defendant to withdraw the plea before the sentence is imposed "if it is fair and just to do so." Minn.R.Crim.P. 15.05, subd. 2. However, the standard for withdrawal is higher after the sentence is imposed: the court may allow a defendant to withdraw the plea only if the motion is timely made and "withdrawal is necessary to correct a manifest injustice." Minn.R.Crim.P. 15.05, subd. 1. A manifest injustice occurs when a plea is not accurately, voluntarily, or intelligently made. See, e.g., *Kaiser* at 903; *Black v. State*, 725 N.W.2d 772, 776 (Minn.App. 2007); *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997).

The Motion is Not So Untimely as to Render it Procedurally Invalid

The State argues the Court should not consider the Defendant's motion to withdraw on the merits at all, because the motion is untimely brought. Minnesota has not established an absolute time limit for the bringing of a motion to withdraw. Instead, the Defendant must act with due diligence in light of the nature of the allegations. *Black* at

776. In making its determination of timeliness, the trial court should consider the following three factors: 1) the court's interest in preserving finality of convictions; 2) the defendant's diligence in bringing the motion to withdraw; and 3) degree of prejudice to the state's case if withdrawal were allowed. *Id* (internal citations omitted).

Here, the State does not take issue with the length of time that has elapsed from the date the plea was entered and does not claim its case would suffer undue prejudice as a result of the delay. The State also does not dispute the dates of the entry of the plea and the filing of the motion, a period of less than 30 days. Rather, the State argues that the reason given to withdraw the plea is not intrinsic to the case itself but is motivated by the social and political events that have taken place since August 8, and that the motion is an attempt by the Defendant to backpedal in hopes of a more socially favorable outcome. In essence the State maintains that the Defendant waited until external political events compelled him to act to protect his political career.

The Defendant has not expressed dissatisfaction with the actual terms of his sentence, which consists solely of a financial penalty of $575 provided that he does not commit any same or similar violations for one year. Likewise, he does not challenge the legal validity of the conviction or the fairness or appropriateness of the negotiation. The timing of the motion relative to the social and political events that began when the case became publicized, approximately three weeks after the plea was entered and sentence was imposed, the State suggests, makes the motion untimely as it is politically, rather than legally, motivated. While the Court has a vital interest in the finality of the voluntary pleas and of convictions and sentences based thereon, the lack of any significant prejudice to the State by the delay, and the Defendant's relative diligence in

seeking withdrawal, make it unjust to dismiss the Defendant's Motion as untimely without ruling on the merits.

The Defendant's Guilty Plea Was Accurate

The Defendant argues his guilty plea was not accurately made and was improperly accepted by the court. To be accurate, the plea must be "entered without improper inducement and with a full understanding of the possible consequences; it [must] also demonstrate that defendant is guilty of a crime at least as serious as that to which he is pleading." *Vernlund v. State*, 589 N.W.2d 307, 310 (Minn.App. 1999) (internal quotation omitted). The accuracy requirement also "assist[s] the court in determining whether the plea is intelligently entered." *Id.* A proper factual basis must be established on the record for the guilty plea to be accurate. *Id.* at 310; see also *State v. Lyle*, 409 N.W.2d 549, 551-2 (Minn.App. 1987); Minn.R.Civ.P. 15.02, 15.03. If the plea agreement does not, on its face, establish a sufficient factual basis for the conviction, the court may look to the court file as a whole to find the factual basis. *State v. Warren*, 419 N.W.2d 795, 799 (Minn. 1988). Guilty pleas entered by *pro se* defendants are subject to the strictest scrutiny. *Vernlund* at 310.

Here, the Defendant argues the court erred in accepting his guilty plea and in imposing the negotiated sentence without memorializing the acceptance on the petition itself. In this argument, the Defendant suggests the postconviction court should ignore the evidence of the substantive validity of the plea, and should also ignore that the plea was entered in the regular course of the court's calendaring and record keeping system, and finally should disregard the fact that the sentence was imposed by and under the authority of Judge Larson. While the absence of a signature or a transcribed verbal

acceptance may be a technical deficiency in this plea record, it is not fatal to the conviction. The Defendant has not met his burden of proving that because Judge Larson did not acknowledge his acceptance of the plea in writing on the petition document, Judge Larson did not actually accept the plea in this case which was regularly calendared to him.

The Defendant next argues that his guilty plea lacked a sufficient factual basis. The petition provides the following factual basis:

> I am pleading guilty to the charge of Disorderly Conduct as alleged because on June 11, 2007, within the property or jurisdiction of the Metropolitan Airports Commission, Hennepin County, specifically in the restroom of the North Star Crossing in the Lindbergh Terminal, I did the following: Engaged in conduct which I knew or should have known tended to arouse alarm or resentment or [sic] others, which conduct was physical (versus verbal) in nature.

Craig Memo. Ex. E; Renz Aff. Ex. C. This factual basis contains the requisite date, location, and elements of the offense, but clearly does not describe, in detail, the conduct that substantively supports each element of the offense. The Defendant argues that because the factual basis in the petition lacks detail, he was therefore not aware of the facts underlying his conduct coinciding with the elements of the offense, or more importantly, that he was not admitting to have engaged in that conduct. This is illogical. The Defendant admits in his postconviction affidavit that he pled in haste in an effort to avoid the public disclosure of the very facts which he now maintains should have been painstakingly detailed in the petition and therefore of record memorializing his admission to specific acts. This Court believes that the Defendant's plea had a more than sufficient factual basis on the face of the petition.

Additionally, the post-conviction court may look to the official record as a whole to determine whether the court accepting a plea could have then determined that the

Defendant was aware of the conduct underlying his plea of guilty. *Warren* at 799. The official record here, in addition to the Petition to Plead Guilty, contains the criminal Complaint, which describes the facts supporting the charges. The Complaint details that while in the men's restroom, the Defendant peered into Sgt. Karsnia's stall long enough for Sgt. Karsnia to see that the Defendant had blue eyes; that the Defendant slid his right foot into Sgt. Karsnia's stall and touched Sgt. Karsnia's left foot; and that the Defendant swiped his hand under the stall divider and into Sgt. Karsnia's stall. The gist of the State's theory is that it would alarm, anger or disturb a person of normal sensibilities using an enclosed stall in a public restroom to have a person stare through the crack in the partition over a period of several minutes, then occupy the adjacent stall and place first their foot and then a hand into this enclosed space, and that if the Defendant did not actually know of this result, he should have so known.

A person has a reasonable expectation of privacy in a public restroom stall. *State v. Ulmer*, 719 N.W.2d 213, 215 (Minn.App. 2006); see also *State v. Bryant*, 177 N.W.2d 800 (Minn. 1970). The *Ulmer* court gave the following rationale:

> The design of the restroom here affords a user more than a modicum of privacy by virtue of the partitions that separate the urinals. When a person steps up to a urinal, the partitions and the user's body create a space in which the user would quite expect to be free from even incidental observation, let alone from the exploring eyes of predatory restroom stalkers. In that space shielded from the public's view by partitions and the user's body, we conclude that a reasonable person has an expectation of privacy. Put differently, only an unreasonable person would consider that space open to public viewing.

Ulmer at 215.

Here, because the Defendant concedes Sgt. Karsnia's facts as alleged in the Complaint are true, and because a person has a reasonable expectation of privacy in the restroom stall, the facts alleged in the Complaint provide a sufficient supplemental

factual basis for a conviction of disorderly conduct. The Defendant knew or should have known his entrance into Sgt. Karsnia's stall with his eyes, foot, and hand are the type of acts that would "tend reasonably to arouse alarm, anger, or resentment in others." Minn.Stat. §609.72, subd. 1(3).

The Defendant next argues the overall plea record is deficient because Judge Larson did not question him on the record about the factual basis. The Defendant reasons that if Judge Larson had questioned him live, Judge Larson would have realized the Defendant did not intend to plead guilty to the specific facts alleged by Sgt. Karsnia. This is a circular argument. The Defendant chose to not appear and to enter his plea by mail just so he could avoid any such publicly, of record, inquiry into his conduct. He kept many of the facts out of the record in so doing. He cannot now complain that he should not have been allowed to take advantage of an approved method to enter a misdemeanor plea. However, if, hypothetically, the Defendant had made an in-person appearance to enter his plea and if he then truly intended to plead guilty, he no doubt would have given answers consistent with guilt to any factual basis questions asked by Judge Larson, or by Mr. Renz, in order to satisfy the factual basis requirement.

The Defendant entered his guilty plea on the date scheduled for his first appearance on the Summons. "If a defendant fails to appear in response to a summons, a warrant shall issue" for the defendant's arrest. Minn.R.Crim.P. 3.01. A defendant may plead guilty to a misdemeanor charge at the first appearance. Minn.R.Crim.P. 8.02. An express waiver of appearance in a guilty plea by mail satisfies the appearance requirement in the Minnesota District Courts. In other words, the Defendant's options for the first appearance, which was continued to August 8 for the Defendant's

convenience, were: to appear in person, plead guilty and be sentenced; appear in person and plead not guilty and have the case proceed to trial; waive his appearance and have an attorney enter a plea of not guilty for him; waive his appearance and enter a plea of guilty and be sentenced in his absence; or not appear and not plead at all and be the subject of an arrest warrant.

Here, the Defendant made the affirmative decision to waive his appearance and plead guilty. The plea petition, which the Defendant signed, memorializes the Defendant's choice and his express and unambiguous waiver:

> I am not entering this plea in person. As this plea is being entered via mail or through my attorney I understand that I am giving up my right to be present at the time of sentencing and to exercise my right to speak on my own behalf by making whatever statement or presenting whatever evidence that I wish. If I am not present when this plea is accepted by the court I understand that I am voluntarily waiving (giving up) my right to be present and consent to sentencing in my absence. . . ..

Craig Memo. Ex. E at p. 2, ¶13; Renz Aff. Ex. C at p.2, ¶13. By signing and dating each page of the guilty plea petition, the Defendant acknowledged that his waiver of appearance also waived the right to present evidence contrary to a conviction. Nothing in the petition even hints at a lack of guilt of the offense of disorderly conduct. Nothing in this record supports, in any way, a contention by the Defendant, that in any of his dealings with Mr. Renz or with the court, he denied his guilt. Because the Defendant waived his appearance for the plea and sentencing, he cannot challenge the absence of questioning of him by the court about the factual basis for the plea and his admission to those facts. It is not a manifest injustice to force the Defendant to be bound by his plea bargain and the waivers and admissions which he made in conjunction with the execution of that bargain.

The Defendant's Guilty Plea Was Voluntary

The Defendant argues his plea was not voluntary because he pled guilty in response to media pressure and to a police interrogation. A plea is voluntary if it is not made in response to improper pressures or inducements. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998); see also *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983).

The Defendant argues he pled in haste to prevent the allegations in this case from being publicized, thus doing damage to his political reputation. In this argument, the Defendant suggests that a manifest injustice occurred when he was legally forced to decide between making a public court appearance with the publicity risks attendant thereto or not making an appearance in hopes that entering a quick and discreet guilty plea would lessen the prospect of the undesirable political consequences derived from having the allegations publicized. This pressure was entirely perceived by the Defendant and was not a result of any action by the police, the prosecutor, or the court.

The Defendant next argues he pled guilty on August 8, 2007, in reaction to an "aggressive" police interrogation that occurred during his arrest on June 11, 2007. The purpose of any interrogation is to elicit potentially incriminating statements from a suspect. *State v. Munson*, 594 N.W.2d 128, 141 (Minn. 1999); *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980). In this case, the interrogation transcript does not evidence an improperly aggressive interrogation. The Defendant was given a *Miranda* warning and agreed to speak with Sgt. Karsnia without having an attorney present. Sgt. Karsnia was clearly the Defendant's adversary, and the Defendant acknowledged as much by saying, "I don't want you to take me to jail" and "I'm not gonna [sic] fight you." Craig Memo. Ex. C at 5, 6. The Defendant may have felt intimidated by the situation, but he also acted

with a degree of confidence when, upon arriving at the POC, he identified himself as a United States Senator and said, "What do you think about that?" Renz Aff. Ex. A.

Sgt. Karsnia appeared sometimes understanding, sometimes disbelieving during the interrogation. Sgt. Karsnia told the Defendant that he could avoid appearing in court, and thereby avoid the publicity of the Sgt. testifying in open court, by pleading guilty and paying a fine. An offer of help does not render a defendant's statement to police involuntary "as long as the police have not implied that a confession may be given in lieu of criminal prosecution." *State v. Farnsworth*, --N.W.2d--, 2007 WL 2671251 (Minn. 2007). Here, Sgt. Karsnia never promised or even suggested that the Defendant would not have to face (and plead guilty to) criminal charges.

The two month lapse in time between the arrest and the plea negates any reasonable conclusion that the questioning by Sgt. Karsnia in June overrode the Defendant's free will in such a way that he was forced by events in June, to plead guilty in August. It is hard to imagine that any interrogation could be that aggressive, but clearly the one here was not. During the two months between the arrest and the guilty plea, the Defendant had several rational and methodical conversations with the prosecutor, including one in which the prosecutor extended a plea offer and advised the Defendant to consult an attorney. Mr. Renz was clearly the Defendant's actual adversary and the Defendant knew it.

The Defendant spoke with Sgt. Karsnia only one time after the arrest date. When the Defendant traveled through the airport on June 22, he confronted the officers at the POC with a demeaning tone, and demanded information about the case. In response, Sgt. Karsnia gave the Defendant the contact information for the prosecutor, and denied the

Defendant's accusation that he had been handcuffed on June 11. As presented, the circumstances surrounding the June 22 conversation contradict the Defendant's assertion that Sgt. Karsnia's intimidation continued to control him through August 8. This Court concludes that the Defendant was not a victim of police or prosecutorial coercion. There was no manifest injustice in the pressures to plead as perceived by the Defendant.

The Defendant's Guilty Plea Was Intelligent

The Defendant argues his plea was not intelligently made. The purpose of requiring that the guilty plea be made intelligently is to ensure the defendant understands the charges made against him, the rights he is waiving by pleading guilty, and the consequences of his guilty plea. *Perkins*, 559 N.W.2d at 689; see also *Trott*, 338 N.W.2d at 251. The Defendant, a career politician with a college education, is of, at least, above-average intelligence. He knew what he was saying, reading, and signing.

In this case, the Defendant made certain important waivers in his plea petition. A waiver is "an intentional relinquishment or abandonment of a known right or privilege." *State v. Merrill*, 274 N.W.2d 99, 106 (Minn. 1978), quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (overruled on other grounds by *Edwards v. Arizona*, 451 U.S. 477 (1981)). The Defendant pleaded guilty *pro se*, waiving his right to counsel by circling "am not represented by counsel" on the petition. Craig Memo. Ex. E; Renz Aff. Ex. C. A plea is invalid as "uncounseled" if the defendant pleads guilty without having an attorney and without validly waiving his right to an attorney. *State v. Nordstrom*, 331 N.W.2d 901, 903-905 (Minn. 1983). Here, the Defendant's waiver of an attorney is valid. The Defendant is an educated adult, who was advised by the prosecutor himself to consult an attorney. He knew of that right when he went back to the POC to get the

prosecutor's information so he could have his "attorney contact him." The fact that the Defendant chose not to consult an attorney, to his detriment, does not render his waiver invalid.

The Defendant also expressly waived his rights to have a trial, to cross-examine witnesses, to remain silent, to subpoena witnesses for his defense, and to contest the admissibility of the evidence against him. Renz Aff. Ex. C. A waiver is invalid if it is not voluntary; that is, if the defendant was threatened or tricked into making the waiver. *Merrill* at 106. Here, there is no evidence the Defendant was in any way manipulated into executing the plea petition and its waivers. The Defendant's procedural waivers are valid.

A plea is not intelligent if the charges are not clear. Even if the defendant has less than average intelligence, the plea is still valid if the charges are stated in plain language. *State v. Judd*, 152 N.W.2d 724, 727 (Minn. 1967); see also *State v. Anderson*, 134 N.W.2d 12, 17 (Minn. 1965). Here, the charges against the Defendant were stated in plain language, and given his intelligence, the Defendant undoubtedly understood them. Even though the Defendant says he rushed to plead guilty, his perceived haste that occurred over the course of two months did not diminish the Defendant's ability to understand the charges. The time period between the arrest and the conviction here is almost exactly the period provided in the rules for a demanded speedy trial in a misdemeanor case involving an out-of-custody defendant. The Minnesota Rules of Criminal Procedure provide that a speedy trial is one that is commenced within sixty days of the entry of a "not guilty" plea for an out-of-custody misdemeanor defendant.

Minn.R.Crim.P. 6.06. Presumably, the Supreme Court in promulgating the rule did not consider this time procedurally too short.

The language of the plea petition is also clear. The petition, which the Defendant adopted by signing every page, contains unambiguous statements regarding the Defendant's knowing acceptance of the terms of the plea. These statements include: "I understand the charge(s) made against me in this case;" "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 the charge to which I am entering a plea of guilty;" "Understanding the above I am entering my plea of guilty freely and voluntarily and without any promises except [the express terms of the plea deal];" and "I understand I am giving up my right to be present at the time of sentencing and to exercise my right to speak on my own behalf by making whatever statement or presenting whatever evidence that I wish." Craig Memo. Ex. E; Renz Aff. Ex. C.

The Defendant signed each page of the plea petition without changing and initialing any of these statements. (Mr. Renz and Judge Larson would have had to approve the changes.) To the extent the Defendant now argues that he believed or understood something contrary to the statements in the petition at the time he signed the petition, he is in fact saying that he made affirmative misrepresentations to the Court when he signed and submitted the petition. The Defendant's duress arguments, addressed throughout this memorandum, are clearly inadequate to overcome the evidence of his discussions with the State about the case, the plea, and the petition, including the evidence of the Defendant's signature on each page accepting the clear terms of the petition.

Where the petition and charges are clear, the plea may still be invalid if the defendant's statements in the plea do not clearly admit guilt. See *Judd* at 727; *Anderson* at 17; *State v. Waldron*, 139 N.W.2d 785, 794 (Minn. 1966). If the defendant does not clearly admit guilt, the court is required to enter a plea of "not guilty" on the defendant's behalf. *Id.* In this case, the Defendant argues he maintained his innocence even through the date of his guilty plea. The pre-plea court record contains no evidence of the Defendant asserting his innocence at any time. The Defendant never entered a plea of "not guilty." He has not asserted that he told Mr. Renz that he was not guilty. Rather, he waived his appearance and pled guilty on the date of his first appearance. The Defendant had several conversations with Mr. Renz prior to pleading guilty, but even these conversations involving plea negotiation are not alleged by the Defendant to have contained protestations of a lack of guilt. At the time Judge Larson accepted the Defendant's plea petition, the court's record of this case contained no information in the nature of a denial of guilt such as to put Judge Larson on notice of the need for further inquiry.

The Defendant argues he understood the plea agreement to include representations made by Sgt. Karsnia during the interrogation, specifically that Sgt. Karsnia would not alert the media to this case and that the Defendant could plead guilty, pay a fine, and not have to explain anything. "Although a plea of guilty may be set aside where an unqualified promise is made as a part of a plea bargain, thereafter dishonored, a solemn plea of guilty should not be set aside merely because the accused has not achieved an unwarranted hope." *Perkins*, 559 N.W.2d at 689. Here, the plea petition states, in plain language, that the Defendant understands the plea agreement involves no

promises other than the crime of which he will be convicted, the charge to be dismissed, and the sentence to be imposed. The petition allows no room for the Defendant to genuinely argue he expected to receive an unstated benefit or penalty.

The Defendant argues Sgt. Karsnia lied when he said this case would not be made public. This argument misstates the evidence. Sgt. Karsnia told the Defendant that *he* had a policy of not contacting media ("I don't call media. I don't do any of that type of crap."). Craig Memo. Ex. C at 3. Sgt. Karsnia did not broadly represent that the media would never find out about this case.

The police are allowed to lie to defendants during interrogation so long as the police do not falsely promise no prosecution in exchange for a confession, and do not coerce the defendant, make improper threats, or use physical intimidation. *Farnsworth* at *8-9; *State v. Moorman*, 505 N.W.2d 593, 600 (Minn. 1993); *State v. Garner*, 294 N.W.2d 725, 727 (Minn. 1980). In this case, there is neither an allegation nor evidence that Sgt. Karsnia directly or indirectly caused this case to become public. The prosecutor made it clear to the Defendant that the conviction would be part of the court record and part of the Defendant's criminal record. Once a conviction is entered, the record of the case is publicly available on the Minnesota State Courts website. The Defendant clearly knew that even if Sgt. Karsnia did not call the media, the charges and conviction in this case would be of public record.

The Defendant argues he pled quickly to keep a low profile and preemptively avoid suffering undesired social and political consequences. Any consequence that does not flow definitely, immediately, and automatically from the plea and sentence is a collateral consequence. *State v. Byron*, 683 N.W.2d 317, 322 (Minn.App. 2004); see also

Kaise, 641 N.W.2d at 904; *Alanis*, 583 N.W.2d at 578-79. Neither the actual happening of a collateral consequence, nor a criminal defendant's ignorance of the collateral consequences of his plea, is an appropriate basis on which to withdraw the plea. *Byron* at 323; *Kaiser* at 904; *Alanis* at 578. Even deportation of immigrant defendants is a collateral consequence. *Byron* at 323; *Alanis* at 578-79. Here, the Defendant's receipt of negative attention is a social and political collateral, not direct, consequence because it was not a definite, immediate, and automatic consequence of his pleading guilty. Because negative attention is not a direct consequence of the Defendant's conviction in this case, it is not an appropriate basis for plea withdrawal.

The Defendant's guilty plea was intelligently made. Judge Larson's acceptance of this intelligent plea is not a manifest injustice.

The Evidence Supports the Conviction for Disorderly Conduct

Next, the Defendant argues the evidence is legally insufficient to support the conviction for disorderly conduct. The Defendant was convicted of "[e]ngag[ing] in conduct which [he] knew or should have known, tended to arouse alarm or resentment [in] others, which conduct was physical (versus verbal) in nature." Renz Aff. Ex. C. The language in the plea petition accurately tracks the language of the disorderly conduct statute, which prohibits "[e]ngag[ing] in offensive, obscene, abusive, boisterous, or noisy conduct . . . tending reasonably to arouse alarm, anger, or resentment in others." Minn.Stat. §609.72, subd. 1(3). Disorderly conduct is a general intent crime, meaning the defendant need not intend the consequences of his actions. See generally *Vance*, 734 N.W.2d at 656.

The primary evidence against the Defendant is the proffered testimony of Sgt. Karsnia, who observed the Defendant enter into Sgt. Karsnia's restroom stall with his eyes, hand, and foot, in a manner that was intentional, rather than accidental. A person has a reasonable expectation of privacy in a public restroom stall. *Ulmer*, 719 N.W.2d at 215; *Bryant*, 177 N.W.2d at 804. The evidence that the Defendant intentionally entered into Sgt. Karsnia's stall with his eyes, hand, and foot, establishes that the Defendant violated the right to privacy in an offensive way that would reasonably tend to cause anger, alarm, or resentment in the stall's occupant.

The fact that Sgt. Karsnia was an undercover police officer and not a private citizen using the restroom for its traditional purpose does not diminish the criminality of the Defendant's conduct because the statute requires only that the offensive conduct "tends reasonably" to cause alarm, anger, or resentment, and not that the conduct must actually cause alarm, anger, or resentment.

The Defendant has not produced any newly discovered exculpatory evidence that could significantly weaken Sgt. Karsnia's proffered testimony. The State's proffered evidence is sufficient to establish that the Defendant engaged in disorderly conduct on June 11, 2007 in the men's public restroom at the Minneapolis-St. Paul International Airport in Bloomington, Hennepin County, Minnesota.

Guilty Pleas Entered by Mail are Designed for the Convenience of Out-Of-State Defendants While Preserving the Integrity of the Criminal Process

A guilty plea entered by mail is a procedure used by Minnesota District Courts for the convenience of criminal defendants facing misdemeanor or petty misdemeanor charges, for whom traveling to the courthouse would be a burden. The standard language

has been developed to ensure that the defendant understands the rights he or she is giving up by pleading guilty. The signature line on each page of the plea petition is an additional safeguard to ensure that the defendant has had an opportunity to review each page of the petition and is reasonably aware of its contents.

Many defendants who enter pleas by mail are *pro se*. To ensure that the petition is accurately completed, the prosecutor typically completes the petition for the *pro se* defendant, who then has the option of signing or not signing the petition. The plea by mail does not prevent the defendant from appearing in court in person to enter a plea or to continue plea negotiations or challenge the State's evidence. Rather, the plea by mail is a courtesy extended by the Court to defendants facing misdemeanor or petty misdemeanor charges, and is designed to fully protect these defendants' constitutional rights, while preserving the finality of the convictions.

The Disorderly Conduct Statute is Necessary to Preserve Order in a Civilized Society

The Defendant challenges the disorderly conduct statute as a whole on the basis that it is overly broad and vague. However, the statute has been upheld as constitutionally valid. See, e.g., *In re S.L.J.*, 263 N.W.2d 412 (Minn. 1978) (fighting words); *State v. Reynolds*, 66 N.W.2d 886 (Minn. 1954) (conduct).

The disorderly conduct statute is a broad, "catch-all" statute designed to criminalize certain behavior that is offensive and counterproductive to a civilized society. Such conduct includes an array of specific behavior too vast to reasonably describe. The legislature's solution is to describe the behavior using such general terms as "offensive," "obscene," and "abusive." Minn.Stat. §609.72, subd. 1. The descriptive language of the statute achieves the State's purpose of criminalizing offensive, "disorderly" conduct.

The ACLU's Arguments are Without Merit when Applied to the Circumstances of this Case

The American Civil Liberties Union and American Civil Liberties Union of Minnesota (together, "ACLU") requested and were given permission to file an *Amicus Curiae* brief with this court in support of the Defendant's motion. In that brief, the ACLU challenges the constitutionality of the factual allegations against the Defendant in light of the constitutional limitations placed on the disorderly conduct statute by *In re S.L.J*, 263 N.W.2d 412 (Minn. 1978). The State opposes this intrusion into the process at the trial level and asks that the brief be stricken.

While there clearly is no judicially sanctioned procedure for such an intervention into a case such as this, the area of privacy rights is an important one, and this Court appreciates the guidance provided by the ACLU brief. Nevertheless, their argument in the context of this case is inapplicable and potentially misleading, because *S.L.J.* focuses only on the verbal "language" portion of the disorderly conduct statute, whereas in the present case, the Defendant is charged under the non-verbal "conduct" portion of the statute. *S.L.J.* limits the verbal "language" portion of the statute to "fighting words," but does not address or place any constitutional limitation on the non-verbal conduct portion of the statute.

The ACLU also argues the conviction is void because individuals engaging in consensual sex in a public restroom stall have a reasonable expectation of privacy under *State v. Bryant*, 177 N.W.2d 800 (Minn. 1970). While, depending on the facts of any particular case, that may be true, the acts alleged in this case are the solicitation, not the sex act, and the criminal behavior is the Defendant's entry into an occupied stall with his eyes, hand, and foot. The ACLU's arguments are here without merit.

CONCLUSION

Because the Defendant's plea was accurate, voluntary, and intelligent, and because the conviction is supported by the evidence, the Defendant's conviction for disorderly conduct occurring on June 11, 2007 in the men's public restroom at the Minneapolis-St. Paul International Airport in Bloomington, Hennepin County, Minnesota, is valid. Accordingly, the Defendant's motion to withdraw his guilty plea is DENIED.

C.A.P.