

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff, MOTION

V. FILE 27CR07043231

Larry Edwin Craig,

Defendant.

COPY

The above-entitled matter came on for hearing before the Hon. Charles A. Porter, Jr., one of the Judges of the above-named court, in Courtroom 227, Hennepin County District Court, Division 4, city of Edina, county of Hennepin, state of Minnesota, on the 26th day of September, 2007 at 1:18 p.m.

APPEARANCES

CHRISTOPHER RENZ, Attorney at Law, and RYAN WOOD, appeared as counsel for and on behalf of the State and the Metropolitan Airport Commission.

THOMAS KELLY, Attorney at Law, and WILLIAM MARTIN, Attorney at Law, and KATHLEEN SINCLAIR, Attorney at Law, appeared as counsel for and on behalf of the Defendant, who was not present.

1 THE COURT: We do have a calendar of
2 other matters to conclude after this hearing is
3 over. If you wish to leave after the hearing, you
4 are free to do so. Please do it in an orderly
5 fashion. You came up through our stairway and you
6 know how crowded it is going up and down that
7 stairs, so if you just exercise some restraint as
8 you leave, we'd appreciate it.

9 THE CLERK: Calling from Line 30, Larry
10 Craig.

11 THE COURT: Appearances, please, for
12 the State.

13 MR. RENZ: Your Honor, Chris Renz on
14 behalf of the Metropolitan Airport Commission.

15 MR. WOOD: Your Honor, Ryan Wood, also
16 on behalf of the Metropolitan Airport Commission.

17 THE COURT: And for the Defendant.

18 MR. KELLY: Good afternoon. Thomas
19 Kelly representing Mr. Craig, together with William
20 Martin, D.C. counsel who has also been admitted to
21 this court, and Kathleen Sinclair, also admitted to
22 this court.

23 THE COURT: Thank you. Welcome.

24 MR. MARTIN: Thank you, Your Honor.

25 THE COURT: I know, counsel, that you

1 have decided to divide the argument between the two
2 of you. Are you going to start, Mr. Kelly?

3 MR. KELLY: I am, Your Honor.

4 THE COURT: You may proceed.

5 MR. KELLY: Your Honor, would you
6 prefer us to use the podium?

7 THE COURT: Whatever you wish.
8 Whatever you are more comfortable with.

9 MR. KELLY: Your Honor, to begin with,
10 the Court was advised earlier that the Defendant
11 would not be present. The court has not requested
12 the defendant's presence and the defendant has filed
13 a waiver of his right to be present for this
14 afternoon's hearing, it being a matter of law only
15 and his presence not being required by either
16 statute or rule.

17 Your Honor, the Defendant makes two arguments.
18 The first is that the Petition filed with the Court
19 lacked the signature line indicating that a court --
20 the sitting Court at that time accepted the plea;
21 and the second argument to be made by Mr. Martin is
22 that the factual basis in the Petition was
23 insufficient to support a guilty plea, therefore was
24 inaccurate. It being inaccurate, it would be a
25 manifest injustice not to allow the Defendant to

1 withdraw his plea.

2 With respect to the first argument, Your Honor,
3 that the Petition was not -- was defective in a
4 certain respect, the Petition that the Defendant
5 signed to enter his plea of guilty was different
6 than the Petition that is recommended for use in
7 entry of pleas by petition by mail. We have
8 referenced that -- the petition that was signed and
9 the one that is recommended in our brief and I think
10 it's set out in some detail in the footnote.

11 The importance of that, Your Honor, is that
12 when a plea is submitted by petition, the routine
13 procedure is, as this Court is aware, is for the
14 Prosecutor to provide the clerk's office with the --
15 or the Court -- court clerk in the courtroom with
16 the Petition, the clerk provides it to the judge,
17 the judge reviews it and accepts the plea. In this
18 case, there is no signature line for the judge, the
19 sitting judge that accepted the plea to sign, nor
20 was there a signature on the Petition. In fact, the
21 record or Register of Court Actions in this case
22 does not show in any respect from my review of it
23 that the sitting judge accepted the plea. It may
24 have happened outside the record. We, of course, do
25 not know because the Defendant was not present and

1 he was uncounseled when he did this. So what is
2 commonly referred to as the "blues" does not
3 indicate that the judge accepted the plea on the
4 face of the document.

5 Your Honor, somewhere between a plea and a
6 final disposition of a case, a judge accepts the
7 plea. While that term "acceptance" is not a defined
8 term or a formal step to which a Rule of Criminal
9 Procedure is devoted, it is commonly understood that
10 courts accept pleas in the Rules of Criminal
11 Procedure before engaging in a colloquy with the
12 Defendant. I think the Rule states that before a
13 judge accepts a plea, the judge should do certain
14 things. So acceptance is recognized and it's
15 important.

16 In proceedings in which the Defendant
17 actually -- the Defendant actually appears in court,
18 the Court will commonly say, I will accept your plea
19 or before I accept your plea, I'm going to refer the
20 matter to Probation. So acceptance is an important
21 step and we submit that because there is no
22 indication in this record that the Court accepted
23 it, the absence of that is particularly significant.
24 It is of considerable significance, Your Honor, in
25 light of the argument that Mr. Martin will make on

1 the sufficiency of the factual basis. That factual
2 basis will -- would have been submitted to the judge
3 that accepted it. We submit that that factual basis
4 was insufficient also. So for the reason that there
5 is no indication in the record that the -- the
6 sitting judge at the time of the plea accepted the
7 plea, we think that that standing alone is
8 sufficient reason to allow the Defendant to withdraw
9 the plea.

10 Mr. Martin, with the Court's permission, will
11 now address our second point.

12 THE COURT: Thank you, Mr. Kelly.

13 MR. MARTIN: Good afternoon, Your
14 Honor.

15 THE COURT: Mr. Martin.

16 MR. MARTIN: Your Honor, first I would
17 like to thank the Court for allowing me to appear
18 pro hoc vice. I do understand that that is a
19 privilege granted by this Court and I will act fully
20 in accord with respect to counsel appearing today.

21 I know, after nearly 32 years practicing law,
22 with 15 of them as a prosecutor sitting here, that
23 seeking to have a guilty plea withdrawn is next to
24 impossible and it should be. It should be because
25 we look for the finality of proceedings in the

1 criminal justice system. We look for all of the
2 reasons that the prosecution has stated in their
3 motions as reasons why we need to have finality, the
4 reasons why we need to have certainty, and the
5 reason why we cannot go back and review everything
6 that occurs in the courtroom. As a proposition,
7 Judge, it's accurate, and that is a correct
8 statement of the law; but, the law does require --
9 the law here in Minnesota does require and the
10 Supreme Court has spoken that if there is a manifest
11 injustice -- and, Judge, I'm not going to cite cases
12 and the law and I know that Your Honor knows the law
13 in Minnesota far better than I do; but, the Supreme
14 Court has stated that if there is a manifest
15 injustice and using the fair and just standard, if a
16 plea is not voluntary, if it is not intelligent, and
17 if it is not accurate, any of those grounds would
18 constitute a basis for a finding of manifest
19 injustice. Your Honor, we submitted a motion which
20 argues essentially all three standards. With your
21 permission, would I like to submit all the arguments
22 that we have with regard to intelligent and
23 voluntary based upon the written motion that we
24 filed and argue today whether or not it was
25 accurate.

1 Judge, we submit that under no circumstances,
2 under no finding whatsoever could there have been a
3 valid factual basis for any court to make a finding
4 that the Disorderly Conduct Statute that was
5 alleged, and charged, and pleaded to by Larry Craig,
6 who happens to be a member of the United States
7 Senate, was -- constituted a crime. It's
8 insufficient, Your Honor.

9 Judge, we would start, if I may, with the
10 given; that the only conduct that is at issue in
11 this proceeding is the following: That Senator
12 Craig stepped up to a bathroom stall; he is alleged
13 to have looked, peered, whatever description is
14 given, through the door; that he sits on the --
15 steps into the stall after it was vacated by another
16 person; he sits on the seat; he spreads his legs; he
17 taps his foot; he slides his right foot and he
18 slides his hand, according to the testimony of the
19 officer, Your Honor, which for purposes of this
20 hearing I know we accept as accurate. We accept and
21 are not contesting any of the facts. We concede
22 that that would be the testimony of Officer Karsnia,
23 were he to appear, and we agree that those are the
24 facts. There is none of those facts in and of
25 themselves that constitute a crime. As a matter of

1 fact, Your Honor, when Senator Craig was
2 interviewed, and, Judge, you wouldn't have this nor
3 would the Court that have accepted the plea would
4 have either the police report, which has more
5 information, or the transcript, or the tape of the
6 interview of Senator Craig. It was not attached.
7 So all we know is that to submit a plea, Senator
8 Craig --

9 THE COURT: The Court did and would
10 have had the Complaint.

11 MR. MARTIN: The court would and did
12 have a Complaint, Your Honor, correct.

13 THE COURT: [Nods head affirmatively.]

14 MR. MARTIN: But that would not have
15 had all of the information that's in the -- and the
16 reason I raise that, Judge, is that during the
17 interview, Senator Craig when asked, What were you
18 doing? He adamantly denied that he was doing
19 anything illegal, that he was there to pick up
20 another man, that he was trying to solicit. He
21 vehemently denied committing or attempting to commit
22 any crime whatsoever. And so the reason I raise
23 that, they were not in there. Had they been in
24 there, had you, Judge -- if Senator Craig were to
25 walk into this courtroom with me right now and on

1 these facts you were to say to him, What did you do?
2 He could not have given you a set of facts that
3 would have constituted an offense to which he could
4 have pleaded guilty. So Your Honor, in a Petition
5 to Enter a Plea of Guilty, the facts that were given
6 to the Court are "I am pleading guilty to the charge
7 of Disorderly Conduct because I did the following:
8 I engaged in conduct which I knew, or should have
9 known, tended to arouse alarm or resentment or" --
10 it says, "or for others, which conduct was physical
11 versus verbal in nature." That's it. So in terms
12 of the statement of facts as to what Larry Craig
13 admit that he had done, that's all. And Your Honor,
14 that's not sufficient. And one of the most
15 protected rights that we as citizens can have,
16 whether he's a United States Senator or somebody who
17 is unemployed, the law applies to all of us and the
18 most protected right that he can have as recognized
19 by the Minnesota Supreme Court in *Munger*, if we go
20 to *Munger*, *Munger* is a case that's on all points.
21 And in *Munger*, Judge, as you know, it was a Burglary
22 plea. The Defendant *Munger* walked by a house. He
23 apparently was a Peeping Tom. And he walked by a
24 window that's opened. He reaches in.

25 THE COURT: He was a Peeping Tom or he

1 was a burglar.

2 MR. MARTIN: Well, he says he meant to
3 only peep and he pled guilty to Burglary; but, he
4 did not -- he denied -- there was no factual
5 recitation of what his purpose was in reaching into
6 the window. So while he entered a plea of --

7 THE COURT: There was not factual
8 recitation that he intended to commit a crime once
9 he reached in the window.

10 MR. MARTIN: Correct. Which is a
11 required and specific -- one of the elements of
12 Burglary. So while he pleaded guilty to Burglary,
13 there were no facts given that would have
14 constituted his intent once he entered the premises.
15 And the Supreme Court found that you need more, you
16 need a valid factual basis to support and constitute
17 the crime that has been charged. Your Honor, we
18 submit that on the facts of this case, there are
19 none. None, Judge.

20 If you accept the facts of this case, it's a
21 disorderly conduct statute. And, Your Honor, you
22 know a disorderly conduct statute is probably one of
23 the broadest and most ambiguous, legally
24 constitutional statutes that we have. It covers
25 virtually everything. I was trying to think of an

1 appropriate analogy as I came into court to give you
2 with the vast range of conduct. It would include
3 spitting on the street, to certain words, to
4 fighting words, to certain physical conduct. So
5 when Senator Craig entered a plea saying that he
6 intended to per se violate the -- to arouse, alarm
7 or to engage in conduct that would arouse, alarm or
8 resentment in others, he could not have filled in
9 the blanks as to what the facts of that are.

10 THE COURT: I'm not sure that that's
11 true. He doesn't have to intend to arouse or
12 inflame the circumstance. All he has to do is do
13 whatever he did and that that is the sort of conduct
14 which he should have known would arouse --

15 MR. MARTIN: Well, Your Honor --

16 THE COURT: -- the other person. I
17 mean I agree with you wholeheartedly, Mr. Martin,
18 that that is a very broad statute. There is no
19 question about that. It is something slightly short
20 of a catch-all. There is no question about that.
21 But what it's trying to catch is people's behavior
22 that makes other people uneasy or mad; not to keep
23 people from intending to make other people mad, but
24 to keep people from not making other people mad. So
25 that's why he should have known language is in

1 there. It's not a specific intent offense.

2 MR. MARTIN: But it is an intent crime,
3 Judge. You have to intend to commit --

4 THE COURT: Well, general criminal
5 intent.

6 MR. MARTIN: General criminal intent,
7 Your Honor. And, Your Honor, we would submit to you
8 that had the Court had the presence of the Defendant
9 before it, and had the Court asked, What did you do,
10 a court would have -- could have determined whether
11 or not tapping the toe was sufficient to constitute
12 the crime of disorderly conduct.

13 THE COURT: Well, you know, I -- I
14 suppose it's fair to engage in speculation, as you
15 are here. My -- my speculation about it is that had
16 Mr. Craig been here at the time and done this plea
17 in person, which it was his right to do and also his
18 right to choose not to do, but had he been here, the
19 Court would have said, Did you peek through the door
20 frame space? And if he intended to plead guilty, he
21 would have said, Yes, I did that. And then the
22 Court would say, Is that the sort of thing that
23 might tend to arouse, and on, and on, and on,
24 others? And if he intended to plead guilty, he
25 would have said, Yes. And the Court would then have

1 said, Did you know that that was going to happen?
2 And he probably would have said, No. But the Court
3 would have said, Is that the sort of thing you
4 should have known? And if he intended to plead
5 guilty, he would have said, Yes. And that's what he
6 did in his petition, admit that that's what he did.

7 MR. MARTIN: Judge, what, we submit to
8 you respectfully, is problematic with his plea is
9 the fact that at the time the plea was entered
10 without somebody able to ask those types of
11 questions -- and clearly he chose to do this -- this
12 petition by mail and we do not contest that, Your
13 Honor. But had a judicial officer said to him, Were
14 you peeping in there? He would have said, No. He
15 would have said, I looked in there, if there was
16 somebody in there. I was waiting for --

17 THE COURT: But the peeping offense was
18 dismissed pursuant to the negotiation.

19 MR. MARTIN: Judge, I was going to take
20 all of the conduct, starting with that and move
21 down.

22 THE COURT: I know, I'll let you
23 finish.

24 MR. MARTIN: He would have said, No.
25 When asked by the police officer during his

1 interrogation, during the interview, he said, I
2 wasn't -- I was not -- if you say I was tapping my
3 foot, that's your opinion. I was not doing that.
4 If you say I was sliding my foot as some type of
5 signal, I was not doing that. If you say I was
6 swiping my hand, I was picking up a piece of paper.
7 I was not doing that.

8 What we are arguing to the Court, when a
9 citizen denies the law enforcement that they are
10 engaging in conduct that is illegal, when they deny
11 I was doing anything that was wrong, I did not mean
12 to do that, some judicial officer, whether it be
13 some officer of the court, whether it be a
14 prosecutor or a defense counsel or the court as
15 officer of the court, have to say to that person,
16 Tell us what you did. And that never occurred here.
17 And the only statements of fact from Senator Craig,
18 Judge, were that, I wasn't in there soliciting
19 anybody. I was not in there to commit a crime. I
20 was in there to go to the bathroom. But if this
21 will get it over with, I will do this. And, Your
22 Honor, we should not have a system of justice that
23 allows a citizen to enter a plea of guilty purely
24 for expediency if it is not a crime. And, Your
25 Honor, he is not charged with peeping into the

1 bathroom, which is my point.

2 THE COURT: He was charged with that.
3 That was dismissed.

4 MR. MARTIN: Again he is not -- yeah,
5 he does not now stand convicted of peeping into the
6 bathroom.

7 THE COURT: Correct.

8 MR. MARTIN: He now stands convicted of
9 disorderly conduct. So we've chosen -- since he's
10 pleading guilty to disorderly conduct, what is the
11 conducted that constitutes a crime? There are no
12 facts given to the trial court that constitute what
13 that crime -- no facts. The summary of the conduct
14 and the summary of the elements of the statute, but
15 no facts.

16 THE COURT: A selection of the elements
17 of the statute.

18 MR. MARTIN: A selection of the --
19 correct, Your Honor. So we submit that even if --
20 even if they had chosen the gross misdemeanor and
21 charged him with looking in through that door, those
22 facts would have explained what he was doing. But
23 the disorderly conduct statute, Judge, and the
24 tapping of the foot and moving of the hand are such
25 an innocuous and ambiguous conduct, all legal, that

1 there cannot be a valid factual basis. And, Your
2 Honor, had any client walked into my office and said
3 to me, This is what I did, or to Mr. Kelly,
4 explained to either of us, there is no doubt we
5 would have given him advice that I don't think what
6 you had done constitutes a crime. I would not enter
7 a plea to that. Lets go down and get a jury and
8 contest this. He waived that right. And we would
9 have said to Senator Craig here that there are no
10 facts. Judge, there's no touching, other than an
11 accidental -- when I say "no touching", there is no
12 intentional touching. There is --

13 THE COURT: Most disorderly conduct
14 fact scenarios are noncontact events.

15 MR. MARTIN: They -- they can. There
16 is a conduct and nonconduct.

17 THE COURT: No. There are -- most of
18 the events which form the incident giving rise to a
19 conviction of disorderly conduct are noncontact
20 events. They're yelling, chasing, swings at,
21 breaking phones, you know, whatever.

22 MR. MARTIN: And the second part --

23 THE COURT: So I don't think I got to
24 -- that any judge would have to say where is the
25 contact in order for this to be disorderly conduct.

1 I don't think they would have to say that.

2 MR. MARTIN: I agree, Your Honor, and
3 the second part of my argument is that and there are
4 no words.

5 THE COURT: There are no words.

6 MR. MARTIN: You should have either
7 touching, or words, or a combination of the two.

8 THE COURT: I don't know. You know, I
9 mean if I were to come storming around the bench
10 here in this context and start shaking my fist at
11 you, it might be found by some of the people sitting
12 in this courtroom that that's the sort of thing that
13 would cause you to become alarmed.

14 MR. MARTIN: It absolutely would.

15 THE COURT: Well, that's disorderly
16 conduct. It's a nontouching, nonverbal, intentional
17 act. And I am not intending to make you mad. I
18 could be intending to illustrate a point, or
19 grandstand for the press, or whatever it is that I'm
20 intending to do. I don't have to intend to make you
21 mad to be disorderly.

22 MR. MARTIN: Your Honor, it's
23 intentional.

24 THE COURT: Just the conduct.

25 MR. MARTIN: The conduct is intentional

1 and here what we have is a tapping of a foot. And
2 that conduct, Your Honor, if you were to shake your
3 fist and shout and --

4 THE COURT: I didn't say I was going to
5 shout now. I'm not going to go that far.

6 MR. MARTIN: If you were to shake your
7 fist --

8 THE COURT: You might respond, if I
9 both shook my fist and shouted.

10 MR. MARTIN: But it's the intentional
11 conduct. And what we have here, what we have is a
12 citizen saying that I engaged in no intentional
13 conduct. Take the intent element out. That I
14 engaged in no intentional conduct in that bathroom
15 that should constitute a crime. That is the essence
16 of our argument, is that tapping of his foot --

17 THE COURT: I think you have to put
18 "intentional" earlier in the sentence. The essence
19 of the disorderly conduct statute is intentionally
20 engaging in conduct; not engaging in conduct with
21 some intention in mind. It's not a specific intent
22 offense. It's a *mens rea* general intent. If he
23 intentionally engaged in looking through the door
24 and looking through the door is the sort of thing
25 that's going to arouse, or enflame, or anger, or

1 bother in some significant way the person on the
2 other side of the door, then he is guilty of
3 disorderly conduct irrespective of if his only
4 reason for looking through the door is to find out
5 if the stall was occupied.

6 MR. MARTIN: But, Your Honor, this
7 Court clearly cannot say if I walk out to the
8 airport now and walk down the stalls and take a
9 minute to look to see if they were all occupied,
10 that I am engaging in a crime of disorderly conduct.

11 THE COURT: Well, you would have to
12 push the public out of the way who is taking
13 pictures of the stall out there if you do it today,
14 so -- That's true.

15 MR. MARTIN: We are saying that while
16 it might be intentional and -- it may come earlier,
17 what I'm arguing to this Court is there is no
18 conduct, no intentional conduct here committed by
19 Senator Craig that's violative of the disorderly
20 conduct statute. And, Your Honor, from the very
21 moment that he was asked -- and to ask you if you
22 come around the bench, somebody could ask you what
23 was your purpose and if you were to say, Well, I was
24 dreaming and I was having a bad dream, that might
25 take away the intentional nature of your conduct.

1 It could. But here Senator Craig said, I went into
2 the bathroom just to go to the bathroom. I went
3 into a stall just to sit on the, uh, on the commode.
4 I went in to sit on the toilet seat. I spread' my
5 legs in a wide stance, that has been so often
6 quoted, and in that wide stance I may have touched
7 his foot. That's not intentional. So even the
8 conduct --

9 THE COURT: Except there is one more
10 line in that narrative and that is, And I admit that
11 that conduct is the sort which constitutes conduct
12 which I should have known, did or should have known,
13 would arouse anger, resentment, whatever the phrase
14 is. I don't have the Petition directly in front of
15 me.

16 MR. MARTIN: Sure.

17 THE COURT: That's the rest of what
18 happened here.

19 MR. MARTIN: Your Honor, we submit that
20 even if you take the legalese that's there and that
21 I did the following, engaged in conduct which I knew
22 or should have known intending to arouse, alarm,
23 resentment -- alarm -- it says or resentment of
24 others, which conduct was physical versus verbal in
25 nature, Your Honor, again, the facts of this case

1 are not sufficient, we submit respectfully, Judge,
2 are not sufficient to constitute a charge of
3 disorderly conduct. And, Judge, we are not now here
4 asking you to find Senator Craig innocent of these
5 charges. We are not here to do that.

6 THE COURT: We don't do that in
7 Minnesota.

8 MR. MARTIN: I'm sorry?

9 THE COURT: We don't do that in
10 Minnesota. We have guilty or not guilty. Florida
11 looks at innocence; we don't do that here.

12 MR. MARTIN: We are not here asking
13 this Court to find Senator Craig not guilty of this
14 charge. We are here to say that we do not believe
15 that there is a valid factual basis to constitute a
16 crime. We are asking this Court to allow Senator
17 Craig to withdraw that plea and to allow these
18 facts, which we are confident that any reasonable
19 juror would look at and not be able to determine
20 beyond a reasonable doubt guilt. So while we are
21 not asking this Court whether or not that conduct
22 constitutes disorderly conduct, we are asking this
23 Court whether or not, based on the facts on that
24 day, that there is a valid factual basis that
25 Senator Craig made and was known to the Court in

1 accepting the plea, it constitutes a crime. And I
2 understand how it's an uphill battle to ask the
3 Court to allow a withdrawal of a guilty plea, but
4 our Supreme -- when I say our Supreme Court, I mean
5 under the rules of Minnesota --

6 THE COURT: Your adopted country.

7 MR. MARTIN: My adopted Minnesota
8 today, but our Supreme Court does allow for the
9 withdrawal of a guilty plea to constitute -- to
10 correct a manifest injustice. And, Your Honor, on
11 these facts, on these very facts where a sting
12 operation has been implemented for valid reasons and
13 conducted in a very lawful way, it's the nebulous,
14 and contradictory, and ambiguous conduct that we
15 think makes it confusing and impossible for a valid
16 set of facts to be discerned that would constitute
17 the crime.

18 Your Honor, we can reach and we can use *ex post*
19 *facto* analyses and opinions now based upon new
20 information to determine what occurred; but, the
21 time this plea was entered, there was not a valid
22 factual basis and we respectfully ask you, Judge, to
23 allow Senator Craig to withdraw that plea. Thank
24 you.

25 THE COURT: Thank you for your

1 appearance, Mr. Martin.

2 Mr. Renz.

3 MR. RENZ: Thanks, Judge. If you don't
4 mind, I'm going to stay here.

5 THE COURT: That will be fine.

6 MR. RENZ: Okay. Judge, we of course
7 are requesting that this Court deny the defendant's
8 motion, first of all, because it's procedurally
9 flawed and that its untimely. I ask the Court to
10 take a serious look -- I'm not going to go over it
11 because Mr. Martin didn't address it. I think it's
12 sufficient in the memorandum.

13 THE COURT: I've read your brief.

14 MR. RENZ: I think if you don't get
15 past that, you don't even get to the substantive
16 elements. Once to the substantive elements, Your
17 Honor, similarly the voluntariness and the
18 intelligence have been well outlined by both parties
19 so I won't go into that.

20 As to the accuracies, Your Honor, which has
21 been the majority of today's argument, it appears
22 that what the Defendant would like the Court to do
23 is to direct this Court's attention to each of the
24 individual actions on its own in an attempt for the
25 Court to determine that each of them by themselves

1 may seem nebulous or may seem vague and hard to
2 understand whether a crime occurred, and I think
3 that's inappropriate, Your Honor.

4 To remind the Court, this occurred in the
5 bathroom stall, which by all means is a very
6 personal space. It occurred in a public restroom at
7 the International Airport with almost 100,000 people
8 flying through a day. It's a restroom used by
9 Congressmen over 60 and kids under 10. Everyone who
10 uses the bathroom, it's an essential area of the
11 airport.

12 At that location the Defendant engaged in a
13 series of invasions in the stall space next to him.
14 First of all, the movements of the foot. There were
15 two separate movements that occurred. There was the
16 tapping, but then there is a movement into the
17 adjacent stall to the point that the foot was
18 touching the stall of the -- or the foot of the
19 adjacent stall user. And that conduct was not where
20 it stopped. There was the repeated stroking of the
21 stall divider on the Defendant's right with his left
22 hand, each stroke showing more and more of the
23 exposed hand up into the adjacent -- uh, into the
24 adjacent stall. And all of this, of course, as the
25 Court is aware and commented upon, was preceded by

1 two minutes of gazing into a stall over and over.

2 The Defendant has pointed to -- the defense
3 counsel has point to what the Defendant admitted to
4 initially. And as I stated in the Memorandum,
5 Judge, if we went by the facts as they were
6 initially admitted by every criminal defendant,
7 nobody would be guilty. I mean the majority of the
8 people come in, don't admit it when it happens; but,
9 somehow they find the will to plead when they come
10 before this court. I think it's inappropriate to
11 use that set of facts to determine whether or not
12 disorderly conduct occurred here.

13 The physical invasions with the foot, and the
14 hand, and the staring, the totality of this physical
15 conduct is clearly the conduct prohibited by the
16 disorderly conduct statute in that it tended to
17 arouse alarm or resentment in others. The conduct
18 is also coupled, of course, with the circumstances
19 of the Defendant exclaiming, No, when the police
20 identification badge is flashed, indicating he knew
21 he was doing something wrong; initially unwilling to
22 exit the stall; and in police interviews indicates
23 that he was solicited and indicating to some extent
24 that he didn't touch. When the record replete with
25 Complaint and the Plea is examined, it supports the

1 conclusion that the Defendant's conduct fell within
2 the charge to which he pled, which is all that we
3 are required to see when we look at whether it's
4 accurate under the *Goulette* decision.

5 Your Honor, I also ask that the Court when
6 looking at the plea petition, consider how it is the
7 plea petition came about and not put on blinders
8 that I think the defense would prefer that you put
9 on in this case in the sense that the plea petition
10 has elements or facts, and in fact the elements of
11 this crime are very factual and uncomplicated which
12 are sufficient for a judge to find that disorderly
13 conduct occurred, which is all that happens when a
14 plea comes in. But we don't just have the plea
15 petition. We have an entire recitation of the facts
16 in the Complaint, a Complaint that the Defendant had
17 for a month before he entered the plea petition.
18 Armed with the Complaint in one hand, he fills out
19 the plea petition. It's not a vacuum where the
20 Defendant has no idea why he was being charged or
21 what it was he was pleading to. He knew what the
22 facts underlying it were. He received the
23 Complaint. He then got the Petition. It included
24 the essential elements of the disorderly conduct
25 crime and he sat and was able to think about it, a

1 thousand miles away in his apartment on the Potomac.
2 He could have asked anybody. He called me with
3 questions. He could have asked for advice and he
4 decided, My conduct, my conduct fit the elements of
5 the crime. And when courts are concerned is when a
6 defendant is unaware of what the elements are
7 because then the Defendant can't possibly decide for
8 themselves, Did my conduct, did my conduct fit what
9 I'm pleading to? That's not true, Your Honor. Not
10 only did he have the entire Complaint, which
11 included the charge, the Statutory citation, and all
12 the elements; but, he pled to the essential elements
13 of the crime. He pled to facts which are themselves
14 the essential elements of the crime.

15 And our Memorandum concentrated on both the
16 rationale that makes it -- that -- the rationale for
17 the reason that this is a sufficient and accurate
18 plea, and there wasn't any Minnesota case law that
19 was directly on point. And so I didn't include
20 these other courts; but, in the Court's review and
21 consideration of this matter, there are two cases
22 which seem to be particularly on point. There is a
23 case called *People v. Holmes*. It's a Supreme Court
24 case out of California in 2004. There the Defendant
25 was charged with a very serious crime, an assault

1 with intent to commit rape. The Judge asked two
2 questions, Did you receive the Complaint; did you do
3 what it said in Count 1? And all Count 1 was was a
4 recitation of the elements. He said, Yes. They
5 took the plea. They tried to withdraw the plea.
6 The Court said you don't get to withdraw the plea
7 because the focus is appropriately on did the
8 Defendant understand his acts constituted the
9 offense. And that's what the Court should focus on
10 here. The Defendant knew what the offense was and
11 he decided that he was going to admit; in fact,
12 admitting that he knew or should have known that
13 this was going to cause alarm or resentment in
14 others.

15 The second, Your Honor, is a case called
16 *Commonwealth v. Decologero*. It's 726 N.E.2d 444.
17 There, Your Honor, the Massachusetts Appellate Court
18 looked at a plea to trafficking in cocaine. In that
19 case, they got into court and the prosecution did a
20 recitation of the facts. The Defendant never
21 admitted to a warrant, never admitted that he agreed
22 that he did any of those facts. The Judge asked two
23 things: Did you market cocaine? Yes. And was it
24 between 28 and 100 grams, or ounces, grams? Yes.
25 And the Court upheld the plea. Even though the

1 details and complications, such as the necessary
2 intent, were not gone into. The Court explained,
3 look, the charge is self-explanatory and it was
4 given following the State's recitation of the facts,
5 even though you didn't specifically agree to that.
6 The Court went on to find a similar plea by that guy
7 on that day wasn't upheld because it was a
8 conspiracy, a much more difficult crime for a person
9 to understand and decide form themselves, Did my
10 acts constitute this offense.

11 Like these cases, Your Honor, the plea in this
12 case should be upheld. The Defendant was made well
13 aware what the offenses were and he decided to plead
14 guilty.

15 Your Honor, as the Court commented, I know the
16 disorderly conduct is just short of a catch-all;
17 but, I think that that is its role. I think it's an
18 important statute. It's the last vestige of without
19 going through a ticky-tack list of exactly what it
20 is one can and can't do, we aren't able to do that
21 because we can't imagine every possible scenario so
22 we have this statute which keeps us in the bounds of
23 a civilized society on the outside. And this is
24 conduct, Your Honor, it's conduct, it's physical,
25 there is no need to get into the fighting-words

1 doctrines, it's multiple invasions of the an
2 adjacent stall's user space, and for all these
3 reasons I think it's a clear and accurate plea. I
4 remind the Court that it's the Defendant's burden to
5 demonstrate the manifest injustice under the Munger
6 decision. They haven't done so. I ask the Court to
7 make a practical determination here, as I know you
8 will, and to find, first of all, that their motion
9 is untimely because all it was was waiting for the
10 political fallout and then they decided to file the
11 motion, and we don't recognize that here in
12 Minnesota. You can't wait for the consequences of
13 your plea. And, secondly, if you get around that to
14 find that there is no manifest injustice, Your
15 Honor, the plea was voluntarily, it was accurate,
16 and it was intelligent.

17 THE COURT: Your timeliness argument
18 does not rely on specific prejudice to the State,
19 however.

20 MR. RENZ: No, it doesn't, Your Honor.
21 It relies on the other two -- the other two of the
22 three factors.

23 THE COURT: Thank you.

24 Mr. Kelly or Mr. Martin?

25 MR. MARTIN: Your Honor, if I may just

1 very briefly.

2 Judge, I would first say that I'm not part of
3 the Senator's political campaign, I am not here in
4 any capacity whatsoever on politics. As the Court
5 may know, I have been a member of the Bar for
6 32 years and have never been cited by any politician
7 as a supporter or adversary, so I take issue with
8 the allegation that what we are here doing today is
9 in any way related to the political consequences of
10 what's going on. I was asked as a criminal lawyer
11 to look at the conduct. The arguments that I have
12 made to you are based solely on whether or not there
13 was a valid legal factual basis for this Court or
14 any court to accept a plea of guilty or to find that
15 a plea of guilty was entered based upon a valid
16 factual basis, and that's all. I say that, Judge,
17 just so there is no -- I know Your Honor will sift
18 through these arguments and take them for what they
19 are; but, I am not here and I do take issue with the
20 arguments that my arguments are in any way related
21 to the fallout. I was asked and I --

22 THE COURT: I think Mr. Renz's
23 argument, if I understand from the brief, is that
24 the timing was based on the fallout and that timing
25 was not within your control.

1 MR. MARTIN: Your Honor, I understand;
2 but -- and, again, it opens up the issue with the
3 voluntariness and the intelligent parts of what --
4 and I -- and we submit that on our brief. And I
5 understand and I wanted Your Honor to know that the
6 arguments that I make stand wholly independent and
7 we think supports our request that the motion to
8 withdraw the guilty plea be granted.

9 Your Honor, I think that the prosecution has
10 made a valid point that supports our argument and
11 that is that in both the *Holmes* case and the
12 Massachusetts case, I did not write the spelling
13 down, and in both cases they were not disorderly
14 conduct. As a matter of fact, the conspiracy
15 statute, it is very much like a catch-all statute.
16 It is very difficult to determine what may
17 constitute conspiracy or what may constitute
18 disorderly conduct, just like the *knew England*
19 Massachusetts case. We believe disorderly conduct,
20 Your Honor, should have had -- and when I say should
21 have, it's not a good argument to stand here and say
22 on a motion to withdraw "this should have happened",
23 but I think under Minnesota law, that this Supreme
24 Court wants under any manifest injustice inquiry for
25 a court to be able to put on the record the facts

1 that were before that court, they found conduct in
2 those very facts that constitute the crime of
3 disorderly conduct. Your Honor, we submit to you
4 that if you take them individually or if you take
5 them as a whole, the conduct here may be problematic
6 when we look at it in hindsight; but, at the time
7 the Senator explained to those police officers, to
8 the police officer and whoever was in the interview
9 room with him, that, I was looking to see if it was
10 empty and I was picking up paper, I was tapping,
11 moving any foot. Your Honor, we submit that that is
12 not enough and should not be enough to constitute a
13 crime in Minnesota or anywhere and very
14 respectfully, Judge, ask you to allow Senator Craig
15 to withdraw his guilty plea. And I thank you,
16 again.

17 THE COURT: Thank you all.

18 Mr. Renz, anything further?

19 MR. RENZ: Very briefly. As you
20 suggested, I make no suggest that Mr. Martin was
21 acting in a political manner, just the timing of his
22 client's decision to.

23 THE COURT: I'll take the matter under
24 advisement and given my calendar status, I doubt if
25 I will have an order before the end of next week.

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Thank you all.

MR. MARTIN: Thank you, Your Honor.

MR. RENZ: Thank you, Your Honor.

(The proceedings adjourned at 2:02 p.m.)

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

REPORTER'S CERTIFICATE

State of Minnesota,

Plaintiff,

V.

FILE 27CR07043231

Larry Edwin Craig,

Defendant.

I, JODI R. HOFFARTH, do hereby certify that I am a Registered Professional Reporter acting as Official Court Reporter for the Hennepin County District Court, Fourth Judicial District; that, as such reporter, I reported in Stenotype the proceedings had in the said hearing of the above-entitled action on September 26, 2007; that I thereafter transcribed the same into typewritten form; that the foregoing pages, consisting of 36 pages, constitute a full, true, and correct transcription of all proceedings had at said hearing.

Dated: September 26, 2007

COPY

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