STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD EERDMANS,

Defendant-Appellant.

UNPUBLISHED
December 2, 2008

No. 280555
Kent Circuit Court
LC No. 06-010666-FH

Before: Murphy, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant was convicted by a jury of fleeing and eluding, MCL 750.602a, and interfering with the custody of a minor (two counts), MCL 750.138, and was sentenced to six months in jail, with credit for 44 days served, and 36 months of probation.[1] Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Michigan Child Protective Services (CPS) became involved with defendant's infant son, Alexander, after receiving a neglect referral because Alexander's meconium tested positive for marijuana at his birth. Initially, Alexander's mother, Kathryn Voelker, cooperated with the CPS intervention programs but eventually stopped participating. CPS filed a petition with the family court to determine if Alexander and an older child, Wilhelmenia, should be made wards of the court. When Voelker failed to appear for the hearing, the family court referee issued an order to place the children into protective custody pending a full hearing with Voelker present.

After the temporary custody order was entered, CPS caseworkers, along with two police officers, went to Voelker's house to retrieve the children to place them into temporary custody. Defendant, however, arrived on the scene shortly after the authorities and removed the children from the CPS automobile, placed them in his truck, and sped away. Police officers pursued defendant and he was apprehended a short time later. The criminal trial at issue ensued.

On appeal, defendant contends the trial court erred by excluding evidence challenging the validity of the family court order. When the decision regarding the admission of evidence involves a preliminary question of law, such as whether a statute or rule of evidence precludes

[1] Defendant was acquitted of two counts of child abuse, MCL 750.136b(3).

the admissibility of the evidence, the issue is reviewed de novo. *People v Washington*, 468 Mich 667, 670-671; 664 NW2d 203 (2003). Otherwise, we review a trial court's decision to admit evidence for an abuse of discretion. *Id.* at 670.

As a preliminary evidentiary matter, the trial court ruled that the defense

> cannot say, "I was attempting to do this because the court order was unlawful." And if he tries to testify to that, and if there's an objection—well, even if there's not an objection, the Court is unilaterally going to instruct the jury that the defense of self-help in contravention of the court order of competent jurisdiction is simply not available . . . .
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> . . . I am not allowing the defendant to offer that aspect of defense.

The trial court did not err in excluding evidence as to the validity of the family court order.

First, the family court case was separate and distinct from the instant criminal proceeding. Thus, the trial court in this criminal action was not the proper venue to contest the actions and decisions of the family court. Furthermore, a party is not entitled to ignore or disobey a court order on the belief that the order was invalid.

> Civil disobedience is not the appropriate course of action when a person disagrees with a court order. We are a society of laws and the legal remedy available to appellant was to seek leave to appeal the trial court's order. . . . A person may not disregard a court order simply on the basis of his subjective view that the order is wrong or will be declared invalid on appeal. Allowing such behavior would encourage noncompliance with valid court orders on the basis of misguided subjective views that the orders are wrong. There exists no place in our justice system for self help. [*In re Contempt of Dudzinski*, 257 Mich App 96, 110; 667 NW2d 68 (2003).]

In this case, that is exactly what defendant did. The police were lawfully on the scene to keep the peace while the CPS picked up the children pursuant to a court order entered by the family court for temporary custody of the children pending a full hearing. Defendant's argument that he was excused from compliance with that order on account of his belief that the family court order was defective is not a defense in this matter, and the evidence in that regard was irrelevant.

Furthermore, irrespective of whether or not there was a valid order, defendant had no right to drive in excess of the speed limit and could have legitimately been stopped for that reason alone. Defendant, however, did not stop despite being followed by marked police cars with lights and sirens engaged. Based on the foregoing, the trial court did not err by excluding irrelevant evidence challenging the validity of the family court order.

Defendant further argues that the trial court erred by interrupting defense counsel's closing argument on the basis that it was a plea for jury nullification.

Whether jury nullification is a defense and whether it may be argued is a question of law and issues of law are reviewed de novo. See *Washington, supra.*

The trial court interrupted defense counsel at the conclusion of his closing argument and determined that the trial strategy of the closing argument amounted to an appeal for jury nullification. In his closing argument, defense counsel argued extensively that defendant's self help actions in contravention of the family court order were justified, which the trial court found to be tantamount to a request for jury nullification. Specifically, as one example, counsel argued:

> When he gets home, he has no notice of anything. He's never gotten notice of anything. . . . [H]e's the father, nobody is disputing that he's providing a home, he's providing care, he's providing food, he's providing financial support. This is his biological son, and he's treating Wilhelmenia, whose father has died, as if Wilhelmenia is his daughter. And he has no notice of anything.
>
> Pulls into a driveway, sees his kids sitting in a stranger's car. What does he do? … You may not like his judgment. You may not like his choice of action, you may not have done what he did. . . . But, Ladies and Gentlemen, you cannot question his paternal instinct. You can't question that.
>
> Pulls into a drive. He knows this panicky nature of the call from Kathy. He sees his kids in an unmarked car, a door open, a female sitting there. He goes directly to the car. He takes his kids. Is that so hard to understand?

Since justification is not a defense to the charges in this case, the trial court's determination that counsel was advocating for jury nullification was not erroneous. Defendant nevertheless claims that jury nullification is not illegal and the trial court erred by precluding him from presenting to the jury his motive for absconding with the children.

"Jury nullification is the power to dispense mercy by nullifying the law and returning a verdict less than that required by the evidence." *People v Demers*, 195 Mich App 205, 206; 489 NW2d 173 (1992). While a jury has the power to exercise jury nullification, it does not have the right to do so. *Id.* at 207. In addition, "[a] trial court may exclude from the jury testimony concerning a defense that has not been recognized by the Legislature as a defense to the charged crime." *Id.* Because the Legislature does not recognize jury nullification as a defense to either charge at issue, defendant had no right to establish a jury nullification defense. Thus, the trial court did not err by precluding an argument aimed at prompting jury nullification.

At a minimum, a trial court has broad discretion regarding the control of trial proceedings, MCL 768.29, including counsel's argument and the introduction of evidence. *People v Taylor*, 252 Mich App 519, 522; 652 NW2d 526 (2002). Here, defense counsel, in his closing argument, addressed matters that the trial court expressly directed him not to because they amounted to a defense not recognized by law. Accordingly, the trial court did not err by interrupting defense counsel's closing argument.

Finally, defendant argues that MCL 750.138 requires proof that the children have been adjudged to be dependent, neglected or delinquent pursuant to the probate code and that the children here were never adjudged dependent, neglected or delinquent. Thus, defendant insists that MCL 750.138 was not violated and the related charges should have been dismissed.

The proper interpretation of a statute is an issue of law and is reviewed de novo. *People v Davis*, 468 Mich 77, 79; 658 NW2d 800 (2003). However, defendant did not raise this issue at trial. This Court reviews unpreserved issues under the plain error doctrine set forth in *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Reversal should occur only if the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.*

MCL 750.138 provides in relevant part that a person may not interfere or attempt to interfere with the custody of "any child who has been adjudged to be dependent, neglected, or delinquent" under the probate code. Black's Law Dictionary (6th ed), p 42, defines "adjudge" as "to pass on judicially, to decide, settle, or decree." Here, the family court referee clearly "decided" that the children were neglected pursuant to MCL 712A.2(b), which is cited in the family court order at issue, and that temporary custody was necessary. The family court entered an order based on this determination, thereby "adjudging" the children to be dependent or neglected in accordance with the referenced act. Pursuant to that order, CPS had lawful custody of the children and defendant interfered with such custody.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Michael R. Smolenski