UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,	:	DOCKET NO: 3:07cr0090
Plaintiff	:	
VS.	:	
	:	
PAUL JACOBS,	:	
Defendant	:	MARCH 11, 2008

DEFENDANT PAUL JACOBS' MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION TO WITHDRAW HIS GUILTY PLEA

I. Preliminary Statement of Facts

On October 31, 2007, defendant Paul Jacobs entered a guilty plea to one count of conspiracy to commit bribery in violation of 18 U.S.C. §§ 666 and 371 before the honorable Janet Bond Arterton, U.S. District Judge. According to the indictment, this plea was based upon the following allegations:

- On August 3, 2006, Paul Jacobs sent information by facsimile to the Undercover Cooperating Employee (hereinafter "the UCE") regarding a fugitive referred to as "WD", and agreed to pay $10,000 for the apprehension of fugitive "WD".

- On September 15, 2006, Lt. William White of the New Haven Police Department traveled to co-defendant Robert Jacobs' office in New Haven, Connecticut, and picked up an envelope that contained payment for the apprehension of fugitive" WD".

The "UCE" was, in fact, one Blake Stine, a sergeant with the Connecticut State Police. However, at no time did Stine disclose to the defendant that he did not work for the New Haven Police.

At the time of his plea, defendant Jacobs was represented by Attorney Andrew Bowman. Subsequent to hiring present counsel, the following exculpatory evidence, contained in telephone transcripts disclosed by the government, was brought to the defendant's attention. See Exhibit "A".

- On August 14, 2006, Sergeant Blake Stine represented to Paul Jacobs in the following telephone conversation that he would assist Mr. Jacobs to locate a fugitive while he was off-duty:

Stine: I'll find him for you regardless uh, I'm just trying to figure out the best way, cause I, you know I've got some, some downtime coming up in the office so I want to start uh, you know, hunting this guy down for ya' uh. (Emphasis supplied).

- Thereafter, Mr. Jacobs explained to Stine, whom he believed at all times to be working for the New Haven Police Department, that the fugitive "WD" lived in Waterbury, not New Haven:

Stine: Does he live in Waterbury or New Haven or

Jacobs: Well there's a Waterbury address uh, yeah everything is uh all Waterbury connected so um. (Emphasis supplied).

- Sergeant Stine represented that the money being paid to him was solely for expenses, as opposed to any illegal personal gain, when he stated:

Stine: Oh ok, good, good Ok. Um, ok and we're still looking at uh, $10,000 for ah expenses on this one.

Prior to the entry of his plea, the defendant was unaware of the existence of the above evidence. The attached Motion to Withdraw the Guilty Plea and this Memorandum of Law in support thereof quickly followed Mr. Jacobs' retention of undersigned counsel.

II. Standard For Withdrawal of a Guilty Plea

Pursuant to Federal Rule of Criminal Procedure 11(d)(2)(b), as well as well-established Second Circuit case law, the general rule is that a defendant may withdraw a guilty plea if the defendant demonstrates a) valid grounds for the withdrawal and b) a fair and just reason for the withdrawal. United States vs. Maher, 108 F.3d 1513, 1529 (2nd Cir. 1997); see also United States v. Couto, 411 F.3d 179, 185 (2nd Cir. 2002).

The Second Circuit case law recognizes three valid grounds that are relevant to the factual situation in this case. Specifically, the Second Circuit recognizes that a guilty plea may be withdrawn due to 1) the defendant's actual/legal innocence; 2) the ineffective assistance of the defendant's counsel throughout the plea process; and 3) the disclosure of exculpatory evidence subsequent to the defendant's plea. United States v. Hirsch, 239 F.3d 221, 225 (2nd Cir. 2001); See also United States v. Arteca, 411 F.3d 315, 320 (2nd Cir. 2005); United States v. Persico, 164 F.3d 796, 804 (2nd Cir. 1999). With respect to the third ground listed above, the defendant is not claiming that the exculpatory evidence in this case was disclosed subsequent to his plea; rather, the defendant was simply not made aware of its existence by his counsel until after his plea was entered. Thus the defendant asserts here a hybrid claim, combining the second and third grounds. Regardless, the Second Circuit's analysis with respect to subsequently disclosed exculpatory evidence is analogous and therefore relevant in this case.

Finally, the defendant acknowledges that the Second Circuit and the United States Supreme Court consider guilty pleas to be grave and solemn acts, and as such there is no absolute right for the withdrawal of the plea. United States v. Arteca, supra, 411 F.3d at 319; see also United States v. Hyde, 520 U.S. 670, 677 (1997). Nevertheless, the defendant is confident that the present factual situation meets the Second Circuit's relatively high standard for withdrawing a guilty plea.

III. Argument

A. Valid grounds exist for Defendant Jacobs to withdraw his guilty plea

The defendant claims that two valid grounds exist for the withdrawal of his guilty plea: his actual legal innocence of the crime; and ineffective assistance of counsel. Furthermore, due to the rather unique factual situation at hand this argument will also discuss the relevant, although not specifically applicable, valid ground due to the subsequent disclosure of exculpatory Brady material. See Brady v. Maryland, 373 U.S. 83 (1963).

1. Innocence

The defendant emphasizes that he does not disavow his actions as alleged in the indictment. What he disputes is the legal and, ultimately, inculpatory significance of his acts. The general rule is that a claim of innocence can be a basis for withdrawing a guilty plea. United States v. Hirsch, 239 F.3d 221, 225 (2nd Cir. 2001). However, a belated allegation of innocence, on its own, is not sufficient to compel the granting of a motion to withdraw a guilty plea. United States v. Hughes, 326 F.2d 789, 792 (2nd Cir. 1964). Rather, in order to be a basis for withdrawing a guilty plea, a claim of innocence must be supported by evidence of the defendant's innocence. Hirsch, 239 F.3d at 225; See also United States v. Torres, 129 F.3d 710, 715 (1997).

Both the United States Supreme Court and the Second Circuit have held that criminal convictions may be reversed in the event that the alleged criminal conduct does not fall within the scope of the criminal statute pursuant to which the defendant is being prosecuted. United States v. Lopez, 514 U.S. 549 (1995); See also United States v. Salas, 139 F.3d 322 (2nd Cir. 1998) (plea can be attacked on the basis of actual legal innocence when admitted facts do not constitute a crime); United States v. Foley, 73 F.3d 484, 493 (2nd Cir. 1996) (conviction for violation of 18 U.S.C. § 666 reversed because the conduct alleged by the government did not come within the scope of that statute).

In Salas, the Second Circuit acknowledged that actual legal innocence is a valid ground for the withdrawal of a guilty plea when the facts admitted by the defendant do not actually constitute a crime. The Court's reasoning in Salas was in line with

decisions from several other jurisdictions that arose in the aftermath of the United States Supreme Court's decision in Bailey v. United States, 516 U.S. 137 (1995). In Bailey, the United States Supreme Court re-defined the actions that constitute a crime pursuant to 19 U.S.C. § 924(c)(1). In response to the Supreme Court's holding, the Fifth, Sixth, Seventh, Eighth, and Tenth Circuit Courts all held that defendants may withdraw their guilty pleas based upon the fact that the actions that the defendants admitted to did not actually constituted a crime. United States v. Andrade, 83 F.3d 729, 731 (5th Cir. 1996).

In Foley, the defendant's bribery conviction was reversed after the Second Circuit determined that the defendant's alleged corruption did not touch upon federal funds, as required by the statute. Foley, 73 F.3d at 493. In line with the Bailey progeny as well as the Second Circuit's holding in Foley, the defendant argues herein that a grave injustice would occur if Mr. Jacobs is denied the ability to withdraw his guilty plea given the fact that the payment involved expenses for work performed *outside* the scope of the officer's official capacity, and therefore *outside* the scope of 18 U.S.C. § 666.

Title 18 U.S.C. § 666 states, in relevant part, that an individual is guilty of bribery if that person,

> Corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent or organization or of a State, local or Indian tribal government, or any agency thereof, *in connection with any business, transaction, or series of transactions of such organization, government, or agency* involving anything of value of $5,000 or more. (emphasis supplied)

According to the Government's indictment, in order to be guilty of bribery pursuant to 18 U.S.C. § 666 Jacobs would had to have given something of value, with an intent to influence and reward an agent of a local government (i.e. New Haven Police Lt. William White) in connection with *any business of that government* (emphasis supplied). United States v. Ford, 435 F.3d 204, 212 (2nd Cir. 2006). Furthermore, bribery is a crime of specific intent. United States v. Barash, 365 F.2d 395, 402 (2nd Cir. 1966). Thus, the crime of bribery requires evidence that demonstrates that "favors and

gifts flowing to a public official *are in exchange for a pattern of official actions* favorable to the donor." United States v. Ganim, 510 F.3d 134, 147 (2nd Cir. 2007) (emphasis supplied). In order to be guilty of bribery the government must prove that a defendant intended to bring about the "evil sought to be prevented" by the bribery statute. United States v. Jacobs, 431 F.2d 754 759 (2nd Cir. 1970). In this case, that would necessarily involve demonstrating that any payments made were, in fact, bribes, intended to influence an official *in his official capacity*.

In its indictment, the Government alleges that Paul Jacobs was involved in one transaction as an overt act in furtherance of a conspiracy to commit bribery. In paragraphs 18e and 18f of the Government's indictment, it is alleged that defendant Paul Jacobs sent information by facsimile to Stine regarding fugitive "WD" and agreed to pay $12,000 for Stine to "hunt" for "WD".

After entering his plea, Mr. Jacobs discovered that despite his guilty plea on October 31, 2007, the evidence that had been disclosed to his counsel by the government with respect to the above transaction suggested that he was, in fact, legally innocent of bribery and conspiracy to commit bribery in violation of 18 U.S.C. § 666 and 371. It is of the utmost importance to note that Mr. Jacobs was not made aware of the specific telephone conversation transcripts prepared by the Government until some time after November, 2007, i.e. after he entered his plea.

The evidence consists of transcripts of telephone conversations dated 8/3/06, 8/14/06 and 8/18/06 between defendant Paul Jacobs and Stine. See Exhibit "A". It is apparent from review of these calls that Stine implies that he was employed by a task force led by co-defendant Lt. William White of the New Haven Police force. There is no evidence that Stine ever represented to Mr. Jacobs that he was, in fact, employed by any other agency, including the Connecticut State Police. Upon review of these transcripts it becomes patently clear that Paul Jacobs agreed to pay Stine for services outside the scope of his official capacity and that the money would be used to pay an informant for information leading to the capture of a Waterbury fugitive. The transcripts demonstrate, in no uncertain terms, that the defendant's understanding was and is that Stine would search for the fugitive not while in the course of his official duty, but rather

in his "down time" i.e. while off duty. Obviously, an officer working on behalf of the New Haven Police Department has no official duty to search or "hunt" for a fugitive in a city outside of his jurisdiction. Moreover, Waterbury defendants appear in the Superior Court for the Judicial District of Waterbury – not New Haven. Therefore, the agreement called for Stine, during his "downtime", to "hunt" for the fugitive "WD", who was "all Waterbury connected," and therefore had no connection to New Haven or the New Haven Police. This agreement was essentially no different then if Jacobs had hired Stine to provide parking lot security in Waterbury or, for that matter, to help him shovel his driveway while off-duty. Neither agreement involves Stine acting pursuant to his official capacity and therefore neither agreement can be categorized as a bribe.

In light of this evidence, the relevant inquiry is whether Stine was acting in connection with any business of the New Haven Police department when he was offered funds for expenses to help locate and/or apprehend a Waterbury fugitive. The Second Circuit has not yet addressed the question whether a police officer was engaged in the performance of his official duties in the context of a bribery case. However, that Court has held that in order to generally determine whether a police officer is engaged in the performance of his official duties, the test is whether the officer is acting within the scope of what that officer is paid to do, rather than engaging in a "personal frolic" of his own. United States v. Heliczer, 373 F.2d 241, 245 (2nd Cir. 1967); United States v. Hoy, 137 F.3d 726, 729 (2nd Cir. 1998).

The Government's evidence demonstrates that the understanding between Jacobs and Stine was that Stine was engaging in a personal task during "downtime" and, therefore, not acting in connection with *any business of the New Haven police department,* especially considering that this "personal frolic" involved Stine traveling outside of his respective precinct to Waterbury to "hunt" for "WD."

Connecticut General Statutes § 54-1f provides, in relevant part, that

> (b) Members...of any local police department...shall arrest, without previous complaint and warrant, any person who the officer has reasonable grounds to believe has committed or is committing a felony [and]
>
> (c) members of any local police department ...*when in immediate pursuit of one*

> who may be arrested under the provisions of this section, *are authorized to pursue the offender outside of their respective precincts into any part of the state in order to effect the arrest*." (Emphasis supplied).

With respect to C.G.S. § 54-1f(b), a member of a local law enforcement agency has a duty to arrest individuals who he or she has *reasonable grounds to believe has committed or is committing a felony*. However, § 54-1f(b) does not impose a duty on members of local law enforcement agencies to "hunt" down individuals outside of their respective precincts, regardless of whether there are reasonable grounds to believe that the individual may have committed a felony. Therefore, according to this statute it is clear that Stine would have no official duty to "hunt" for a fugitive outside the New Haven "precinct." To the contrary, § 54-1f provides that members of a local law enforcement agency have a duty to pursue an individual outside of their jurisdiction only when that officer is in "immediate pursuit" of the individual.

The Appellate Court of Connecticut has defined "immediate pursuit" as "without delay" from the time that the crime is observed to the apprehension of the suspect. State v. McCullough, 88 Conn. App. 110, 118 (2005). In contrast, the telephone transcripts in this case demonstrate that Stine was not in immediate pursuit of "WD" and therefore had no official duty to travel outside of his precinct, into Waterbury, to "hunt" for him. Therefore, it is clear that Stine was not acting pursuant to his official capacity when he agreed to travel to Waterbury.

The defendant's position is further supported by the fact that New Haven police officers are actually available for hire outside of their official capacity as New Haven police officers. Thus, the defendant's acts are essentially the same as if he had hired the officer to provide security at a party in another community. According to the New Haven police department's collective bargaining agreement, New Haven police officers are available for "Extra Police Duty" which is defined as a situation where New Haven police officers are "paid directly or indirectly by some party other than the city." See Exhibit "B". Thus, when Jacobs arranged to hire Stine to apprehend a fugitive in Waterbury, it is clear that Jacobs was hiring Stine for "extra-duty" or "off-duty" police-related work. Any work performed in this context clearly does not fall within the

definition of the bribery statute as discussed above. Indeed, it is not qualitatively different than if Stine moonlighted as a painting contractor. Moreover, the transcripts demonstrate that Stine solicited the funds for payment to an informant rather than as a gratuity to an officer.

The defendant concedes that the New Haven police department's collective bargaining agreement sets out procedures for hiring off-duty police officers that were not followed in this instance. It remains, however, a question of fact whether off-duty work by an officer outside the scope of his normal duties would need to follow the collective bargaining agreement procedures. Stine, as opposed to Mr. Jacobs, was in the superior position to know and explain the proper procedures to follow for hiring a New Haven police officer to perform off-duty work. However, the violation of a collective bargaining agreement results in no consequences to the defendant, since he was not a party to that agreement. Thus, it is clear that, at worst, Mr. Jacobs and Stine entered into an agreement in violation of the New Haven police department's collective bargaining agreement; conduct which not only fell far short of violating Title18 U.S.C. § 666, but would not have any consequences for Mr. Jacobs at all.

The Second Circuit limits a defendant's ability to withdraw a guilty plea based upon a claim of innocence in two relevant ways. First, the Second Circuit considers the self-inculpatory statements made under oath during the plea allocution to carry a strong presumption of verity. Maher, 108 F.3d at 1530. However, this limitation creates a catch-22, due to the fact that in order to have entered a guilty plea, a defendant would have necessarily made self-inculpatory statements at the time that the plea was entered. This is juxtaposed by the fact that the Second Circuit clearly considers a claim of innocence to be a valid basis for the withdrawal of a plea. Hirsch, 239 F.3d at 225. This, in turn, leads to the logical inference that the persuasiveness of the evidence of innocence must be weighed against the "presumption of verity" given to the self-inculpatory statements made at the time of plea allocution. Any other conclusion would emasculate a claim of innocence as a valid ground for the withdrawal of a guilty plea.

In this case, the defendant concedes that he made all of the standard self-inculpatory statements during the plea allocution. He also admits that he made the

statements to stine and made the payment (primarily by business check) alleged in the indictment. However, in addition to the new evidence discussed above in support of his innocence, the defendant directs the court's attention to his hesitation to enter a plea of guilty on October 31, 2007. Specifically, at the beginning of the hearing, both Assistant United States Attorney Dannehy as well as Attorney Bowman noted defendant Jacobs' hesitation with respect to going forward with the guilty plea in the following exchange:

- Ms. Dannehy: ...the question being whether Paul Jacobs is going forward today
- Mr. Bowman: ...I am going to need a few minutes with Mr. Jacobs ... And it's critical because I don't think at this particular moment I can proceed ... But if I had 20 minutes, a half an hour, I certainly can advise the Court definitively.

Although the defendant did proceed to enter a plea, it is clear that Mr. Jacobs had serious reservations about pleading guilty on October 31, 2007.

Second, the Second Circuit does not allow a defendant to withdraw a guilty plea based solely upon a re-evaluation of the strength of the Government's case. United States v. Gonzalez, 970 F.2d 1095, 1100 (2nd Cir. 1992); United States v. Figueroa, 757 F.2d 466, 475 (2nd Cir. 1985); United States v. Michaelson, 552 F. 2d 474, 476 (2nd Cir. 1977). But re-evaluation of evidence is not the functional equivalent of a legal analysis that the defendant's conduct did not constitute the crime to which he entered his plea of guilty. In this case, the defendant directs the court's attention to the fact that he was unaware of the specific evidence discussed in this memorandum at the time of the plea. However, the defendant acknowledges the fact that the Court may impute knowledge of the exculpatory evidence to the defendant based upon his then-counsel's access to this information. In the event that the Court does take this position, the defendant argues that his plea was, in turn, not knowing or voluntary due to the ineffective assistance of counsel.

2. Ineffective Assistance of Counsel

In evaluating motions to withdraw guilty pleas, the general rule is that the ineffective assistance of counsel during the plea process can invalidate a guilty plea

and make withdrawal appropriate. United States v. Arteca, 411 F.3d 315, 320 (2nd Cir. 2005); See also Couto, supra, 311 F.3d at 187. In determining whether a guilty plea should be withdrawn due to the ineffective assistance of counsel, the Second Circuit applies the following two-part test: 1) Did counsel's performance fall below an objective standard of reasonableness; and 2) Is there a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have proceeded to trial? Arteca, 411 F.3d at 320. If this two-part test is satisfied, it is clear that a defendant's plea of guilty was not knowing and voluntary, and thus, provides a basis for withdrawal. Id.

With respect to the first prong of this test, the Second Circuit has held that effective representation during the plea process involves informing the defendant of the strengths and weaknesses of the case against him. Purdy v. United States, 208 F.3d 41, 45 (2nd Cir. 2000). In this case, it is abundantly clear that Attorney Bowman's representation of defendant Jacobs during the plea process fell below an objective standard of reasonableness. Quite simply, by neglecting to bring the exculpatory evidence that is the subject of this memorandum to Mr. Jacobs' attention, and by not discussing the legal innocence claim, Attorney Bowman failed to advise Mr. Jacobs of a significant weakness of the Government's case. Without the knowledge of this exculpatory evidence, Mr. Jacobs was completely unable to evaluate his choices and make a knowing and voluntary plea. As a result, Mr. Jacobs is, at this point, conducting an initial evaluation, rather than a re-evaluation, of the strengths and weaknesses of the case. Furthermore, there is no conceivable strategic reason for Attorney Bowman to have neglected to draw defendant Jacobs' attention to this evidence, or to the obvious defense that payments to a police officer to moonlight for a bondsman outside of his jurisdiction is not a federal crime.

With respect to the second prong of this test, it is also clear that, but for Attorney Bowman's failure to advise Mr. Jacobs as to the existence of this evidence, Mr. Jacobs would not have entered a plea of guilty, but, instead, would have insisted on going to trial. As discussed above, Mr. Jacobs remained hesitant to enter a plea of guilty on October 31, 2007. His attorney filed no motion to dismiss on the grounds noted in this

memorandum; although a motion to dismiss on other grounds not relevant to this claim was filed and later withdrawn. Furthermore, the defendant is now currently attempting to withdraw his plea and proceed to trial precisely due to the exculpatory evidence that should have been brought to his attention. Surely the history of this case from the date of the plea to the present demonstrates that, but for Bowman's errors, Mr. Jacobs would have insisted all along on his day in court.

3. Brady Material

The Second Circuit recognizes the ability to withdraw a guilty plea based upon the late disclosure of new exculpatory evidence. United States v. Persico, 164 F.3d 796, 805 (2nd Cir. 1995). However, this ground has previously arisen only in the context of the Government's failure to disclose exculpatory evidence at the time of the plea; that is not the case in this instance due to the fact that Attorney Bowman was, apparently, in possession of the transcripts at the time of the plea. This leaves the Court with an issue of first impression; namely, can exculpatory evidence discovered by the defendant subsequent to his plea, yet know to his prior attorney at the time of the plea, provide a valid ground for the withdrawal of that plea?

A court may allow a defendant to withdraw a guilty plea based upon the disclosure of new evidence due to the fact that a defendant is entitled to make the decision to plead guilty with full awareness of favorable evidence known to the Government. Persico, supra, 164 F.3d at 805; See also United States v. Avellino, 136 F.3d 249, 255 (2nd Cir. 1998). The relevant concern seems to be that a defendant have full awareness of all favorable evidence prior to pleading guilty; which party actually is in possession of the evidence takes a back seat to that primary concern. When analyzing the materiality of the exculpatory evidence, once again the proper analysis becomes whether there is a reasonable probability that, but for the failure to produce the new information, the defendant would have not entered his plea. Persico, supra, 164 F.3d at 805. Thus, in this case, it appears that a grave injustice would arise in the event that Jacobs is not allowed to withdraw his guilty plea, due to the fact that there is no uncertainty with respect to the fact that Jacobs would have insisted on going to trial had he been aware of this exculpatory evidence at the time of his plea.

B. The facts in this case satisfy the Second Circuit's "fair and just reason" analysis.

The Second Circuit analyzes three criteria in determining whether a fair and just reason exists for the withdrawal of a guilty plea; 1) Whether the defendant has asserted his innocence in a motion to withdraw the guilty plea; 2) The amount of time that has elapsed between the plea and the motion; and 3) Whether the government would be prejudiced by a withdrawal of the plea. Couto, Supra, 311 F.3d at 185. The defendant bears the burden of establishing the first two criteria, at which point the burden shifts to the Government to establish that the withdrawal would result in prejudice. Maher, Supra, 108 F.3d at 1529.

1. Defendant Jacobs is asserting his innocence.

For the purposes of this argument, the defendant's innocence doubles as both a "valid ground" for withdrawal *and* a criteria in the "fair and just reason" analysis. Couto, F.3d at 185; See also Hirsch, 239 F.3d at 225. As such, it is abundantly clear that Mr. Jacobs' innocence is, in fact, the underlying basis for this entire motion.

2. The duration of time between plea and motion does not preclude withdrawal in this instance.

The Second Circuit case law does not specify the exact amount of time between the guilty plea and the motion to withdraw that will act to preclude a defendant from withdrawing his plea of guilty. Rather, the Second Circuit considers "the timing of a defendant's attempted plea withdrawal [to be] highly probative of motive...While an immediate change of heart may well lend considerable force to a plea withdrawal request, a long interval between the plea and the request often weakens the claim that the plea was entered in confusion or under false pretenses." United States v. Lopez, 385 F.3d 245, 254 (2nd Cir. 2004).

In this case the defendant concedes that approximately four months has elapsed between his guilty plea and this motion. The defendant further concedes that this may be on the long-end of the spectrum of the allowable amount of time elapsed between plea and motion. However, the defendant suggests that in light of the relevant case law, the Court should direct its attention to the amount of time between the retention of

present counsel and this motion rather than the amount of time that has elapsed between the plea and the motion.

Case law suggests that the amount of time elapsed is a) probative of the motive for the withdrawal, and b) will weaken a claim that a plea was made in confusion or under false pretenses. Id. The defendant therefore directs the Court's attention to the very short amount of time between the hiring of present counsel and the submission of this motion. For purposes of determining the defendant's motive for withdrawal, surely this extremely short amount of time supports the allegation that the defendant wishes to maintain his innocence based upon his discovery of new exculpatory evidence. Furthermore, the relatively long four month period between plea and motion in this case is not especially relevant here due to the fact that the defendant is not claiming his guilty plea was made in confusion or under false pretenses. Rather, it is based upon the failure to disclose to him highly material exculpatory information with the consequence that his actions did not constitute a federal offense at all.

3. The Government will not be prejudiced by the withdrawal of the defendant's plea

Upon the defendant's demonstration of his innocence and the Court's determination of the duration of time that has elapsed between plea and motion, the burden shifts to the government to demonstrate that the withdrawal of the plea will result in prejudice. Maher, 108 F.3d at 1529. In this case, it is clear that the withdrawal of the defendant's guilty plea will not result in prejudice to the government.

Quite simply, the Government has not commenced trial, nor will the withdrawal of the defendant's plea impact the trials of the Mr. Jacobs' co-defendants, as each co-defendant has already entered guilty pleas. Furthermore, on October 31, 2007, Government counsel acknowledged that the co-defendants' pleas would only "change slightly" if Mr. Jacobs decided not to enter a plea on October 31, 2007. See Transcript, p.4.

IV. Conclusion

The evidence to date demonstrates that Paul Jacobs agreed to enter into a financial agreement with Sergeant Stine for off-duty work that was outside Stine's

jurisdiction and, therefore, outside of his official duties. Thus, Mr. Jacobs' conduct alleged in the indictment does not constitute bribery, according to the plain language of 18 U.S.C. § 666. Furthermore, but for Attorney Bowman's failure to advise Mr. Jacobs as to the existence of the relevant evidence contained in the telephone calls until after the entry of his plea, Mr. Jacobs never would have entered his plea of guilty on October 31, 2007 in the first place. Therefore, in order to prevent a grave injustice, defendant Paul Jacobs should be allowed to withdraw his guilty plea and proceed to trial.

THE DEFENDANT,
PAUL JACOBS,

By /s/ *Jon L. Schoenhorn*

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CERTIFICATION

I hereby certify that on the above date, a copy of the foregoing document was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Jon L. Schoenhorn
Jon L. Schoenhorn