STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 18, 2008
v	No. 276845 Calhoun Circuit Court
BARRY WAYNE ADAMS, Defendant-Appellant.	LC No. 06-004001-FH

Before: Fitzgerald, P.J., and Bandstra and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for failing to pay child support from April 1, 2005, to September 30, 2006. MCL 750.165.[1] Defendant was sentenced to 25 to 96 months' imprisonment for his conviction. We affirm.

On appeal, defendant proceeds *in propria persona*, raising 16 issues. We have organized defendant's issues on appeal into four categories: issues implicating defendant's arraignment; issues implicating defendant's arrest; issues implicating defendant's conviction; and issues implicating abstract questions of law.

First, defendant raises a number of issues on appeal relating to the failure to hold a circuit court arraignment. We review these unpreserved allegations of error for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

A defendant has a fundamental due process right to know the nature and cause of the accusations being made against him, and this right is guaranteed by the federal and state constitutions, as well as by statute. US Const, Am VI, XIV; Const 1963, art 1, § 20; MCL 767.45; *People v Thomason*, 173 Mich App 812, 814-815; 434 NW2d 456 (1988). "An arraignment on the warrant has several functions: it provides formal notice of the charge against the accused; the magistrate informs the accused of his right to counsel and inquiry is made to

[1] This is defendant's second conviction for failing to pay child support. In *People v Adams*, unpublished memorandum opinion of the Michigan Court of Appeals, issued March 21, 2006 (Docket No. 258750), we affirmed defendant's conviction for failing to pay child support from 1997 through 2003.

determine whether he is in need of appointed counsel; the preliminary examination may be waived or set for a certain date; and the arraigning judge may fix bail." *Id.*, quoting *People v Killebrew*, 16 Mich App 624, 627; 168 NW2d 423 (1969). The failure to hold an arraignment will not be grounds for automatic reversal, where a defendant and all the parties go to trial "as if all formalities had been complied with." *People v Weeks*, 165 Mich 362, 365; 130 NW 697 (1911).

In the instant case, the relevant lower courts entered an administrative order eliminating circuit court arraignments as permitted by MCR 6.113(E).[2] Defendant was charged originally with failure to pay child support from March 21, 2005 to November 22, 2005, as well as for his status as an habitual offender, third offense. Defendant was arraigned in district court on October 24, 2006. At that arraignment, the magistrate advised defendant of his rights, of the charges against him, and of the date of the preliminary hearing. The magistrate also asked defendant if he understood the charges and his rights, to which defendant repeatedly responded: "There is no understanding"; "There is no contractual understanding"; or "I refuse your attempt at presentment and admiralty for fraud." With respect to court-appointed counsel, defendant responded: "Again, I refuse your attempt." Despite this response, the district court appointed counsel for defendant.

At defendant's preliminary examination, defendant's court-appointed counsel appeared to represent defendant, but he discharged her before that proceeding actually commenced. The district court permitted defendant to proceed *in propria persona*, but requested that counsel remain in case defendant required assistance. During the proceeding, the district court granted the prosecution's motion to amend the crime dates to April 1, 2005 to September 30, 2006, it found that there was probable cause that defendant committed the offense of failing to pay child support, and it subsequently bound over defendant to the circuit court. An amended information was filed on November 1, 2006, to reflect the aforementioned amended crime dates. The record does not reflect if defendant or defendant's stand-by counsel received the amended information. However, on appeal defendant does not dispute this fact.

Pursuant to the aforementioned administrative order, in accordance with MCR 6.113(E), defendant was not entitled to an arraignment before the circuit court. Further, defendant does not indicate, nor is there any indication in the record, that he did not receive a copy of the amended information as required by the administrative order. As the appellant, "defendant bore the burden of furnishing the reviewing court with a record to verify the factual basis of any argument upon which reversal was predicated." *People v Elston*, 462 Mich 751, 762; 614 NW2d 595 (2000). Moreover, we conclude that the purposes for arraignment were met, because defendant was fully aware of the charges against him and he clearly planned to proceed to trial. See *Weeks*,

[2] MCR 6.113(E) provides, "[a] circuit court may submit to the State Court Administrator . . . a local administrative order that eliminates arraignment for a defendant represented by an attorney, provided other arrangements are made to give the defendant a copy of the information." The Calhoun Circuit Court, and the 10th District Court, issued such an administrative order effective March 1, 2006, eliminating circuit court arraignments for defendants represented by counsel, where "arrangements have been made to give the defendant a copy of the information" or of any amended information.

supra at 365. Defendant may not remain silent about any procedural defects, and then raise the issue after a verdict has been rendered against him. *Id.* at 367.

In reaching our conclusion, we note that defendant has essentially posed a series of questions to this Court, asking whether a trial court may proceed without a plea being placed on the record; whether a circuit court arraignment is required for a valid prosecution of a felony; what the procedural requirements necessary to perfect subject-matter jurisdiction are; what the procedural requirements necessary to perfect *in personam* jurisdiction are; what the difference between an "indictment" and an "information" is; and whether an "information" is the charging instrument in military process. These questions are moot, as they present "only abstract questions of law that do not rest upon existing facts or rights." *BP7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

Next on appeal, defendant challenges his arrest, essentially asserting that the police broke down his front door to arrest him, that the police did not have an arrest warrant when they initiated the arrest, and that the police violated the knock-and-announce rule. Defendant did not present these issues to the trial court, and there is no record regarding defendant's arrest. Defendant bore the burden of furnishing the reviewing court with a record to verify the factual basis of any argument upon which reversal was predicated. *Elston, supra* at 762. These issues are abandoned.

Next, and by construing defendant's arguments broadly, we find that he appears to be challenging the constitutionality of MCL 750.165, as well as challenging the sufficiency of the evidence for that conviction. However, these arguments lack merit.

"Statutes are presumed to be constitutional unless their unconstitutionality is readily apparent." *People v Sands*, 261 Mich App 158, 160; 680 NW2d 500 (2004). "A party challenging the constitutionality of a statute has the burden of proving its unconstitutionality." *Id.* Defendant has failed to advance any specific and relevant arguments regarding the unconstitutionality of MCL 750.165 or any of our statutes, other than the fact that MCL 750.165 does not have an enacting clause. The Michigan Penal Code, however, contains an enacting clause, and MCL 750.165 does not require an independent enacting clause. We, therefore, reject defendant's challenge of the constitutionality of MCL 750.165 (or any and all of our statutes).

In reaching our conclusions, we note that the elements of failing to pay child support are (1) an order required defendant to support a child; (2) defendant appeared in or received notice by personal service of the action in which the order was issued; and (3) defendant failed to pay the required support at the time ordered or in the amount ordered. *People v Herrick*, 277 Mich App 255, 257; 744 NW2d 370 (2007). In the instant trial, there was testimony that the judgment of divorce was entered on June 19, 1996, that defendant was ordered to pay $152.26 per month in child support, and that defendant appeared in, and contested, the divorce action. It was undisputed that defendant did not make any child support payments from April 1, 2005 to September 30, 2006. At trial, defendant advanced the theory that he and his ex-wife agreed that his mother would spend money on the children, and that the ex-wife would report that to the Friend of the Court as child support. However, our courts have not accepted such a theory as a defense to failure to pay child support. See *People v Adams*, 262 Mich App 89, 100; 683 NW2d 729 (2004) (failure to pay support is a strict liability offense, where inability to pay is not relevant). Defendant appears to object to paying child support, because his ex-wife allegedly

would not use that support for the children's benefit. This argument is outside of the purview of this criminal prosecution. Ultimately, defendant does not specifically challenge the sufficiency of any of the elements of the offense. And, viewing the evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could, and did, find that the essential elements of failing to pay child support were proved beyond a reasonable doubt. *Herrick, supra* at 257.

In reaching a conclusion, we reject defendant's argument that the system to collect child support in the State of Michigan violates federal law, namely, the prohibition against peonage, 42 USC 1994, the prohibition against forced labor, 18 USC 1589, and the prohibition against slavery, US Const, Am XIII. Defendant's attempt to make an analogy between paying court-ordered child support to a system characterized by compulsory service and involuntary servitude is attenuated and illogical.

Finally, defendant presents a number of questions on appeal that seemingly only ask this Court to answer questions that have no bearing on the instant case. Defendant would have us ponder the following questions: Are the "Michigan Compiled Laws" the certified enactments of a *de jure* legislature?; Are "statutes" the legalistic instrumentalities of a *de facto* system of "martial rule"?; Is the existence of the corporate "State of Michigan," having been erected within the *de jure* republic of Michigan, a violation of the federal constitution?; and Does the conversion of the *de jure* organs of government into "bodies corporate," structurally re-organize the system of government from a *de jure* republic into a *de facto* system of corporate fascism in violation of the federal constitution? We will not entertain such questions, as they present only abstract questions of law that have no bearing on defendant's criminal prosecution for failing to pay child support. *BP7, supra* at 359. Those questions are moot.

We affirm.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Peter D. O'Connell