STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWIGHT T. SAMUELS,

Defendant-Appellant.

FOR PUBLICATION
December 28, 2021
9:05 a.m.

No. 353302
Wayne Circuit Court
LC No. 19-005162-01-FC

Before: SAWYER, P.J., and RIORDAN and REDFORD, JJ.

RIORDAN, J.

Defendant pleaded guilty to assault with intent to commit murder (AWIM), MCL 750.83, and possession of a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b. At sentencing, defendant moved to withdraw his guilty plea, asserting that it was involuntary because it was at least partially induced by a plea offer made to his identical twin brother and codefendant, Duane T. Samuels. The trial court denied defendant's motion without holding an evidentiary hearing on the matter of involuntariness and sentenced him to 13 to 30 years' imprisonment for the AWIM conviction and five years' consecutive imprisonment for the felony-firearm conviction, as contemplated by the plea offer. Defendant appeals as on leave granted from our Supreme Court.[1] We affirm.

[1] This Court denied defendant's application for leave to appeal for lack of merit in the grounds presented. *People v Samuels*, unpublished order of the Court of Appeals, entered July 9, 2020 (Docket No. 353302). Our Supreme Court, in lieu of granting leave to appeal, remanded the case to this Court for consideration as on leave granted, stating as follows: "Among the issues to be considered, the Court of Appeals shall address: (1) whether a trial court is required to hold an evidentiary hearing on the voluntariness of a guilty plea that is induced in part by an offer of leniency to a relative, see *People v James*, 393 Mich 807 (1975); and if so, (2) how a trial court is to determine whether an offer of leniency to a relative 'rendered the defendant's plea involuntary in fact.' *Id*." *People v Samuels*, 507 Mich 928 (2021).

I. BACKGROUND

This case arises out of the conduct of defendant and Duane on June 19, 2019, at a Coney Island restaurant in Detroit, Michigan. Following a fight at the restaurant with another patron, defendant was charged, as a fourth-offense habitual offender, MCL 769.12, with seven felony counts: one count of AWIM; one count of assault with intent to do great bodily harm less than murder, MCL 750.84; one count of being a felon in possession of a firearm, MCL 750.224f; one count of carrying a concealed weapon, MCL 750.227; and three counts of felony-firearm, one as a second offense. Duane was charged with the same offenses as defendant, except all of Duane's felony-firearm charges were as first offenses. The prosecution offered the brothers a joint plea agreement under which each of them would plead guilty to AWIM and one count of felony-firearm, conditioned upon both brothers agreeing to plead guilty.

At the plea hearing on November 4, 2019, defendant indicated that he believed that the conditional nature of the joint plea offer was "not right" and that he wished to proceed to trial. However, once Duane's counsel indicated that Duane wished to plead guilty to the terms of the prosecution's proffered plea offer, defendant stated that he wished to also plead guilty. Defendant and Duane then proceeded to each plead guilty to AWIM and felony-firearm in exchange for the prosecution dropping all other charges and the fourth-offense habitual offender enhancements against them, in accordance with the joint plea offer. Thus, defendant agreed to serve 13 to 30 years' imprisonment for the AWIM conviction plus five years' consecutive imprisonment for his felony-firearm conviction, and Duane agreed to serve 11 to 30 years' imprisonment for the AWIM conviction plus two years' consecutive imprisonment for his felony-firearm conviction. Defendant, Duane, and their respective attorneys did not raise any issue with the voluntariness of the pleas during the plea colloquy, and the trial court accepted the pleas as being entered freely, knowingly, and voluntarily.

At sentencing, defendant and Duane moved to withdraw their guilty pleas and proceed to trial. Defendant indicated that he wished to withdraw his plea because he was "dissatisfied" with the agreed-upon sentence, that he believed the pleas were not voluntary because of "an atmosphere of coercion," and that he and Duane "were unduly influenced by the potential consequences of these charges." The trial court then asked defendant and Duane if they believed that the conditional format of the joint plea offer caused them to feel that they had no choice but to plead guilty, to which both responded in the affirmative.

The prosecution opposed the motion, arguing that withdrawal of the pleas was improper because neither defendant nor Duane made a claim of innocence, alleged any error in the plea proceeding, or explained why withdrawal of his plea would be in the best interest of justice. The prosecution explained that it made the plea offers conditional because it would have been at a tactical disadvantage to proceed to trial against only one of the brothers.

On the basis of the gravity of the circumstances and nature of the offenses, the trial court concluded that there was no reason to allow defendant or Duane to withdraw his plea. The trial court reiterated that the pleas were entered freely, knowingly, and voluntarily. The trial court added that "the interest of justice" required it to proceed with sentencing. Therefore, the trial court denied defendant's motion to withdraw his plea and sentenced him according to the joint plea offer. Defendant now appeals, arguing that (1) he "was induced to plead guilty by a specific form

of coercion -- not pleading would have jeopardized his brother's right to do so," and (2) this Court should remand to the trial court for an evidentiary hearing "to determine whether the conditional joint plea required by Mr. Samuels was involuntary in fact because it forced him to do something he didn't want to do but did it anyway because he believed it was in his brother's best interest."

II. DISCUSSION

A. STANDARD OF REVIEW

"A trial court's decision on a motion to withdraw a plea is reviewed for an abuse of discretion." *People v Cole*, 491 Mich 325, 329; 817 NW2d 497 (2012). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *People v Anderson*, 501 Mich 175, 189; 912 NW2d 503 (2018). A trial court also "necessarily abuses its discretion when it makes an error of law." *People v Waterstone*, 296 Mich App 121, 132; 818 NW2d 432 (2012). Questions of law, such as constitutional issues and the proper application of a court rule, are reviewed de novo. *Cole*, 491 Mich at 330.

B. NECESSITY OF AN EVIDENTIARY HEARING

The first issue that our Supreme Court directed us to address is "whether a trial court is required to hold an evidentiary hearing on the voluntariness of a guilty plea that is induced in part by an offer of leniency to a relative, see *People v James*, 393 Mich 807 (1975)." *Samuels*, 507 Mich at 928.

A guilty plea is valid only if it is understanding, voluntary, and accurate. *Cole*, 491 Mich at 330-331; MCR 6.302(A). "Where, as here, a defendant moves to withdraw the plea before sentencing, the burden is on the defendant to establish a fair and just reason for withdrawal of the plea; the burden then shifts to the prosecutor to establish that substantial prejudice would result from allowing the defendant to withdraw the plea." *People v Jackson*, 203 Mich App 607, 611-612; 513 NW2d 206 (1994); MCR 6.310(B). Such "fair and just" reasons may include a claim of actual innocence, a valid defense to a charge, or an involuntary plea. *People v Fonville*, 291 Mich App 363, 378; 804 NW2d 878 (2011); *People v Wilhite*, 240 Mich App 587, 596-597; 618 NW2d 386 (2000).

When considering a motion to withdraw a plea as involuntary, a trial court generally "must employ the decisional process . . . and make findings in a hearing to support the application of discretion." *People v Plumaj*, 284 Mich App 645, 652; 773 NW2d 763 (2009). A trial court may deny a motion to withdraw a guilty plea without holding an evidentiary hearing if the defendant's offer of proof as to the involuntariness of his plea contradicts his own testimony at the plea hearing. See *People v White*, 307 Mich App 425, 430-431; 862 NW2d 1 (2014) ("We conclude that because defendant's offer of proof, i.e., his own affidavit, is inconsistent with defendant's own testimony during the plea hearing, the trial court did not abuse its discretion when it denied defendant's request for an evidentiary hearing."). On the other hand, a trial court typically must hold an evidentiary hearing when a question of fact is raised by the defendant's substantiated allegations that his or her guilty plea was involuntary because it was improperly induced. See *Jackson*, 203 Mich App at 612. For example, a trial court usually must conduct an evidentiary hearing when a defendant files an affidavit or makes an offer of proof on the record that his or her plea was induced

by counsel's faulty legal advice or by a promise that he or she would receive a lenient sentence. *Id*. Courts generally reject assertions that a promise of leniency to the defendant induced him or her to plead guilty unless the record contains "some [factual] support" for the claim. *Id*. at 612-613. Simply put, whether a trial court must hold an evidentiary hearing on a motion to withdraw an allegedly involuntary guilty plea is generally dependent on the facts of the case.

With regard to the particular allegation of involuntariness at hand, our Supreme Court directed our attention to *James*, 393 Mich 807. In that case, the Court remanded to the trial court for an evidentiary hearing, stating as follows:

> While a promise of leniency for a relative does not in itself amount to coercion so as to make a guilty plea involuntary as a matter of law, we recognize that it may render a plea involuntary as a matter of fact. The trial judge shall determine after an evidentiary hearing whether the promise of leniency to defendant's wife in this case rendered the defendant's plea involuntary in fact. [*Id*. (citations omitted).[2]]

Thus, *James* stands for the proposition that a promise of leniency to a relative "may" render the defendant's guilty plea "involuntary in fact."[3] Consistent with that holding, we conclude that the general rule governing evidentiary hearings as to the voluntariness of a guilty plea also governs whether trial courts must hold an evidentiary hearing to determine the voluntariness of a guilty plea that was induced by a promise of leniency to a relative. In other words, a promise of leniency to a relative is one of countless facts that may render a guilty plea involuntary; we discern no principled reason why that particular fact should be treated differently than any other fact that may render a guilty plea involuntary. Thus, the relevant rule may be stated as follows: Where the record contains some substantiated allegation that raises a question of fact as to the defendant's claim that his or her guilty plea was involuntary because it was entered on the basis of a promise of leniency to a relative, and where the defendant's testimony at the plea hearing does not directly contradict that allegation, the trial court must hold an evidentiary hearing to determine whether the plea was involuntary. See *Jackson*, 203 Mich App at 612-613; *White*, 307 Mich App at 430-431. We therefore answer the first issue posed by our Supreme Court in the affirmative, with the caveat that the alleged promise of leniency to a relative rendering the guilty plea involuntary must somehow be substantiated before the defendant is entitled to an evidentiary hearing, and the caveat that the trial court may summarily deny an evidentiary hearing if the defendant's testimony at the plea hearing contradicts the new allegation.

C. THE EVIDENTIARY HEARING QUESTION

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[2] This order of our Supreme Court is precedentially binding because it contains "a concise statement of the applicable facts and the reason for the decision." *People v Crall*, 444 Mich 463, 464 n 8; 510 NW2d 182 (1993).

[3] In its remand order, our Supreme Court used the term "*offer* of leniency." However, *James* used the term "*promise* of leniency." In this context, there is no meaningful distinction between "offer" and "promise."

The second issue that our Supreme Court directed us to address is "how a trial court is to determine whether an offer of leniency to a relative 'rendered the defendant's plea involuntary in fact.' " *Samuels*, 507 Mich at 928.

1. LEGAL PRINCIPLES

At the evidentiary hearing on a motion to withdraw a guilty plea, the trial court must consider the facts of the particular case to determine whether the defendant's plea was voluntary. See *Plumaj*, 284 Mich App at 652. See also *People v Forrest*, 45 Mich App 466, 469; 206 NW2d 745 (1973) ("[T]he question in each case is whether the inducement for the guilty plea was one which necessarily overcame the defendant's ability to make a voluntary decision."). Generally, to be entitled to withdraw a plea, the defendant must present sufficient proof to "satisfy the trial court by a preponderance of credible evidence that the plea was the product of fraud, duress, or coercion." *People v Patmore*, 264 Mich App 139, 151-152; 693 NW2d 385 (2004) (quotation marks and citation omitted). Although a trial court is generally barred at the evidentiary hearing "from considering testimony or affidavits inconsistent with statements made during the plea hearing," *White*, 307 Mich App at 430, "guilty pleas may be withdrawn on the basis of promises of leniency if the record contains some [other] support for the defendant's claim," *Jackson*, 203 Mich App at 612-613 (quotation marks and citation omitted).

We emphasize that the case before us involves what defendant characterizes as a promise of leniency to a relative through a joint plea offer by the prosecution.[4] Apparently, surmising from our Supreme Court's remand order, Michigan courts have not yet specifically addressed how a trial court should determine whether a promise of leniency to a relative rendered a guilty plea involuntary. Federal courts, however, have addressed this issue in great detail.

The United States District Court for the District of Minnesota has explained that promises of leniency to a relative are not particularly problematic:

> Generally speaking, a guilty plea is not rendered involuntary simply because it is based in part on a prosecutor's promise of leniency toward some friend or relative of the defendant. A plea agreement containing such a condition is proper so long as the government acts in good faith based upon probable cause to file charges against or to prosecute the third party named in the agreement. Only physical harm, threats of harassment, misrepresentation, or promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g., bribes) render a guilty plea legally involuntary. Almost anything lawfully within the power of a prosecutor acting in good faith can be offered in exchange for a guilty plea. [*Anderson v United States*, 2003 WL 21135556 (DMN, 2003) (cleaned up).]

[4] It does not involve, for example, an off-the-record promise of leniency by defense counsel. For the purposes of our discussion, we refer to a "promise of leniency" as contemplating only those promises by the prosecution to a defendant.

Other federal courts are in accord with the proposition that the mere promise of leniency to a third party does not render a plea constitutionally invalid without other aggravating facts. See, e.g., *United States v Messino*, 55 F3d 1241, 1251 (CA 7, 1995) (ruling that the defendant was not allowed to challenge his guilty plea as involuntary despite the prosecution's threat to subpoena the defendant's children); *United States v Marquez*, 909 F2d 738, 741 (CA 2, 1990) ("[A]ll of the other circuits that have considered the issue have concluded that a plea is not invalid if entered (a) under a plea agreement that includes leniency for a third party or (b) in response to a prosecutor's justifiable threat to prosecute a third party if the plea is not entered[.]"). *Marquez* further explained why the promise of leniency to a third party does not render a guilty plea particularly suspect:

> The question in every case resolved by a guilty plea is whether the plea is voluntary. "Voluntary" for purposes of entering a lawful plea to a criminal charge has never meant the absence of benefits influencing the defendant to plead. Since a defendant's plea is not rendered involuntary because he enters it to save himself many years in prison, it is difficult to see why the law should not permit the defendant to negotiate a plea that confers a similar benefit on others. Some courts have expressed the view that the prospect of a benefit to a third party poses a greater risk of undue pressure upon a defendant than the chance to secure a reduced sentence for himself, though this view has been doubted. [*Id*. (citations omitted).]

More recently, in *United States v Seng Chen Yong*, 926 F3d 582, 591-592 (CA 9, 2019), the United States Court of Appeals for the Ninth Circuit summarized the relevant caselaw and articulated the following principles for determining whether a guilty plea induced by a promise of leniency to a third party is involuntary:

> This circuit has yet to provide a standard for determining whether a guilty plea conditioned on leniency for a third party is voluntary. Every federal court of appeal to consider the issue, however, has held that plea agreements that condition leniency for third parties on the defendant's guilty plea are permissible so long as the Government acted in "good faith," meaning that it had probable cause to prosecute the third party. See *United States v McElhaney*, 469 F3d 382, 385 (5th Cir 2006); *United States v Vest*, 125 F3d 676, 680 (8th Cir 1997); *United States v. Wright*, 43 F3d 491, 499 (10th Cir 1994); *United States v Pollard*, 959 F2d 1011, 1021–22 (DC Cir 1992); *United States v Marquez*, 909 F2d 738, 742 (2d Cir 1990); *Martin v Kemp*, 760 F2d 1244, 1248 (11th Cir 1985); *Harman v Mohn*, 683 F2d 834, 837 (4th Cir 1982); *United States v Nuckols*, 606 F2d 566, 569–70 (5th Cir 1979); see also *Politte v United States*, 852 F2d 924, 929 (7th Cir 1988) ("We hold that a good faith prosecution of a third party, coupled with a plea agreement which provides for a recommendation of a lenient sentence for that third party, cannot form the basis of a claim of coercion by a defendant seeking to show that a plea was involuntarily made."). As the Fifth Circuit explained in *Nuckols*:
>
> > Recognizing, however, that threats to prosecute third persons can carry leverage wholly unrelated to the validity of the underlying charge, we think that prosecutors who choose to use that technique must observe a high standard of good faith. Indeed, absent probable cause to believe that the third person has committed a crime,

> offering "concessions" as to him or her constitutes a species of fraud. At a minimum, we think that prosecutors may not induce guilty pleas by means of threats which, if carried out, would warrant ethical censure.

606 F2d at 569.

> We agree with these courts and hold that the Government must have probable cause to prosecute a third party when it conditions leniency for that party in exchange for a defendant's guilty plea. We note that these courts have used wording that focuses on whether probable cause was present at the time the threat was made or lenity offered. See, e.g., *Marquez*, 909 F2d at 742 ("Where the plea is entered after the prosecutor threatens prosecution of a third party, courts have afforded the defendant an opportunity to show that probable cause for the prosecution was lacking when the threat was made."); *Wright*, 43 F3d at 499. A prosecutor's improper coercion actually takes effect, though, when a defendant pleads guilty as a result of the threat or offer of lenity. Therefore, a defendant may successfully challenge the voluntariness of his plea by showing that probable cause to prosecute the third party did not exist at the time the defendant pleaded guilty, even if the Government had probable cause to prosecute at an earlier time.

Although we are not bound by these federal decisions, see *Sharp v City of Lansing*, 464 Mich 792, 809; 629 NW2d 873 (2001), we find them persuasive in this case, particularly given that the question of "voluntariness" in the guilty-plea context is one of Due Process. See *Bordenkircher v Hayes*, 434 US 357, 363; 98 S Ct 663; 54 L Ed 2d 604 (1978).

Therefore, to answer the second issue posed to us by our Supreme Court, we conclude that a trial court determines the voluntariness of a guilty plea induced by a promise of leniency to a relative, or any other third party, by assessing whether the prosecution had probable cause to prosecute the third party at the time the defendant pleaded guilty. "[A] defendant may successfully challenge the voluntariness of his plea by showing that probable cause to prosecute the third party did not exist at the time the defendant pleaded guilty . . . ." *Seng Chen Yong*, 926 F3d at 592. On the other hand, if probable cause to prosecute the third party did exist at the time the defendant pleaded guilty, then the defendant cannot show that his or her guilty plea was involuntary because it was induced by the promise of leniency to a third party. See *Politte*, 852 F2d at 929 ("[A] good faith prosecution of a third party, coupled with a plea agreement which provides for a recommendation of a lenient sentence for that third party, cannot form the basis of a claim of coercion by a defendant seeking to show that a plea was involuntarily made.").

We acknowledge that some state courts have identified the risks inherent in package familial plea agreements. See, e.g., *State v Danh*, 516 NW2d 539, 542 (MN, 1994) (" 'Package deal' agreements are generally dangerous because of the risk of coercion; this is particularly so in cases involving related third parties, where there is a risk that a defendant, who would otherwise exercise his or her right to a jury trial, will plead guilty out of a sense of family loyalty."). However, this seems to be overcome by the federal courts' analytical framework which requires an inquiry into whether the prosecution had probable cause to prosecute the third-party relative of the defendant. Moreover, creating a bright-line prohibition, or presumption, against such

agreements potentially is counter-productive and harmful to those defendants who find themselves in possible jeopardy with a family member.[5] It also would impinge on the right of a defendant to choose whether a plea agreement would be in his or her best interests. "Only a defendant can weigh the benefits of assenting to a plea agreement or the potential downsides of rejecting one." *People v Smith*, 321 Mich App 80, 104; 922 NW2d 615 (2017) (RIORDAN, J., *dissenting*), rev'd in part on other grounds 502 Mich 624 (2018). As illustrated by this case itself, had defendant not accepted the plea offer, the case would have proceeded to trial with overwhelming video evidence against him, and he would have been confronted with far more mandatory time in prison following a finding of guilt by the jury. We discern no principled reason why someone in defendant's position should not be able to benefit from a highly favorable plea offer which incidentally may also benefit a family member.

2. APPLICATION

Applying these principles to the instant case, defendant is entitled to an evidentiary hearing on the question of involuntariness if the record contains some substantiated allegation that raises a question of fact as to whether the prosecution had probable cause to prosecute Duane at the time defendant pleaded guilty. Having reviewed the record, there is no factual dispute whatsoever that the prosecution did have such probable cause.[6] The video of the incident clearly shows both Duane and defendant seriously assaulting the defenseless victim with deadly weapons until he lay nearly dying on the floor. This evidence, by itself, is more than sufficient to establish probable cause to charge Duane with a variety of felony offenses, including the charges that the prosecution actually filed against him.[7] Further, there is nothing in the record to suggest that the prosecution did not otherwise act in good faith.

Accordingly, we conclude that defendant is not entitled to an evidentiary hearing on the question of involuntariness, and the trial court did not abuse its discretion by denying his motion to withdraw his plea.

III. CONCLUSION

[5] Further, such a bright-line prohibition or presumption begs the threshold question of how "family member" is to be defined. Is a "family member" an individual who is at least a third-degree relative, such as a first cousin, or does it include ninth-degree relatives such as a second cousin three-times removed as well? Or, will the co-defendants define "family" according to whatever fits their circumstances?

[6] At oral argument, defendant's appellate counsel conceded, in good faith, that there was probable cause to prosecute both brothers.

[7] There was other evidence as well, such as the victim's testimony, that additionally supported probable cause.

The trial court did not abuse its discretion by denying defendant's motion to withdraw his plea without an evidentiary hearing. Therefore, we affirm.

/s/ Michael J. Riordan
/s/ David H. Sawyer
/s/ James Robert Redford