STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 22, 2025 8:52 AM
v	No. 367023 Kent Circuit Court
CHAD ROBERT BRUINING, Defendant-Appellant.	LC No. 21-005525-FC

Before: M. J. KELLY, P.J., and REDFORD and FEENEY, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for (1) first-degree murder, MCL 750.316(1)(a); and (2) second-degree arson, MCL 750.73(1). The trial court sentenced defendant, as a fourth-offense habitual offender, MCL 769.12, to serve concurrent sentences of (1) life without the possibility of parole and (2) 15 to 30 years in prison respectively. We affirm.

I. FACTS

At a status conference held about one year before trial, the prosecutor offered defendant a 25-year minimum sentence and dismissal of the supplemental information charging defendant as a fourth-offense habitual offender in exchange for defendant's plea to second-degree murder and second-degree arson. Defendant rejected the plea agreement. At the final status conference about a month before trial, the prosecutor extended the same offer. The conference ended without entering a plea, and the parties proceeded to trial.

The prosecutor extended the plea offer a third time on the first day of defendant's trial, adding that the trial court would be willing to enter a *Cobbs*[1] agreement in which the trial court would set defendant's maximum sentence at 30 years. After approximately thirty minutes of discussion between the trial court, defendant, and defense counsel, the prosecutor gave defendant five minutes to decide and enter a plea or the offer would be withdrawn. Defendant and his

[1] *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993).

attorneys conferred, and defense counsel reported that "it looks like we're going to have to have a trial," to which defendant stated, "I didn't say that." In response, defense counsel requested that the trial court provide one additional opportunity for defendant to decide. The trial court stated, "[Y]ou have one minute before the offer's not there anyway and the decision would be made for you." After exchanges between the trial court, defense counsel, the prosecutor, and defendant, the defendant said, "I guess I'm taking the plea deal." The trial court attempted to swear in defendant by instructing defendant to stand and raise his right hand. After the trial court, both defense attorneys, and a deputy repeatedly instructed the handcuffed defendant to raise his hand as best he could, defendant protested, "I just don't feel comfortable," and "I don't even know what's going on today." The time set by the prosecution expired without defendant complying with the trial court's instruction. Recognizing that the offer had expired, the trial court stated: "Time's up anyway. Time's up. I know it's not an easy decision." The parties proceeded to trial. Defendant was convicted and sentenced, as stated earlier. Defendant now appeals.

II. PLEA COLLOQUY

Defendant first argues that the trial court erred by failing to engage in a plea colloquy and accept defendant's guilty plea when defendant stated his express desire to plead guilty multiple times. We disagree.

A. PRESERVATION AND STANDARD OF REVIEW

Defendant preserved this issue by raising it in his trial-court motion to vacate his convictions and reinstate the plea offer. See *People v Heft*, 299 Mich App 69, 78; 829 NW2d 266 (2012). We review for an abuse of discretion a trial judge's decision to accept or reject a plea. *People v Plumaj*, 284 Mich App 645, 648; 773 NW2d 763 (2009). "A trial court abuses its discretion when it selects an outcome that does not fall within the range of reasonable and principled outcomes." *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007). We review de novo a trial court's interpretation and application of court rules. *People v Lee*, 489 Mich 289, 295; 803 NW2d 165 (2011).

B. ANALYSIS

The prosecutor holds the "constitutional authority to determine the charge or charges a defendant will face," and a trial court may not usurp this authority by accepting a plea over the prosecutor's objections. *People v Smith*, 502 Mich 624, 646; 918 NW2d 718 (2018) (quotation marks and citation omitted). See also *People ex rel. Leonard v Papp*, 386 Mich 672, 684; 194 NW2d 693 (1972) ("For the judiciary to claim power to control the institution and conduct of prosecutions would be an intrusion on the power of the executive branch of government and a violation of the constitutional separation of powers"). A defendant "has the ultimate authority to determine whether to plead guilty . . . ." *Florida v Nixon*, 543 US 175, 187; 125 S Ct 551; 160 L Ed 2d 565 (2004) (quotation marks and citations omitted). There is, however, "no absolute right to have a guilty plea *accepted*," and "[a] court may reject a plea in exercise of sound judicial discretion." *Santobello v New York*, 404 US 257, 262; 92 S Ct 495; 30 L Ed 2d 427 (1971) (emphasis added). A trial court may not accept a plea to a lesser charge "without the consent of the prosecutor." MCR 6.301(D). Absent prejudice to a defendant, a prosecutor may revoke a plea offer until the time it is accepted by the trial court. *People v Heiler*, 79 Mich App 714, 722; 262

NW2d 890 (1977). Prejudice may arise when a defendant acted in reliance on the plea agreement in a way that prejudiced his defense, such as by making inculpatory statements to police in reliance on the terms of the agreement. *Id*. at 721.

In this case, on the morning of trial, the prosecutor offered defendant the same plea that had been available for almost one year—for the third time—and gave defendant a five-minute deadline to accept the offer and enter a plea. The prosecutor made it clear that if defendant did not accept the plea offer in the allotted time, it would be withdrawn.[2] In addition, the prosecutor confirmed that the trial court would be willing to enter a *Cobbs* agreement, in which the court would set the maximum sentence at 30 years. Defendant did not accept the plea before the time limit expired; therefore, the prosecutor's final offer lapsed. There is no evidence that defendant acted in reliance on the plea offer in a way that would prejudice his defense, and defendant has not claimed so. See *id*.

Defendant further argues that the trial court abused its discretion by refusing to engage in a plea colloquy as MCR 6.302 requires. The record shows, however, that the trial court attempted to initiate the plea colloquy by instructing defendant to stand and raise his right hand, but defendant remained uncertain, and the prosecutor's time limit expired before defendant complied.[3] Because the prosecutor's offer expired, the trial court could not usurp the prosecutor's constitutional authority by reinstating the offer without the prosecutor's consent. See MCR 6.301(D); *Smith*, 502 Mich at 646; *Heiler*, 79 Mich App at 722. Without the option to accept the offer, it was not an abuse of discretion for the trial court to call an end to the discussions that were only resulting in defendant's ongoing vacillation and, accordingly, to forgo the plea colloquy. See MCR 6.302(A).[4]

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[2] The dissent posits that the acceptance of the plea and completion of the plea colloquy had to be completed—but likely could not be finished—within the five minutes that the prosecutor allotted, but there is nothing in the record to support the proposition that the entire plea colloquy needed to be completed within the allotted five minutes. The trial court's determination that defendant did not enter a valid, timely plea was supported by the record, and defendant's refusal to raise his hand or otherwise participate in the plea-taking process was further evidence that he was equivocal regarding acceptance of the plea.

[3] Again, the trial court, the bailiff, and both defense counsels repeatedly asked defendant to raise his right hand, all to no avail.

[4] The dissent focuses on the virtual impossibility of completing the plea taking within the five minutes set by the prosecutor, but had defendant raised his hand and been sworn in, it appears that the plea would have gone forward even after the five-minute deadline ended. Nonetheless, defendant's equivocal statements such as "I'm scared," "I don't understand why I've been charged," "I guess I'm taking the plea deal," "I just don't feel comfortable," "For something I didn't do, I'm just like are you kidding me," "I don't even know what's going on today," "I don't want to spend the rest of my life for something I didn't do" and the like on the morning of trial evidenced defendant's lack of desire to knowingly and voluntarily accept the plea offer. These

III. INEFFECTIVE ASSISTANCE

Defendant further argues that he was deprived the effective assistance of counsel when defense counsel stated that defendant would proceed to trial despite defendant's express desire to enter a guilty plea. We disagree.

A. PRESERVATION AND STANDARD OF REVIEW

Defendant preserved this issue by raising it in his trial-court motion to vacate his convictions and reinstate the plea offer as well as in his appellate motion to remand for an evidentiary hearing. See *People v Abcumby-Blair*, 335 Mich App 210, 227; 966 NW2d 437 (2020); *People v Sabin (On Second Remand)*, 242 Mich App 656, 658; 620 NW2d 19 (2000). "The question whether defense counsel performed ineffectively is a mixed question of law and fact; this Court reviews for clear error the trial court's findings of fact and reviews de novo questions of constitutional law." *People v Trakhtenberg*, 493 Mich 38, 47; 826 NW2d 136 (2012). When, as here, a defendant's motion to remand for an evidentiary hearing is denied, "our review is for errors apparent on the record." *Abcumby-Blair*, 335 Mich App at 227.

B. ANALYSIS

In *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984), the United States Supreme Court established a two-prong test that a defendant must meet to prove that his or her counsel's assistance was so defective as to require a new trial. The test is as follows:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. [*Id*.]

"Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise." *People v Solmonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004).

The right to effective assistance of counsel applies equally in the plea-bargaining process as at trial. *People v Douglas*, 496 Mich 557, 591-592; 852 NW2d 587 (2014), citing *Lafler v*

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statements by the defendant are completely inconsistent with the requirements of MCR 6.302 (A) which provides:

"Plea Requirements. The court may not accept a plea of guilty or nolo contendere unless it is convinced that the plea is understanding, voluntary, and accurate. Before accepting a plea of guilty or nolo contendere, the court must place the defendant or defendants under oath and personally carry out subrules (B) – (E)."

The defendant's continual equivocation and assertion of actual innocence were inconsistent with the trial court being able to accept a plea.

Cooper, 566 US 156, 162; 132 S Ct 1376; 182 L Ed 2d 398 (2012). To satisfy the *Strickland* prejudice requirement at the plea-bargaining stage, "the 'defendant must show the outcome of the plea process would have been different with competent advice.' " *Douglas*, 496 Mich at 592, quoting *Lafler*, 566 US at 163. More specifically, in cases where the alleged prejudice resulting from counsel's ineffectiveness is that the defendant rejected a plea offer and went to trial,

> a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (*i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. [*Lafler*, 566 US at 164; see *Douglas*, 496 Mich at 592.]

In contrast to cases where a defendant accepts or rejects a plea having received potentially ineffective assistance, there are cases where counsel overrides a defendant's plea decision. See *McCoy v Louisiana*, 584 US 414, 420-422; 138 S Ct 1500; 200 L Ed 2d 821 (2018). Although counsel is responsible for trial management, decisions such as whether to plead guilty or assert innocence are reserved for the defendant because "they are choices about what the [defendant's] objectives in fact *are*." *Id*. at 422. When a defendant "expressly asserts" the objective of his defense, counsel may not override the defendant's decision. *Id*. at 423. When counsel has overridden a decision within the sole control of a defendant, the *Strickland* standard for ineffective assistance of counsel requiring that a defendant show prejudice does not apply. *Id*. at 426-427. Such errors instead warrant relief without the need for a defendant to show prejudice. See *id*. at 426-428.

On appeal, defendant argues that the *McCoy* approach applies to this case because defense counsel nformed the trial court that defendant would proceed to trial over defendant's express desire to plead. We disagree and conclude that this case resembles *Douglas* more so than *McCoy*. See *McCoy* 584 US at 422-428; *Douglas*, 496 Mich at 592. Although defendant had plenty of chances to accept the plea, his prolonged indecision is what led him to stand trial, not any actions of defense counsel.

In this case, defendant failed to accept a plea offer before the prosecutor's offer deadline and as a result stood trial. Defendant alleges that counsel rendered ineffective assistance by stating that defendant would proceed to trial. Assuming without deciding that defense counsel's statements "fell below an objective standard of reasonableness," defendant cannot show that "but for" counsel's statement, "there is a reasonable probability" that: (1) "defendant would have accepted the plea," (2) "the prosecution would not have withdrawn [the plea] in light of intervening circumstances," and (3) "the court would have accepted [the plea's] terms . . . ." *Douglas*, 496 Mich at 592 (quotation marks and citation omitted).

First, defendant cannot show that absent defense counsel's statements, there is a reasonable probability that defendant would have accepted the offer in time or at all. See *id*. Defendant continued to disagree with the charges, to say that he did not understand the situation that he was in, and to assert his innocence. Defendant also cannot show that there is a reasonable probability that absent defense counsel's statements, the prosecution would not have withdrawn the offer and

that the trial court would have accepted the offer. See *id*. The prosecutor did in fact withdrew the offer—not due to defense counsel's statements, but because the time limit had expired—and the trial court could not accept a plea agreement without the prosecution's consent. See MCR 6.301(D); *Smith*, 502 Mich at 646; *Heiler*, 79 Mich App at 722.

As stated, "Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise." *Solmonson*, 261 Mich App at 663. Defendant has failed to meet his "heavy burden," *id*., because defendant cannot show that "the outcome of the plea process would have been different with competent advice," *Douglas*, 496 Mich at 592 (quotation marks and citation omitted). For the foregoing reasons, defendant has failed to demonstrate that he was deprived of effective assistance of counsel.

Affirmed.

/s/ James Robert Redford
/s/ Kathleen A. Feeney

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M. J. KELLY, P.J. (*dissenting*).

I respectfully dissent.

On the day of his trial, Chad Bruining was offered a plea deal by the prosecution. The record reflects that Bruining had many questions regarding the details of the plea bargain and its potential impact upon his future. The court, the prosecutor, and Bruining's lawyers answered his questions and attempted to clarify aspects of the plea that repeatedly confused Bruining. Interspersed in the discussion of the plea offer, Bruining was repeatedly questioned regarding whether he desired to change from his jail-issued clothing into civilian clothing. Bruining, who was still cogitating on whether he should or should not accept the plea offer, did not satisfactorily answer the questions relating to his choice of attire.

The overlapping discussions lasted approximately 30 minutes, after which, the prosecutor stated:

> Your Honor, I'm going to withdraw the plea in approximately five minutes. We've been on the record here for 30 minutes, getting nothing accomplished. Mr. Bruining will have the next five minutes to make a decision, and if he hasn't entered a plea by then, the People are withdrawing their agreement to 25 years, and we'll just try the case.

Thereafter, Bruining conferred with his lawyers. One of his lawyers then stated that it "looks like we're going to have to have a trial." Bruining responded, "I didn't say that." His other lawyer then requested that the trial court ask Bruining "one more time" if he wanted to accept the plea

offer. Bruining stated that he understood that he needed to make a decision. The court agreed, noting that Bruining had "one minute before the offer's not there anyway and the decision would be made for you."

Bruining then stated multiple times that he "guessed" that his decision was "to take the plea agreement." His lawyer then instructed him to "[s]top talking" and that they were "going to try it." Bruining protested. He stated, unequivocally, "My decision was to take the plea deal." When the court asked him to repeat it, he stated that he guessed that he was "taking the plea deal." The court took his statements as an acceptance of the plea offer made by the prosecution by asking him to stand and raise his right hand. Notably, the prosecutor did not state at that time—or at any future time—that the plea had expired. Nor is there any indication on the record, after Bruining stated that he would accept the plea agreement, that the prosecutor otherwise exercised his right to withdraw the plea.

The record plainly reflects that Bruining was asked by the court and both of his lawyers to raise his right hand. He was not told that he needed to be sworn in so that the court could engage in a plea colloquy. When he expressed confusion as to what was "going on," the deputy—not the court, his lawyers, or the prosecutor—advised that he needed to be sworn in. He was again asked to raise his right hand.[1] He started to say something but was interrupted by his lawyer stating that "we're going to have a trial." The court then stated that time was "up anyway." Bruining was then taken to change out of his jail garb despite the fact that he had never made a decision on that matter.

The majority reads the above exchange far differently than I. They stress the times that Bruining indicated that he "guessed" he would accept the plea, and brush aside his unequivocal statement that his decision was to take the plea agreement. They state that the agreement expired before the plea was accepted by the court and so the prosecutor implicitly withdrew it. In support, they cite *People v Heiler*, 79 Mich App 714, 722; 262 NW2d 890 (1977), for the proposition that, so long as the defendant is not prejudiced, a prosecutor may revoke a plea offer until the time that the trial court accepts the plea. I do not find *Heiler* dispositive, however.

In *Heiler*, the prosecutor withdrew a plea offer the day before the plea was to be entered. *Id*. at 716. In contrast, in this case, the prosecutor set a five-minute time limit for the offer. When—by the trial court's calculation—approximately one minute remained on the offer, Bruining stated that his decision was to accept the plea agreement. As noted above, the court asked him to repeat himself, he stated that he guessed he was taking the plea. At that time, the trial court started the procedure for accepting the plea agreement. That is, consistent with MCR 6.302(A), the court took steps to place Bruining under oath, which is a mandatory first step in accepting a

[1] Both the trial court and the majority rely heavily on Bruining's failure to raise his right hand and be sworn after the court accepted his statement that "My decision was to take the plea deal." Indeed, it was when and because his manacled hand was not sufficiently raised that the process collapsed. But Michigan law is clear: "Witnesses need not raise their right hands when taking an oath to testify truthfully, and such oaths need not be prefaced with any particular formal words." *People v Putnam*, 309 Mich App 240, 244; 870 NW2d 593 (2015).

plea by a criminal defendant. Notably, the trial court did not find Bruining's use of the word "guess" as an equivocation and instead found his proclamation that he would take the plea to be a genuine acceptance of the prosecutor's offer *within the time limit* set for Bruining to accept the offer. Thus, on this record, I would hold that Bruining accepted the plea agreement within the five minute timeframe given by the prosecutor and the trial court signaled its willingness to accept that plea when it began the required colloquy under MCR 6.302. At that time, the five-minute timeframe was no longer applicable. Thus, withdrawal of the plea by expiration of the timeframe was no longer an option.

Stated differently, I view Bruining's acceptance of the plea offer within the five minutes as "stopping the clock" on the five-minute timeframe, but the majority seems to contend that the clock kept running after the court started the plea colloquy under MCR 6.302. The process for accepting a plea under MCR 6.302 is necessarily time consuming. In order for the plea to be successfully entered, the court had to (1) place Bruining under oath; (2) ascertain that his plea was understanding by advising him of numerous details regarding the offense that he was pleading to (including the maximum possible prison sentence and any electronic monitoring) and advising him of the many rights that he would be giving up by entering a plea; (3) determine that the plea was voluntary by making inquiries of the prosecutor and Bruining's lawyers and by detailing information related to the sentencing guidelines; (4) conclude that the plea was accurate by explaining the reasons why a no contest plea was appropriate and by finding a factual basis for the plea that would not involve questioning Bruining; and (5) making additional inquiries as required by the court rule. Under the majority's logic, the time limit imposed by the prosecutor continued running past the time that Bruining accepted the plea offer and the court signaled its willingness to accept that plea by starting the plea colloquy. The majority does not explain why the clock necessarily kept running after the court determined that Bruining accepted the offer and began to take the plea. Nor does the majority explain at which point in the plea colloquy the clock would stop running. As stated above, it is my position that the clock stopped running when Bruining accepted the plea and the court acknowledged his acceptance and proceeded to try and take his plea. A withdrawal based upon the expiration of the time limit was, therefore, no longer possible.

Because there is nothing on the record suggesting that the prosecutor intended to make an offer that would be impossible for both Bruining and the court to accept within the proffered timeframe, I would read the prosecutor's offer in a common-sense manner: the prosecutor gave Bruining five minutes to accept or reject the offer and the offer was not contingent upon the court accepting Bruining's plea within that same period. Given that Bruining accepted within that timeframe, I would hold that the trial court erred by rejecting his plea based upon its finding—after it began the plea proceedings under MCR 6.302—that the offer had expired. That is, after signaling that it was proper to take the plea by attempting to place Bruining under oath, the court halted the proceedings, not because it found that the plea was not knowing, understanding, and accurate, but based upon its erroneous position that the offer was not accepted.

In sum, I dissent because Bruining had accepted the plea offer before the time to accept the offer had expired.[2] At no time did Bruining ever say that he did not want to accept the plea, nor did the prosecutor state that the offer was withdrawn or expired. Thus, I would hold that the trial court erred by rejecting Bruining's plea on the basis that there was no longer an offer instead of continuing its obligation to determine whether the plea Bruining had stated he was willing to accept was going to be voluntary, understanding, and accurate.[3]

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[2] I do not find it necessary in resolving this case to address the ineffective-assistance claim. However, it is curious that the defense team was so quick to say that "Judge, it looks like we are going to have a trial"—a statement that Bruining immediately rejected by stating, "I didn't say that"—but then less than 15 minutes later, when Bruining was out of the courtroom and supposedly changing into his civilian clothes for trial, to represent to the court:

> If I may add for the record, it continues to be our position that Mr. Bruining is not competent to stand trial. I think the Court's seen that he is unable to rationally assist in his defense. I know that the State Forensic Center has found him competent and that he has not cooperated with our independent attempt to do an independent forensic evaluation, but I believe that's, you know, evidence further that he is unable to do so, not that he is unwilling, but that he is unable to based on his mental-capacity. So it is our continued position that he is not competent to stand trial.

In light of the defense team's beliefs regarding Bruining's competency, one would think that his defense team would have tried all the harder to see the plea bargain through to fruition.

[3] Because both the majority and I cite to what we believe are relevant portions of the transcript, for clarity and completeness, the transcript reads as follows:

> *Prosecutor*. Your Honor, I'm going to withdraw the plea in approximately five minutes. We've been on the record here for 30 minutes, getting nothing accomplished. Mr. Bruining will have the next five minutes to make a decision, and if he hasn't entered a plea by then, the People are withdrawing their agreement to 24 years, and we'll just try the case.
>
> *Trial court*. Okay.
>
> (At 10:45 a.m., defendant talking to attorneys)
>
> *First defense lawyer*. Judge, it looks like we're going to have to have a trial.
>
> *Bruining*. I didn't say that.
>
> *Second defense lawyer*. Well, if the Court will ask one more time. This is your last chance, Mr. Bruining. I don't want you to miss an opportunity, if you're interested. I would—I'm asking the Court to ask one more time, and this is it. If

you do not answer, silence is no, you do not wish to accept the plea and you wish to have a trial. Do you understand that? Mr. Bruining, do you understand that?

Bruining. I understand that.

Second defense lawyer. Okay.

Bruining. I need to make a decision.

Trial court. Yes, and you have one minute before the offer's not there anyway and the decision would be made for you.

First defense lawyer. Yep.

Bruining. I guess I—my decision would be to take the plea, I guess. I don't—I really don't —I've never been in this situation. I'm scared. I don't understand why I've been charged.

First defense lawyer. Okay. Do you want to take—you said you want to take the plea or no?

Bruining. I feel like I'm being put in the—

Second defense lawyer. Judge isn't going to let you say that we're pushing you, so do you want to or not?

Trial court. Mr. Bruining, are you going to change clothes?

Bruining. Yeah, I guess my decision is to take a plea agreement. I don't know. I don't—that would be—I don't want to spend the rest of life for something I didn't do, but I—

The prosecutor. Your Honor—

First defense lawyer. Stop talking, okay? We're going to try it.

Bruining. I said I—

Trial court. Are you changing clothes?

Bruining. My decision was to take the plea deal.

Trial court. I'm sorry?

First defense lawyer. Say it again.

Bruining. I guess I'm taking the plea deal.

Trial court. Would you stand? Would you raise your right hand?

Bruining. I just don't feel comfortable.

Trial court. Raise your right hand.

First defense lawyer. Raise your right hand.

Second defense lawyer. Raise your right hand.

Bruining. I don't even know what's going on today. I'm like—

The deputy. She needs to swear you in, so raise your right hand to the best of your ability.

Trial court. Can you raise your right hand as best you can?

First defense lawyer. Put your hand up.

Bruining. I've never—

First defense lawyer. Well, then we're going to have a trial.

Trial court. Time's up anyway. Time's up. I know it's not an easy decision.

(At 10:52 a.m., defendant taken back to change for trial)

* * *

Trial court. And also for the record, apparently Mr. Bruining has come back out into the courtroom. He's still in jailhouse greens. Apparently, he's decided not to change into civilian clothes which is, again, his decision. And despite being advised against it by myself—I'm not sure if counsel did as well, but I know I did advise that he change clothes. He's decided not to do so. So therefore, we will proceed with the case—

Bruining. Your Honor—

Trial court. –with him dressed in jailhouse greens, but there is a requirement that he—the shackles be removed for trial.

Bruining. Your Honor, somebody said I was raising the wrong hand.

/s/ Michael J. Kelly

Trial court. It doesn't matter at this point.

Bruining. So I said I—

Trial court. Yeah, it doesn't matter. The time's passed, so there's no offer anymore. It's not up to me.

Bruining. Assuming that was all I was doing was raise—trying to raise my hand—

Trial court. Right. But at that point, the Prosecutor withdrew the offer. There is no offer.

Bruining. I said that I was willing—I wanted—was willing to take the offer, and somebody said I was raising the wrong hand, so I was looking to see how—

Trial court. Right. And the time went by, so—

Bruining. –to try to raise my hand.

A. Okay. So at this point, you can have a seat, yes. We're going to go forward with trial. . . .