STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 20, 2008
v	No. 279508 Wayne Circuit Court
JONATHAN MILLER, Defendant-Appellant.	LC No. 06-000746-01

Before: O'Connell, P.J., and Smolenski and Gleicher, JJ.

GLEICHER, J. (*dissenting*).

I respectfully dissent. In my view, the circuit court coerced defendant's guilty plea by sua sponte raising the amount of his bail. Under these circumstances, the circuit court should have permitted defendant to withdraw his plea pursuant to MCR 6.310(B).

The police arrested defendant on December 18, 2005. At defendant's arraignment on December 20, 2005, a magistrate set his bond at $10,000, with a 10% cash requirement. Defendant posted bail the next day and was released from jail. On January 12, 2006, defendant attended his preliminary examination. The district court bound him over for trial and continued his bond.

On March 21, 2006, defendant and his counsel attended a pretrial conference in the circuit court. Because the entire colloquy before defendant's plea is vital to my analysis, I recite it here:

> *Defense Counsel*: Good morning. … We have defendant, Your Honor.
>
> We have a trial date already of April 3rd, and we are just going to proceed to that. If something changes before that, we will definitely come in before that, but we are going.
>
> *The Court*: What is the offer in this case? Can I see the file and the information?
>
> *The Prosecutor*: Your Honor, the defendant is charged with four counts, one count of felon in possession, one count of felony firearm, one count of

felonious assault, one count of assault or resisting obstructing police officer, and he has a habitual offense third notice.

The People are offering felony firearm second, which is a five year mandatory sentence.

This is the defendant's second felony firearm charge, and we are offering to dismiss counts 1, 3 and 4 in exchange for a plea to the felony firearm.

The Court: Let me see the information—I mean the file.

What is bond in the case?

The Clerk: Ten thousand, ten percent. Ten thousand, cash, surety or ten percent.

The Court: All right.

Is there anything either counsel wants to say as to the bond in this case? This appears to be assault on a police officer.

Defense Counsel: Your Honor, we addressed this issue the first time we came before this court, and nothing has changed since then.[1]

The Court: Can I see the file?

Defense Counsel: You told him to—

The Court: He has some instruction to do what?

Defense Counsel: You told him to call [Sergeant] Quain every week. He has been doing that. No problem.

The Court: Do you know what Quain said?

The Prosecutor: My first contact with the file was in March, and the bond and all that had been set.

The first contact I had was the pre-trial, and I wasn't aware of his conduct with Sergeant Quain.

Defense Counsel: First day we were in here, bond issue was brought up, we addressed it. Judge, you said to call the sergeant weekly. He has been doing that. There hasn't been any problems.

[1] The parties did not supply this Court with a transcript of this appearance, which apparently occurred on January 19, 2006.

The Court: All right.

At that time I don't think that the issue of the charge being assault on a police officer—I don't recall anything about that.

This is a second offense of a charge of felony firearm; specifically a charge of a dangerous weapon against a police officer.

The trial date is coming up very quickly. Defendant's attendance at the trial date now becomes very important. *As there does not appear to be a resolution of the case, the court is going to increase the bond to fifty thousand cash, surety or ten percent.* Short time; trial date is April 3rd.

Defense Counsel: Your Honor, can we approach before you do that?

The Court: Yes. Not before I do that, I just did it.

(Discussion at sidebar)

* * *

Defense Counsel: . . . Is it possible we could have a sentencing date in the end of May?

The Court: At the end of May?

Defense Counsel: Yes.

The Court: All right. What date did you want?

Defense Counsel: Last day of May. I don't know what that is.

The Clerk: May 31st?

Defense Counsel: Yes.

The Court: We don't usually like to wait that long, but he has to—

Defense Counsel: Get his affairs in order.

The Court: If we could take the defendant under oath, please. [Emphasis supplied.]

Defendant then pleaded guilty in accordance with the offered plea agreement. At the end of the plea, the circuit court stated,

The court will accept your plea of guilty to felony firearm, second offense, set a sentencing date of May 31st.

The defendant has been on a ten thousand cash, surety or ten percent bond.

> The court is going to add to that a condition that you, in addition to contacting the officer as you have been contacting the officer in charge, that you be on a tether were you can be located. That is to be done immediately, by the end of the day.

On July 24, 2006, defendant and his counsel appeared for sentencing. The circuit court denied defendant's request to withdraw his plea, explaining, "There is nothing to indicate, on the record, that it wasn't a knowing and voluntary plea."

A conviction on a coerced plea of guilty "is no more consistent with due process than a conviction supported by a coerced confession." *Waley v Johnston*, 316 US 101, 104; 62 S Ct 964; 86 L Ed 1302 (1942). The majority acknowledges that under circumstances strikingly similar to those of the instant case, this Court held that a defendant should have been allowed to withdraw his guilty plea "because it was coerced by the trial court's action in *sua sponte* raising the amount of his bail and remanding him to jail after he at first refused to plead guilty." *People v Weatherford*, 132 Mich App 165, 169; 346 NW2d 920 (1984). According to the majority, *Weatherford* differs from this case because here, "although the trial court brought up the issue of bond on its own, at no point did the trial court make statements that support an inference that it raised defendant's bond in an attempt to coerce him to plead guilty." *Ante* at 5. In my view, the entirety of the March 21, 2006 colloquy supports only one reasonable inference: that the circuit court sua sponte increased defendant's bond either to coerce his guilty plea or to punish him for electing to proceed to trial.

My conclusion is buttressed by the circuit court's announcement, "As there does not appear to be a resolution of the case, the court is going to increase the bond to fifty thousand cash, surety or ten percent." When defendant agreed to resolve the case with his guilty plea, the circuit court rewarded him by continuing his prior bond, albeit with the additional requirement that defendant wear a tether. Had defendant's future appearance at trial been a true concern motivating the circuit court's quintupling of defendant's bond, the court easily could have achieved this objective simply by ordering that he wear a tether. In fact, the risk of defendant absconding likely increased *after* his guilty plea, and before his sentencing date. The circuit court's words and actions unambiguously bespeak the court's desired disposition of this case, and clearly induced defendant's plea. Given this record of evident coercion, I would reverse.

/s/ Elizabeth L. Gleicher