STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 9, 2013
v	No. 309535 Livingston Circuit Court
CRAIG ALLEN REED, Defendant-Appellant.	LC No. 10-019549-FH

Before: BECKERING, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

A jury convicted defendant of two counts of parental kidnapping/custodial interference, MCL 750.350a(1). The trial court sentenced defendant to three years' probation and 60 days in jail. The court also ordered defendant to pay restitution, as well as costs and fees. For the reasons set forth below, we affirm.

I. FACTS

Defendant and the complainant were married from October 1995 until November 2007. The parties had two children during the marriage and both were minors at the time of trial. Initially, the parties shared custody of their children, but the complainant was granted sole physical and legal custody in June 2009. Defendant was granted parenting time and the parties agreed that, in the summer of 2010, defendant would have the children from August 6 to August 13. The complainant dropped the children off with defendant on August 6, and returned to their designated meeting place at the appointed time on August 13, but defendant did not arrive with the children. The complainant did not hear from defendant or the children until the next day. Over the telephone, the complainant's son told her that he thought they were in New Jersey, while her daughter told her that she did not know where they were. Defendant told the complainant that she would find out where the children were on Monday. The complainant notified law enforcement authorities who were able to locate the children and defendant at a homeless shelter in London, Ontario, Canada.

II. DISCUSSION

A. CONTEMPT

Defendant acted as his own counsel at trial and he argues that the court denied him a fair trial by twice finding him in contempt of court in the presence of the jury. Defendant did not object in the trial court, so this issue is not preserved for review. *People v Toma*, 462 Mich 281, 323; 613 NW2d 694 (2000). We review unpreserved issues for plain error affecting substantial rights. *People v Pipes*, 475 Mich 267, 279; 715 NW2d 290 (2006), citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "[R]eversal is only appropriate when the plain error that affected substantial rights seriously affected the fairness, integrity, or public reputation of the proceedings or when the defendant shows actual innocence." *Pipes*, 475 Mich at 283 (internal quotation marks omitted).

The trial court first held defendant in contempt after he ignored several warnings about referring to inadmissible reports and other evidence. The court also held defendant in contempt on the last day of trial when defendant again attempted to introduce statements from a report that the court had ruled inadmissible.[1] At the close of proofs, the prosecutor asked the court to instruct the jury that it should not let the fact that defendant had been found in contempt of court "influence your verdict in any way." Defendant objected and said that "the jury can use their reason and figure out what happened." The trial court did not give the instruction. On appeal, defendant argues that the instruction would have been futile because the "damage had already been done." This argument lacks merit because "[i]t is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

Further, defendant has not shown that it was improper for the court to hold him in contempt in the presence of the jury. Defendant speculates that the trial court may have become "frustrated" with his decision to represent himself because of his lack of knowledge of the rules of evidence. However, defendant does not point to any exchanges that demonstrate frustration by the trial judge. Further, when defendant expressed that he wanted to represent himself, the judge made clear to defendant that he would be required to follow the rules of evidence. Thus, defendant was on notice that he might be faced with matters with which he was unfamiliar. We further note that the court appears to have exercised considerable patience in handling defendant's continuing disregard of the court's evidentiary rulings.

Pursuant to MCL 600.1711(1), "[w]hen any contempt is committed in the immediate view and presence of the court, the court may punish it summarily by fine, or imprisonment, or both." This Court has held that "it is preferable that admonition of counsel be made outside of the hearing of the jury." *People v Williams*, 162 Mich App 542, 546; 414 NW2d 139 (1987). However, a court's failure to excuse a jury before citing a party for contempt does not automatically deny that party's right to a fair trial. The *Williams* Court further stated that while

> [i]n most cases it would appear wise to excuse the jury before an attorney is cited for contempt or for that matter before a witness is cited for contempt, . . . where counsel and witnesses *persistently continue to ignore the admonition of the court*,

[1] Outside the presence of the jury, the court later permitted defendant to "purge" himself of his second contempt sentence if he apologized to the court and promised to adhere to the court's ruling regarding inadmissible evidence.

> as in this case, the court is justified under the circumstances in imposing a fine and telling the jury to disregard the improper questions or comments. [*Id.* at 547 (emphasis added).]

Similarly, here, defendant persistently ignored the trial court's warnings to avoid referring to evidence the court had excluded. Because defendant has not shown that the court plainly erred, he is not entitled to a new trial or other relief.

B. AFFIRMATIVE DEFENSE AND INTENT

Defendant argues that the trial court denied him the opportunity to present a defense by refusing to allow him to present evidence of alleged abusive conduct toward his children by the complainant. Defendant asserts that the evidence was relevant to the affirmative defense set forth in MCL 750.350a, as well as to show that his intent was not to conceal the children, but to protect them. We review a trial court's decision to admit or deny evidence for an abuse of discretion. *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001). "An abuse of discretion occurs . . . when the trial court chooses an outcome falling outside [the] principled range of outcomes." *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

MCL 750.350a provides in part as follows:

> (1) An adoptive or natural parent of a child shall not take that child, or retain that child for more than 24 hours, with the intent to detain or conceal the child from any other parent or legal guardian of the child who has custody or parenting time rights under a lawful court order at the time of the taking or retention, or from the person or persons who have adopted the child, or from any other person having lawful charge of the child at the time of the taking or retention.
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> (7) It is a complete defense under this section if a parent proves that his or her actions were taken for the purpose of protecting the child from an immediate and actual threat of physical or mental harm, abuse, or neglect.

At trial, defendant stated that his defense "basically boil[ed] down" to his assertion that he had "no intent to conceal the children." Defendant told the court that he did not want to use the affirmative defense set forth in MCL 750.350a(7).[2] It is well established that "error requiring reversal may only be predicated on the trial court's actions and not upon alleged error to which the aggrieved party contributed by plan or negligence." *Lewis v LeGrow*, 258 Mich App 175, 200; 670 NW2d 675 (2003). Thus, defendant has abandoned his assertion that the court improperly limited his ability to raise this affirmative defense.

[2] At the time § 350a(5). 2012 PA 548.

With regard to intent, defendant has not shown how the evidence of past alleged abuse was relevant. In order to prove parental kidnapping, the prosecutor had to show that defendant specifically intended "to detain or conceal the child[ren.]." MCL 750.350a(1). Absent defendant's reliance on MCL 750.350(a)(7), which, here, he rejected, defendant's motive in detaining or concealing the children is irrelevant to the question of whether he intended to detain or conceal them.

Further, significant evidence showed that defendant acted with specific intent. Clearly, by taking the children to Canada when they should have been returned to their mother's care establishes the intent to detain. The statute refers to alternatives ("detain or conceal"), so intent to detain is proof enough. In any event, the evidence also showed defendant intended to conceal the children. Defendant argued that the fact that he called the children's mother while in Canada was proof of his lack of intent to conceal them. However, defendant acknowledged that he did not disclose their location to the complainant, and the evidence showed that he prevented the children from doing so as well.

C. DEFENSE WITNESSES

Defendant asserts that the court improperly excluded certain people on his witness list from testifying. However, defendant does not state which witnesses he believes were improperly excluded, nor does he explain why the court's ruling that their testimony would not be relevant amounted to an abuse of its discretion. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Affirmed.

/s/ Jane M. Beckering
/s/ Henry William Saad
/s/ Peter D. O'Connell