

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
DIVISION IV - SOUTHDALE

STATE OF MINNESOTA,
Plaintiff,

District Court Case No.: 27-CR-07-043231

v.

**RULE 15.05 - MOTION TO
WITHDRAW PLEA-ORAL
ARGUMENT REQUESTED**

LARRY EDWIN CRAIG,
Defendant.

Pursuant to Rule 15.05 of the Minnesota Rules of Criminal Procedure, Larry Edwin Craig, a United States Senator from the State of Idaho ("Senator Craig"), hereby moves this Court for an Order allowing him to withdraw his guilty plea entered in the above-captioned action on August 8, 2007.

INTRODUCTION

Senator Craig has honorably served in the United States Senate since 1990. In 2006, Senator Craig learned that the *Idaho Statesman*, a prominent daily publication, was investigating allegations related to alleged homosexual activity by him. The *Statesman's* investigation included such tactics as contacting scores of the Senator's friends and family, demanding the Senator's FBI file, and patrolling bars and restrooms with the Senator's picture. Quite understandably, since Senator Craig has denied any allegations that he is a homosexual or has engaged in homosexual conduct, he was surprised to learn that the media was considering publicizing the false allegations pertaining to his private life. For that reason, he willingly participated in a meeting with the investigating reporter in which he vehemently denied the

allegations. That meeting, along with the underlying investigation, weighed heavily on the Senator's mind. In fact, the Senator requested that the *Statesman* cease its activities, but the *Statesman* continued its efforts. Based on these circumstances, however, the Senator had reason to believe that, without additional corroborating evidence, the *Statesman* would not publish these false and unproven allegations.

Shortly after Senator Craig's meeting with the *Idaho Statesman*, in June 2007, Senator Craig was arrested and charged with interference with privacy and disorderly conduct, based on an arrest stemming from an undercover operation targeting gay men in a public men's restroom at the Minneapolis International Airport. Despite Senator Craig's denial of any inappropriate behavior, he was panicked that such allegations would be made public and that they would provide the *Idaho Statesman* with an excuse to publish its baseless article. While in this state of intense anxiety, Senator Craig felt compelled to grasp the lifeline offered to him by the police officer; namely that if he were to submit to an interview and plead guilty, then none of the officer's allegations would be made public. Thus, rather than seek legal advice from an attorney to assist him in publicly fighting these charges and potentially protract the issue, Senator Craig's panic drove him to accept a guilty plea, the terms of which offered him what he thought was a private, expeditious resolution of this matter.

Senator Craig maintains his innocence with respect to these charges, and it would be manifestly unjust not to allow his guilty plea, entered in a state of fear, to be withdrawn. As will be demonstrated below, Senator Craig respectfully moves the Court to allow him to withdraw his guilty plea because: 1) the plea was not knowingly and understandingly made, which would have been clear had there been a colloquy with a judge; and 2) the evidence is insufficient to support a guilty plea as a matter of law.

FACTUAL BACKGROUND

On June 11, 2007, Senator Craig traveled through the Minneapolis International Airport on a layover between Washington, D.C. and his home state of Idaho. *See* Affidavit of Larry Edwin Craig (“Craig Aff.”), attached hereto as Exhibit A, ¶ 3. Between his flights, Senator Craig entered the main men’s public restroom of the Northstar Crossing in the Lindbergh Terminal. *Id.* ¶ 3. Unbeknownst to Senator Craig, Officer Dave Karsnia, an undercover police officer with the Minneapolis Airport Police, had already entered that restroom and had proceeded to an unoccupied stall in the back of the restroom. *See* Police Report, attached hereto as Exhibit B. Officer Karsnia was working in the airport as part of a sting operation related to sexual activity in this men’s room, in which he has made numerous arrests targeted at homosexual men. *Id.* In fact, Officer Karsnia claims that he is able to recognize the behavior of a gay man when he sees it. *Id.*

While Officer Karsnia was in the stall, Senator Craig approached the outside of the stall. Senator Craig, anxiously waiting for a stall to free so that he could use the facilities, stood outside of the stall and glanced into Officer Karsnia’s stall to determine if it was empty. *See* Exhibit B; *see also* Craig Aff. ¶ 4. Officer Karsnia stated in his report that he observed Senator Craig look down at his hands, “fidget[]” with his fingers, and look through the crack into Officer Karsnia’s stall. *See* Exhibit B. Also according to Officer Karsnia’s report, Senator Craig entered the stall to the left of Officer Karsnia’s and placed his roller bag against the front of the stall door, tapped his right foot, tapped his toes several times, and moved his foot “closer” to Officer Karsnia’s, all innocent acts. *See* Exhibit B. Also according to the report, Senator Craig then swiped his left hand under the stall divider for a few seconds in the direction from the front (door side) of the stall back toward the back wall, with his hand facing toward the ceiling as he

guided it at the stall divider. *See id.* Senator Craig maintains that he had moved his hands to pick a piece of paper from the floor. *See* Craig Aff. ¶ 5. *See also* Arrest Interview Transcript, attached hereto as Exhibit C. The report alleges that Senator Craig moved his hand two additional times, yet at no point did Senator Craig either speak to Officer Karsnia, intentionally touch Officer Karsnia, or engage in any other conduct toward Officer Karsnia. *See* Exhibit B. *See also* Craig Aff. ¶¶ 5-6.

According to Officer Karsnia's report, Officer Karsnia displayed his police identification to Senator Craig by holding it in his right hand by the floor. *See* Exhibit B. Eventually, Senator Craig exited the stall, and Officer Karsnia motioned for Senator Craig to exit the restroom and showed Senator Craig his credentials. *See id.* Officer Karsnia physically removed Senator Craig from the restroom, took him through the public airport areas, and placed him in custody within a police interrogation room. *See* Exhibit B; Craig Aff. ¶ 8. Alarmed at the sequence of events, Senator Craig acceded to Officer Karsnia's orders. *See* Craig Aff. ¶ 8.

In the interrogation room, prior to Senator Craig being advised of the requisite *Miranda* warning, Officer Karsnia advised Senator Craig that he could either plead guilty to an offense and "won't have to explain anything ..." and that he would "pay a fine" and "be done," or otherwise that Officer Karsnia would testify regarding the events in open court. *See* Exhibit C. *See also* Craig Aff. ¶ 10. After Officer Karsnia advised Senator Craig of his *Miranda* warning, he asked Senator Craig to give his "side of the story." *See* Exhibit C. Senator Craig denied engaging in any improper conduct. *See* Craig Aff. ¶ 9. Rather, Senator Craig indicated that he had simply gone into a public men's bathroom to use the facilities, and sat down in the toilet stall. *Id.* ¶¶ 3, 9; Exhibit C. Senator Craig stands well over six feet tall and, therefore, explained that when using the restroom he has a wide stance. Exhibit C. Further, in response to the

allegation that he had reached under the toilet stall, he indicated that he had merely picked up a piece of paper from the floor. *Id.* See also Craig Aff. ¶ 5. Senator Craig has never changed or recanted his assertion that he did not engage in improper conduct, and, at the time the plea offer was drafted, both the police officers and prosecutors were aware that he steadfastly denied engaging in any improper conduct. See Craig Aff. ¶¶ 6, 9, 13.

Rather than consider Senator Craig's explanation, Officer Karsnia told Senator Craig that he was "skipping some parts," and that he was "not being truthful." See Exhibit C. Officer Karsnia also told Senator Craig that he was "disappointed" in him and that he did not "want to be lied to." *Id.*; see also Craig Aff. ¶ 9. Such allegations added to Senator Craig's already rising anxiety level. See Craig Aff. ¶¶ 9, 10. Officer Karsnia told Senator Craig that: "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." See Exhibit C. In fact, Officer Karsnia told Senator Craig on three occasions during the interview that he would need to pay a fine and that there would be nothing more to the action. *Id.* Officer Karsnia ended the interrogation by insulting the Senator and implicating his political career, stating that it was "[n]o wonder why [the country is] going down the tubes." *Id.* Although Officer Karsnia advised Senator Craig that he could plead guilty to an offense to dispose of the matter, there is no indication from Officer Karsnia's report or from the recorded interview that he advised Senator Craig of the exact nature of the charges being pursued or the applicable penalties. *Id.*; see also Craig Aff. ¶ 11.

Senator Craig was subsequently charged with disorderly conduct pursuant to Minn. Stat. § 609.72 sub. 1(3) (a misdemeanor) and interference with privacy pursuant to Minn. Stat. § 609.746 sub. 1(c) (a gross misdemeanor). See Complaint, attached hereto as Exhibit D. Without the assistance of counsel, and as repeatedly prompted and advised by Officer Karsnia, Senator

Craig eventually pled guilty, via the United States Postal Service, to the disorderly conduct charge by signing a Petition to Enter Plea of Guilty – Misdemeanor and mailing it to the Court. *See* Craig Aff. ¶ 12. This Petition was drafted by the prosecuting attorney. *See* Craig Aff. ¶ 13. Senator Craig signed the Petition on August 1, 2007, and, in his mind, the terms of the plea included the promise made by Officer Karsnia that the alleged incident would not be released to the media. *See* Craig Aff. ¶¶ 12-13. The Petition, delivered by mail rather than entered in person, was filed with this Court on August 8, 2007. *See* Guilty Plea, attached hereto as Exhibit E. The plea was not entered personally before a judge. *See id.* The jail time and \$500 of the fine were stayed for one year. *See id.* Senator Craig was assessed \$500 and a surcharge of \$75, for a total of \$575. *See id.* Even at the time the prosecutor agreed to a guilty plea, Senator Craig was maintaining his innocence. *See* Craig Aff. ¶ 13.

LEGAL STANDARD

To be valid, a guilty plea must be “accurate, voluntary, and intelligent (i.e., knowingly and understandingly made).” *Munger v. State*, ___ N.W. 2d ___, 2007 WL 2417094, at *2 (Minn. App. Aug. 28, 2007) (citing *Sykes v. State*, 578 N.W.2d 807, 812 (Minn. App. 1998) (quotations omitted)). While there is no absolute right of withdrawal, a defendant may withdraw a guilty plea pursuant to Minn. R. Cr. P. 15.05, even after sentencing, if he shows that the withdrawal of the plea is necessary to correct a manifest injustice. *Black v. State*, 725 N.W.2d 772, 776 (Minn. App. 2007). A district court is vested with broad discretion in determining whether a defendant is allowed to withdraw his guilty plea. *Black*, 725 N.W.2d at 775-76 (Minn. App. 2007); *Butala v. State*, 664 N.W.2d 333, 338-39 (Minn. 2003) (holding that the ultimate decision of whether to allow a withdrawal of a guilty plea under the fair and just standard is left to the sound discretion of the trial court). As a matter of law, it is manifestly unjust to refuse to allow a guilty plea

withdrawal if the plea was not “accurate, voluntary, and intelligent.” *Munger*, 2007 WL 2417094 at * 2; *see also Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). Indeed, a court should not accept a plea unless the record supports the conclusion that the defendant actually committed an offense at least as serious as the crime to which he is pleading guilty. *State v. Goulette*, 258 N.W.2d 758, 761-62 (Minn. 1977); *State v. Hoaglund*, 307 Minn. 322, 240 N.W.2d 4, 5-6 (1976) (where record of accused’s plea of guilty to a charge of kidnapping person under sixteen years of age and trial court’s adjudication of guilt and entry of judgment of conviction was inadequate to support such court’s determination of factual basis for plea, interest of justice required reversal).

ARGUMENT

I. IT WOULD BE MANIFESTLY UNJUST NOT TO ALLOW SENATOR CRAIG TO WITHDRAW HIS PLEA OF GUILTY

1. Inquiry by the Court Would Have Demonstrated that the Plea was not Made Knowingly and Understandingly

Senator Craig’s plea does not satisfy the factual basis requirement for a guilty plea, which would have been apparent to a court had he been afforded a judicial colloquy. Rule 15.02 of the Minnesota Rules of Criminal Procedure requires that “before the court accepts a plea of guilty to any offense punishable upon conviction by incarceration, any plea agreement shall be explained in open court.” That rule requires that the Court or counsel inquire into whether the defendant understands the charges levied against him and the potential penalty faced following the entry of a guilty plea, whether he has had the assistance of counsel, and whether he understands that by entering the plea he is waiving his constitutional rights. *See id. Inter alia*, the rule requires that following these questions, the Court, or counsel, elicit information to ensure that there is a factual

basis for the entry of a guilty plea. *See id.* Rule 15.03, which governs “plea by mails” such as the plea petition entered in this case, requires the same protections as Rule 15.03.¹

Not only must a guilty plea be voluntary and accurate, it also must be intelligent (*i.e.* “understandingly made”). *Munger*, 2007 WL 2417094, at *2. “The purpose of the requirement that the plea be intelligent is to insure that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea.” *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983), *cited in Kaiser v. State*, 641 N.W.2d 900, 903 (Minn. 2002). In other words, a defendant must understand that what he pleads to constitutes a crime. Here, however, Senator Craig has repeatedly denied that his actions on June 11, 2007 constituted a crime.

Senator Craig, in submitting his plea by mail, never appeared in court and was never questioned by a judge. The factual basis for the guilty plea states that he “[e]ngaged in conduct which [he] knew or should have known tended to arouse alarm or resentment or others, which conduct was physical (versus verbal) in nature.” *See* Exhibit E. The plea, however, does not describe the conduct alleged, and as a result, does not even recite the minimum elements of Section 609.72, sub. 1(3), the crime for which Senator Craig was convicted. Furthermore, *all* of the statements in which Senator Craig has described his conduct have constituted claims of innocence and denials of any wrongdoing. In this instance, therefore, with the factual defects underlying the basis of the plea and Senator Craig’s interpretation of the events, it was necessary for a court to examine Senator Craig’s understanding of the plea agreement to determine if the

¹ That rule states that: “The defendant or defense counsel may file with the court a petition to plead guilty as provided for in the Appendix B to Rule 15 signed by the defendant indicating that the defendant is pleading guilty to the specified misdemeanor offense with the understanding and knowledge required of defendants personally entering a guilty plea under Rule 15.02.”

plea was intelligently made. Rules 15.02 and 15.03 were adopted to ensure that a defendant does not enter into a plea without knowing and understanding the constitutional rights he is waiving. These rules are further designed to ensure that people do not plead guilty to crimes they did not commit. Senator Craig is not a lawyer, and like any other non-lawyer, should not be expected to understand the intricacies of constitutional law. Yet, without any judicial intervention to ensure that Senator Craig understood the plea agreement, Senator Craig signed a plea agreement that waived his constitutional rights and pled guilty to a crime he has steadfastly denied committing.

Had an appropriate judicial inquiry occurred in this case, the court would have quickly concluded that, faced with the pressure of an aggressive interrogation and the consequences of public embarrassment, Senator Craig panicked and chose to plead to a crime he did not commit. The Court would have elicited information that Senator Craig did not fully understand that he waived his right to challenge the use of statements made prior to being read his *Miranda* warning, that he waived his right to a trial before a jury of his peers, and most importantly, that he waived the right to have that very jury determine if these facts proved that he was guilty of the alleged crime beyond a reasonable doubt. In fact, had the spirit of the Minnesota rules been followed, the Court would have determined that Senator Craig waived all these constitutional rights in a moment of panic, and 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.²

In short, without the benefit of the assistance of counsel or an examination by a judge, Senator Craig 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. Had Senator Craig been afforded the opportunity to engage in a colloquy with the court, the court could have been notified as to any promises that had been made to the Senator, and Senator Craig would have been on notice as to whether those promises were binding on the court and the parties. *Cf. Perkins*, 559 N.W.2d at 689 (citing *Schwerm v. State*, 288 Minn. 488, 491, 181 N.W.2d 867, 868 (1970) (record made clear that defendant's own counsel told him that prosecutor's statement would not bind the court)).

Further inquiry into the allegations also would have elicited the fact that, as indicated in the transcript, Senator Craig was distracted by the fact that he might miss his flight, and seemingly unaware of the fact that the police were contemplating charging him with a misdemeanor rather than with a routine citation, did not exercise his right to counsel. Exhibit C; Craig Aff. ¶ 11. Indeed, only after discovering that if he paid a fine he would be “done,” did Senator Craig submit to the interview. *See* Exhibit C. A colloquy before the Court would have determined that had Senator Craig exercised his right to counsel, he would not have submitted to the interview, and counsel would have explained the potential charges against him, the defenses available, and the consequences of such charges, including any potential imprisonment, of which he was not previously informed. *See* Craig Aff. ¶ 11. Moreover, as the arrest interview transcript indicates, Senator Craig and Officer Karsnia had significantly differing interpretations of the events, and there appears to have been no eye witness interviewed to corroborate Officer Karsnia's allegations. *See* Exhibit C; Craig Aff. ¶ 9. Had Senator Craig exercised his opportunity to consult competent counsel prior to his interview, he would have been given a

² It should be noted that, unlike the form recommended in Appendix B of the Minnesota Rules of Criminal Procedure, the plea petition used in this case does not contain a place for a reviewing

realistic evaluation of the facts of the case, and as a result, facing these unsubstantiated “he said,” “she said” allegations, he would not have pled guilty to the offense of which he has maintained his innocence. As such, because these procedures were not exercised, the Court never had the opportunity to discern the fact that this plea was not intelligent, as that word is interpreted by Minnesota law, and that the facts submitted in support of the plea do not support a crime.

Thus, it would be manifestly unjust not to allow Senator Craig to withdraw his plea of guilty. Accordingly, Senator Craig respectfully requests that the Court allow him to withdraw his guilty plea.

2. There is Insufficient Evidence to Support a Guilty Plea

Insufficient evidence exists to support a guilty plea in this case. Thus, it would be manifestly unjust not to allow Senator Craig to withdraw that plea. The disorderly conduct statute defines the crime as “offensive, obscene, abusive, boisterous, or noisy conduct or...offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others.” Minn. Stat. §609.72, sub. 1(3). Even assuming that the officer’s statements in his police report are accurate, which Senator Craig emphatically denies, the facts do not support the criminal charges that Senator Craig engaged in any disorderly conduct as defined by the statute.³

Officer Karsnia’s report indicates that he merely observed the following: Senator Craig looked down at his hands and ““fidgeted”” with his fingers; he looked through the crack into Officer Karsnia’s stall; he entered a stall to the left of Officer Karsnia’s and placed his roller bag

judge to indicate that the plea has been reviewed and accepted. *See* Exhibit E.

³ As the transcript of the arrest interview indicates, Senator Craig affirmatively disagreed with Officer Karsnia’s interpretation of the gestures. Indeed, Senator Craig even went so far as

against the front of the stall door; he tapped his right foot; he tapped his toes several times and moved his foot “closer” to Officer Karsnia’s; and he swiped his left hand three times under the stall divider for a few seconds. At no point prior to Officer Karsnia’s showing Senator Craig police credentials is there any indication that Senator Craig attempted to speak to Officer Karsnia, that Senator Craig intentionally touched Officer Karsnia, or that Senator Craig engaged in any other “improper” activity. See Craig Aff. ¶¶ 6-7; Exhibit B. And, while Officer Karsnia indicated in his report that, in his opinion, some of the cited behavior is consistent with that of individuals who have engaged in lewd conduct, at no point did Officer Karsnia observe any patently lewd conduct, any affirmative solicitations for sexual contact, or any other disorderly behavior. See Exhibit B.

Indeed, taking Officer Karsnia’s interpretation of the events as true, at most, he observed several ambiguous – but legal – hand and foot gestures. Such innocuous conduct is insufficient to support a plea of guilty for a charge of disorderly conduct, particularly when the only evidence of the accused’s criminal intent involves his own denials of any wrongdoing. See, e.g., *Beaman v. State*, 301 Minn. 180, 184, 221 N.W.2d 698, 701 (Minn. 1974) (defendant entitled to withdraw guilty plea where defendant’s statements inconsistent with guilty plea). In fact, “[t]he very wording of the [statute] makes it plain that this prohibition is against loud, boisterous, or obnoxious words and conduct which disturb or bother people who may be exposed to the same. The prohibition in the [statute] indicates violent conduct which attracts attention as the basis for the offense.” *City of St. Paul v. Campbell*, 287 Minn. 171, 174, 177 N.W.2d 304 (Minn. 1970) (discussing similar St. Paul ordinance). In *Campbell*, the defendant photographed a 13-year-old

to tell Officer Karsnia that Officer Karsnia had obviously seen something that did not happen. See Exhibit C. See also Exhibit B.

girl in the nude while alone in his apartment with the girl without the permission of the girl's mother and after misrepresenting his intentions to the girl's mother. It may have violated other laws, but the Court found in this case that the behavior did not constitute "disorderly conduct" under the St. Paul ordinance. *And see In re Welfare of K.L.W.*, No. A06-78, 2006 WL 2530540 (Sept. 5, 2006) (unpublished opinion) (reversing conviction of juvenile offender for violating disorderly conduct based on insufficient evidence where juvenile drew cartoon in his personal notebook, juvenile did not intend for anyone to see drawing, the cartoon was found by a teacher, juvenile's conduct was not abusive, boisterous, noisy, offensive, or obscene, and juvenile did not know or have reasonable grounds to know that his behavior could arouse alarm, anger, or resentment in others).

Mere "annoyance does not justify a finding of disorderly conduct." *State v. Korich*, 219 Minn. 268, 271, 17 N.W.2d 497 (Minn. 1945) (conduct of a "Jehovah's Witness" in entering apartment building against caretaker's previous order and, in a quiet and orderly manner, going from one apartment to another for purpose of distributing literature to any tenant who would listen, and then leaving the premises peacefully when arrested by officers, did not constitute "disorderly conduct" under Minneapolis city ordinance). Senator Craig's conduct as stated in Officer Craig's report, viewed in its worst light, does not even rise to the level of annoying, much less disorderly as that conduct is contemplated under Minnesota law.

As a result, and as a matter of law, there is not a sufficient factual basis to support Senator Craig's guilty plea, and Senator Craig should be afforded the opportunity to withdraw that guilty plea and to have his constitutional rights restored, which he unknowingly waived in response to repeated suggestions from the law enforcement official in this matter. In *Munger v. State*, a recent case from the Court of Appeals, it was held that a defendant's guilty plea to first-degree

burglary was not accurate, and therefore, that it would be manifestly unjust not to allow him to withdraw the plea. 2007 WL 2417094. The defendant was charged with first-degree burglary, which requires the state to prove that he entered a building without consent and with the intent to commit a crime, that the building is a dwelling, and that another person, not an accomplice, was present when he entered. *Id.* at * 3 (citing Minn. Stat. § 609.582, subd. 1(a) (2004)). At the plea hearing, the defendant had admitted that he reached his hand into an open window and moved the curtain with his hand in order to commit a crime (interference with privacy). *Id.* He later argued, however, that his plea was inadequate because he did not enter the building with the intent to commit a crime *within* the building. *Id.* at * 2. The Court held that the burglary statute required that a person enter a building with the intent to commit a crime while in the building, and that, as a result, the defendant's plea was not accurate. *Id.* at *5. Accordingly, the Court of Appeals held that it was an abuse of discretion for the district court to deny his post-conviction petition to withdraw his guilty plea. *Id.* at *6.

In *Bollinger v. State*, 647 N.W.2d 16 (Minn. App. 2002), a defendant was entitled to withdraw his guilty plea to a second-degree controlled substance charge, even though it was undisputed that both the prosecutor and the defense counsel had intended for the defendant to plead guilty to that offense. In order to establish the requisite factual basis for the plea, the defendant was mistakenly questioned not about the specific incident for which he had been charged, but about an unrelated incident, which in fact, formed the basis of a lesser offense. *Id.* at 21-22. The Court stated that "attorneys are officers of the court with a duty to act with due diligence and candor toward the court." *Id.* at 22 (citing Minn. R. Gen. Pract. 2.03(a); Minn. R. Prof. Conduct 1.3 and 3.3). The Court stated that "the prosecutor and defense counsel share the court's burden to reasonably ensure that pleas are accurately made on the record. The interests of

justice are not served by requiring appellant to bear the consequences of the erroneous questioning in their case.” *Id.* In the instant case, since there was no judge or defense counsel involved in reviewing the terms of and facts surrounding the plea, the only officer of the court with any meaningful involvement was the prosecutor, who mistakenly allowed this plea to be submitted without a proper factual foundation.

Finally, in *Shorter v. State*, 511 N.W.2d 743 (Minn. 1994), it was held that a withdrawal of a criminal sexual conduct plea was necessary to correct a manifest injustice, where the original police investigation was incomplete, there was an inadequate factual basis for the plea, and new witnesses had been located who corroborated certain aspects of the defendant’s version of the events. In particular, the Court noted that there was a substandard police investigation and an inability of the defendant to obtain potentially exculpatory evidence. *Id.* at 746-47. The Court stated that “the trial court bears the primary responsibility to advise and interrogate the defendant in sufficient detail to establish an adequate factual basis for the plea.” *Id.* at 747 (citing *Hoaglund*, 307 Minn. 322, 240 N.W.2d 4 (1976)). *And see Beaman v. State*, 301 Minn. 180, 221 N.W.2d 698 (Minn. 1974) (defendant was entitled to withdraw guilty plea to charge of first-degree manslaughter where there was merit to the defendant’s defenses and claims of innocence). As these cases have indicated, a plea cannot be accurate if there is not sufficient evidentiary support for the plea. Here, because there is an insufficient evidentiary basis for Senator Craig’s guilty plea, that plea is not accurate as required under Minnesota law, and, as a result, it would be manifestly unjust not to allow Senator Craig to withdraw it.

Accordingly, Senator Craig respectfully requests that he be permitted to withdraw his plea of guilty in the above-referenced criminal action entered August 8, 2007, due to the fact that there is an insufficient factual basis, as a matter of law, to support his plea of guilty.

CONCLUSION

Senator Craig respectfully submits that he is innocent of the charges against him and requests the right to withdraw his plea to prevent a manifest injustice, and further requests that he be allowed to present a defense to these charges.

In addition, Senator Craig respectfully requests that the Court schedule this matter for oral argument.

DATED: September 10 2007

Respectfully submitted,

William R. Martin (*pro hac* application
to be submitted)
D.C. ID # 465531
Kathleen H. Sinclair (*pro hac*
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D.C. ID # 501594

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Exhibit A

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
DIVISION IV - SOUTHDALE

STATE OF MINNESOTA,
Plaintiff,

District Court Case No.: 27-CR-07-043231

v.

**RULE 15.05 - MOTION TO
WITHDRAW PLEA**

LARRY EDWIN CRAIG,
Defendant.

**AFFIDAVIT OF LARRY EDWIN CRAIG
IN SUPPORT OF MOTION TO WITHDRAW PLEA**

I, Larry Edwin Craig, being duly sworn, depose and say:

1. I am a United States Senator from the State of Idaho and am the defendant in the above-referenced criminal action. I am over 18 years of age and competent to testify to the facts stated herein, which are based on my personal knowledge.
2. In May of 2007, I submitted to an interview with the *Idaho Statesman*, in an effort to subdue efforts on that paper's part to perpetuate false rumors about my private sexual life.
3. Shortly after that interview, on June 11, 2007, while on a layover at Minneapolis International Airport between Washington, D.C. and my home state of Idaho, I entered the men's public restroom of the Northstar Crossing in the Lindbergh Terminal, for the sole purpose of using the restroom facilities.
4. Anxious at the thought of missing my flight, I glanced into one of the stalls to determine if it was empty.

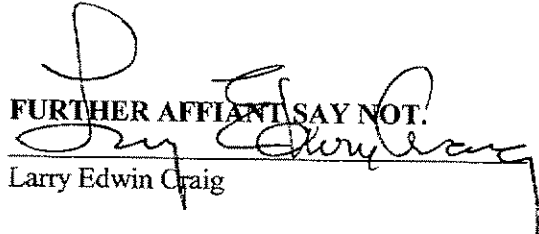
5. I entered a stall, eager to move on to my departing gate. While in the stall, I placed my roller bag against the front of the stall door and spread my legs. Also while in the stall, I looked down and retrieved a piece of paper from the floor with my right hand.
6. At no time did I engage in offensive, obscene, abusive, boisterous, or noisy conduct or offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others while in the men's room. Nor did I have any intent to engage in any illegal behavior.
7. While I was in the stall, I noticed an individual in the stall to my right place police identification in his hand under the divider so that I could see it, and then he abruptly pointed to the door with his finger.
8. When I exited the stall, I was physically removed from the restroom by Officer Karsnia, the officer in the stall next to mine, taken through the public areas of the airport, and led into a room, where I was questioned. Overwhelmed by the events, I acquiesced to the officer's demands and submitted to the interview.
9. During my interview, I repeatedly asserted my innocence and I told Officer Karsnia that I disagreed with his interpretation of the events in the men's restroom, but he indicated to me that he believed I was lying.
10. Officer Karsnia told me several times during the interview that I could plead guilty to an undisclosed crime, pay a fine, and be "done" with the situation. I believed him and, based in part on his representation, I decided to plead guilty.
11. At no time during that interview did Officer Karsnia explain to me the nature of the charges against me or the potential consequences.
12. Deeply panicked about the events, and based on Officer Karsnia's representations to me regarding the potential outcome, my interest in handling the matter expeditiously, and the risk

that protracting the issue could lead to unnecessary publicity, I did not seek the advice of an attorney on the date of my arrest, and I made the decision on that date to seek a guilty plea to whatever charge would be lodged against me.

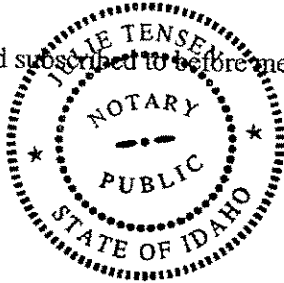
13. On August 1, 2007, following my decision in June, I signed a petition to plead guilty to a misdemeanor charge of disorderly conduct, even though I believed that I was not guilty of any criminal offense. That Petition was drafted by the prosecuting attorney in this action. Because I continued to seek a speedy resolution of the matter, I did not seek the advice of an attorney before entering my plea.

14. I hereby assert that I am innocent of all charges lodged against me, and I wish to change my plea from Guilty to Not Guilty.

FURTHER AFFIANT SAY NOT.


Larry Edwin Craig

Sworn and subscribed to before me this 8th day of September, 2007.




Notary Public

Exhibit B

AGENCY: AIRPORT POLICE DEPT.
Jurisdiction: MN0272500
Report Date / Time: 6/11/2007 12:22:19 PM
Incident/Case Number: 07002008
Case Description: Lewd Conduct
Primary Officer Name/ID: Karsnia, Dave/DK011
Approved By:
Data/Time Printed: 6/12/2007 12:49:40 PM

Narrative: Page 7

Narrative Title: Lewd Conduct
Date Entered: 6/12/2007 12:42:46 PM

07002008

On 06/11/07, at about 1200 hours, I was working a plain-clothes detail involving lewd conduct in the main men's public restroom of the Northstar Crossing in the Lindbergh Terminal. The Airport Police Department has received civilian complaints and has made numerous arrests regarding sexual activity in the public restroom.

I entered the men's restroom and proceeded to an unoccupied stall in the back of the restroom. Other people were in the restroom for their intended purposes. Some, but not all of the bathroom stalls were occupied. While seated in the stall, I was the third stall from the wall which was to my left (East). From my seated position, I could observe the shoes and ankles of person seated to the right of me. An unidentified person entered the stall to the left of me. From my seated position, I was able to see his shoes and ankles.

At 1213 hours, I could see an older white male with grey hair standing outside my stall. He was standing about three feet away and had a roller bag with him. The male was later identified by Idaho driver's license as Larry Edwin Craig (07/20/45). I could see Craig look through the crack in the door from his position. Craig would look down at his hands, 'fidget' with his fingers, and then look through the crack into my stall again. Craig would repeat this cycle for about two minutes. I was able to see Craig's blue eyes as he looked into my stall.

At 1215 hours, the male in the stall to the left of me flushed the toilet and exited the stall. Craig entered the stall and placed his roller bag against the front of the stall door. My experience has shown that individuals engaging in lewd conduct use their bags to block the view from the front of their stall. From my seated position, I could observe the shoes and ankles of Craig seated to the left of me. He was wearing dress pants with black dress shoes. At 1216 hours, Craig tapped his right foot. I recognized this as a signal used by persons wishing to engage in lewd conduct. Craig tapped his toes several times and moved his foot closer to my foot. I moved my foot up and down slowly. While this was occurring, the male in the stall to my right was still present. I could hear several unknown persons in the restroom that appeared to use the restroom for its intended use. The presence of others did not seem to deter Craig as he moved his right foot so that it touched the side of my left foot which was within my stall area.

At 1217 hours, I saw Craig swipe his hand under the stall divider for a few seconds. The swipe went in the direction from the front (door side) of the stall back towards the back wall. His palm was facing towards the ceiling as he guided it all the stall divider. I was only able to see the tips of his fingers on

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Jurisdiction: MN0272500
Report Date / Time: 8/11/2007 12:22:19 PM
Incident/Case Number: 07002008
Case Description: Lewd Conduct
Primary Officer Name/ID: Karanix, Dave/DK011
Approved By:
Date/Time Printed: 8/12/2007 12:45:40 PM

Narrative: Page 8

my side of the stall divider. Craig swiped his hand again for a few seconds in the same motion to where I could see more of his fingers. Craig then swiped his hand in the same motion a third time for a few seconds. I could see that it was Craig's left hand due to the position of his thumb. I could also see Craig had a gold ring on his ring finger as his hand was on my side of the stall divider.

At about 1219 hours, I held my Police Identification in my right hand down by the floor so that Craig could see it. With my left hand near the floor, I pointed towards the exit. Craig responded, "No!" I again pointed towards the exit. Craig exited the stall with his roller bags without flushing the toilet. Without causing a disturbance, I discretely motioned for Craig to exit the restroom. I noticed that not all of the stalls were occupied. Craig demanded to see my credentials. I again showed Craig my credentials. Craig kept asking what was going to happen. I told Craig that we would speak in private. Craig said that he would not go. I told Craig that he was under arrest, he had to go, and that I didn't want to make a scene. Craig then left the restroom.

Once outside the restroom, Craig stopped near the entrance and was hesitant to comply. I told Craig that we would speak in a private area without embarrassing him or causing a disturbance. Craig was still hesitant to follow me at first, but then complied. He followed me towards the Police Operations Center (POC). Detective Nelson was seated outside of the restroom and followed us. Dispatch was notified that we had one in custody at 1222 hours.

When we got to the POC, we asked Craig to leave his bags outside of the interview room. This is standard procedure for safety reasons. I asked him for his driver's license. Craig left his roller bag outside the interview room, but brought his two-strapped carry bag in with him. I again stated that he had to leave the bag outside. Craig stated that his identification was in the bag. Craig handed me a business card that identified himself as a United States Senator as he stated, "What do you think about that?" I responded by setting his business card down on the table and again asking him for his driver's license.

Craig provided me his Idaho driver's license. In a recorded post-Miranda interview, Craig stated the following:

- 5 He is a commuter
- GHe went into the bathroom
- He was standing outside of the stalls for 1-2 minutes waiting for the stall.
- o He has a wide stance when going to the bathroom and that his foot may have touched mine
- He reached down with his right hand to pick up a piece of paper that was on the floor
- He is unable to take his gold wedding ring off of his left ring finger

It should be noted that there was not a piece of paper on the bathroom floor, nor did Craig pick up a piece of paper. During the interview, Craig either disagreed with me or "didn't recall" the events as they happened.

Craig was worried about missing his flight. Detective Nelson tried to call the airline to hold the plane. The airline did not answer the phone. Craig's Criminal History was clear. Craig was explained the process for formal complaints. Craig was photographed, fingerprinted, and released pending formal

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[REDACTED]
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Case Description: Lowd Conduct
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[REDACTED] K
[REDACTED]
Narrative: Page 9

complaint for Interference with Privacy (MSS 609.746) and Disorderly Conduct (609.72) at 1305 hours.

Sgt. Karsnia #4211
Airport Police Department