NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstance allowed under Rule 23(e)(1).

No. 3--09--0640

Order filed March 30, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois
Plaintiff-Appellee,	)	
v.	)	No. 07--CF--537
WENDY HARTMAN-THOMAS, f/k/a WENDY A. OLSHEFSKI,	)	
Defendant-Appellant.	)	Honorable Kathy Elliott, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

Held: Defendant provided no authority to support her contention that the State was required to introduce expert legal testimony in order to prove all the elements of the offense of child abduction. As such, defendant forfeited the issue. Furthermore, defendant's failure to make an offer of proof to support her defense of necessity resulted in forfeiture of her contention that the trial court improperly "cut-off" a witness's testimony.

The State charged defendant, Wendy Thomas, with the offense of

child abduction. The information alleged that, at the expiration of her visitation period with her son C.J. in Arizona, she intentionally failed or refused to return or impeded the return of C.J. to his lawful custodian in Illinois. The matter proceeded to jury trial in which the jury returned a guilty verdict. The circuit court of Kankakee County sentenced defendant to 12 months' conditional discharge, fined her $100 plus court costs and ordered her to make restitution of $350 to C.J.'s father. She appeals, claiming the trial court erred "by not requiring an expert witness to testify regarding the legal effect of [an] Illinois custody decree and [an] Arizona Order of Protection" and "by terminating C.J.'s testimony, when the testimony would have established a basis for the defense of necessity." We affirm.

FACTS

Richard Olshefski and defendant terminated their marriage in 1998 while living in California. The two had one child during the marriage, C.J., born on February 28, 1990. The marital settlement agreement entered by the California Superior Court in July of 1998 awarded joint custody of C.J. to both parents with Richard being the custodial parent. The agreement noted that Wendy intended to move from California to Colorado and that she was to have physical custody of C.J. "in Colorado on the seventh (7th) day after his school-year ends for summer vacation and shall return to California seven (7) days before the start of the new school year."

In 2002, a family law case, Number 02-D-125, was opened in the circuit court of Kankakee County through which the parties litigated various matters involving their divorce. In August of 2004, the circuit court of Kankakee County entered an order modifying the visitation schedule. The Illinois order stated that C.J. shall travel to his mother's residence in Colorado on the eleventh day after his school year ends for summer vacation and shall return to Illinois 11 days before the start of his new school year.

In the summer of 2007, a dispute arose between Richard and defendant concerning when, and if, C.J. needed to be returned to Illinois. This dispute resulted in a grand jury indictment being entered claiming that defendant committed the offense of child abduction in violation of section 10-5(b)(5) of the Criminal Code of 1961. 720 ILCS 5/10-5(b)(5) (West 2008).

The matter proceeded to jury trial in which Richard testified to his marriage and divorce with defendant. He further testified to the substance of the marital settlement agreement entered in California and the Illinois order that modified custody. The trial court admitted both documents into evidence and published them to the jury.

As Richard testified to the substance of the Illinois order, the following exchange took place:

"[The State]: And what was the visitation

arrangements that were ordered in 2004?

MR. SACKS [Defense Counsel]: Well I think the document, Judge, speaks for itself.

THE COURT: I'm sorry. I couldn't hear you Mr. Sacks.

MR. SACKS: I'm sorry. I had my hand in front of my mouth. I said I believe the document speaks for itself as to what the arrangement was.

THE COURT: Okay. I don't know whether he's going to move to have it admitted and published.

***

[The State]: I expect, Your Honor, that the State will be moving to admit and publish the document to the jury. However, rather than have the document passed through at this time and have each juror read it one by one, it was my intent to simply narrate it to explain how the process moves along. If the Court prefers that we do it through the publication method, I have no objection to that.

THE COURT: Mr. Sacks?

MR. SACKS: I have no objection to you - - there's only two pages to that document. I don't care if you run 14 copies of it and let

the jurors read it themselves.

***

THE COURT: That's okay. She can just as easily run 14. Thank you. So if you want to proceed then, I'll sustain your objection. Evidently you're - - it's going to be admitted and published with 14 copies. Okay?

MR. SACKS: I have no objection to that being admitted or to the divorce decree being admitted."

At that point, the State moved on from its questioning of Richard concerning the substance of the Illinois order. However, defendant later objected to the State's question of "when was that visitation to begin in 2007?" Defense counsel stated, "My objection is that order relates to visitation in Colorado." The trial court dismissed the jury and a lengthy debate took place during which time defense counsel stated his belief that the State needed to bring in an "expert to interpret" the various custody and visitation orders. Defense counsel claimed neither Richard nor defendant were capable of deciding the "consequence of going to Colorado and agreeing to use a visitation schedule in Colorado set out in the Illinois order, okay, and finally, what's the consequence of going to Arizona." Following the debate, defense counsel noted, "I'm happy to have the whole thing admitted", referring to the Illinois custody order and the marital settlement

agreement from California, and proclaimed that if the State did not seek to introduce those documents, "I'll admit them if he doesn't."

When Richard continued his testimony, he noted that in either 2005 or 2006, defendant moved to Arizona. She continued to comply with the Illinois custody order after having moved to Arizona as she had when she lived in Colorado. After school ended in 2007, C.J. accompanied his school band on a trip to Disney World. Defendant met him in Florida, as her parents lived near Orlando, and C.J. traveled with her to Arizona for the summer.

Richard noted that the first day of school for the 2007-08 school year began on August 21, 2007. As such, Richard believed C.J. was to return to Illinois by August 10, 2007. He tried several times to reach defendant by cell phone and land line phone in the two weeks prior to August 10, but defendant never answered, returned his calls, or responded to his messages.

Richard indicated that when C.J. did not return to Illinois on August 10 as scheduled, he called Mesa, Arizona police on August 11 to initiate a well-being check. The police went to defendant's home and had C.J. call his father on that day. C.J. said he was fine and defendant also spoke to Richard on that day. She told Richard that she purchased a plane ticket for C.J. and he would return August 15 as there was a concert he wanted to attend on Monday, August 13.

Richard continued his testimony noting that C.J. did not return on August 15 and again his calls to defendant went unanswered. The Manteno, Illinois police department told Richard to call them if C.J. had not returned by August 15, so he did. The police department then contacted the state's attorney's office.

Richard further noted that on August 15, 2007, he was served with a petition for an order of protection entered in Arizona on August 13, 2007. The trial court entered the order into evidence without objection. The August 15 order is the only document he has ever been served with pertaining to any court proceedings in Arizona. Richard concluded his testimony noting that C.J. was returned to Illinois on August 31, 2007 after Richard's brother went to Arizona to bring him home pursuant to a writ issued in Illinois. C.J. began attending school immediately.

The second witness called by the State in its case-in-chief was C.J. He testified that he was 18 years old at the time of the trial in October 2008. Since his parents' divorce, he had lived with his father and spent summers with his mother in Colorado and then Arizona. C.J. confirmed his father's testimony regarding being picked up by his mother at Disney World in the summer of 2007. He was supposed to return home to his father's house at the end of the summer and made plans with his father to do so which included meeting his father by the baggage claim area in the airport terminal.

C.J. testified he did not return home as planned, however, and made no additional plans with his father to return on a later date. One day, the sheriff's department came to his mother's home and told him to decide whether to stay with his mother or go back to his father's home.

C.J. stated that at some point during the summer of 2007, he overheard a conversation between his mother and father in which the two discussed an August 13 concert. He did not go to the concert, instead he accompanied his mother on that date to court so she could obtain an order of protection. He testified to the judge in Arizona that his father had spanked him with a belt approximately 10 years earlier, when he was 7 or 8 years old. He concluded his testimony by reiterating that the sheriff who came to the home did not force him to return to Illinois. The sheriff gave him a choice to go with his mother to court or to go back home to his father's home. He chose to return to Illinois.

After C.J.'s testimony, the State rested. Defendant made a motion for a directed verdict that the trial court denied. The defendant then rested without putting on any evidence. The case was given to the jury which returned a verdict of guilty. Following a sentencing hearing, defendant was placed on 12 months' conditional discharge and assessed a fine of $100. Defendant filed a posttrial motion that the trial court denied and this timely appeal followed.

ANALYSIS

Defendant makes two claims of error. Initially, defendant claims the trial court erred in failing to require the State to produce expert testimony regarding the legal effect of the Illinois custody order and the Arizona order of protection. Defendant claims that "without explanation as to the effect of these two different orders, one to the other, the jury should not have been left to decide whether or not a crime had been committed." Defendant further claims that the trial court prematurely terminated C.J.'s testimony precluding her from raising a defense of necessity.

A. Expert Legal Testimony

Defendant cites the medical malpractice case of *Jones v. Dettro*, 308 Ill. App. 3d 494 (1999), to support her contention that the trial court erred in denying her request to require the State to present expert testimony regarding what effect, if any, the Arizona order of protection had on the Illinois order that required C.J. to return to his father 11 days before the start of the school year. *Jones*, however, is totally irrelevant to the matter at hand. *Jones* involved a certified question under Supreme Court Rule 308(a) (eff. Feb. 1, 1994) which asked, "Must Plaintiff come forward with some evidence from an opinion witness to show that the allegedly continuous and unbroken course of treatment was also negligent?" *Jones*, 308 Ill. App. 3d at 497. The *Jones* court answered the

question in the affirmative. *Jones*, 308 Ill. App. 3d at 499. In doing so, the *Jones* court commented on the general rule regarding the necessity of expert testimony to establish the standard of care in a medical malpractice case, and two exceptions to that general rule. *Jones*, 308 Ill. App. 3d at 498. However, the discussion of expert testimony in *Jones* is, at best, *dicta* marginally relevant to plaintiffs in medical malpractice cases that are attempting to establish the proper standard of care. *Jones* simply cannot be read as authority to support defendant's contention that the State needed to call an expert to discuss the interplay between the Illinois custody order, the marital settlement agreement entered in California, and the order of protection from Arizona.

Supreme Court Rule 341 (eff. July 1, 2008) made applicable to criminal cases by Supreme Court Rule 612(i) (eff. Sept. 1, 2006), requires parties to an appeal to provide legal authority for their contentions. Failure of a party to provide such authority results in waiver of the argument. *Bianchi v. Savino Del Bene International Freight Forwarders, Inc.*, 329 Ill. App. 3d 908 (2002); *People v. Hoffmann*, 140 Ill. App. 3d 1056 (1986).

Not only has defendant failed to provide any authority to support the proposition that the State needed to supply an expert to discuss the effect of the various court orders, but as noted above, a review of the record indicates that defense counsel fully intended to introduce the orders into evidence if the State refused

to. Again, while referring to the Illinois order (People's Exhibit Number 2), defense counsel stated, "Well I think the document, Judge, speaks for itself *** I said I believe the document speaks for itself as to what the arrangement was. *** I have no objection to you - - there's only two pages to that document. I don't care if you run 14 copies of it and let the jurors read it themselves. *** I have no objection to that being admitted or to the divorce decree being admitted. *** I would like all of the documents - - well, I'll admit them if he doesn't."

When the State moved to admit People's Exhibit Number 2, however, defense counsel objected to its admission and noted he would state the nature of his objection outside the presence of the jury. The court agreed that defense counsel could state the nature of his objection later. When the State asked Richard to testify as to the day C.J. returned from Arizona, defense counsel objected to question again claiming, "You're asking him to interpret the divorce decree, which I believe is a question of law." The court overruled the objection and Richard testified as to the date C.J. returned.

Following Richard's testimony, defense counsel finally stated the nature of his objection to People's Exhibit Numbers 1 and 2. He simply claimed that "legal documents, in my opinion, need an expert to explain them and their meaning. *** There has to be expert testimony frankly, Judge, on what the effect of an order of

protection that's entered in Arizona on August 13th of 2007, okay, what effect does that have on the previous provisions related to child custody in California and Illinois are or we going to just let the jury on an ad hoc basis say well this is what I think it means and maybe three of them will think one thing and three of them will think another thing." Defendant provided no authority to the trial court to support this contention and provides no authority to this court to support it.

We acknowledge defendant references section 303 of the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJA) which states that a court of this state shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with the UCCJA. 750 ILCS 36/303 (West 2008). However, defendant does not argue that section 303 of the UCCJA is authority to support the proposition that the State must introduce expert testimony to prove a child abduction in violation of 720 ILCS 5/10-5(b)(5). Defendant merely references section 303 much in the same way defendant references the Arizona order of protection and the California judgment for dissolution of marriage: that is, its existence adds to the quagmire of conflict between the Illinois order, the California judgment and the Arizona order of protection. Given these conflicts, defendant concludes by noting that "how different legal orders relate to one another, and which, if either, order

should be given deference is something that requires expert opinion testimony before it can be decided by the finder of fact."

As noted above, however, defendant has cited no authority to support that position. As such, pursuant to Supreme Court Rules 341 and 612(i), we find it waived. Numerous courts have noted that appellate courts are entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented and are not a repository into which an appellant may foist the burden of argument and research. *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296 (2010); *Stenstrom Petroleum Services Group, Inc., v. Mesch,* 375 Ill. App. 3d 1077 (2007).

B. Defense of Necessity

Defendant's second claim of error is that the trial court improperly terminated C.J.'s testimony foreclosing defendant's ability to establish a defense of necessity. Defendant claims that, had C.J. been allowed to continue his testimony, "the jury in the case at bar could potentially find that the defendant was acting out of a reasonable belief that her child was in danger."

The State correctly notes that defendant fails to provide any citation to the record indicating where she informed the trial court of her intention to bring the defense of necessity. Defendant also does not indicate any specific point in the record at which the trial court forbade her from eliciting testimony from C.J. in an attempt to raise the defense of necessity. Our review

of the record indicates defendant mentioned the defense of necessity during a sidebar in which the trial judge stated that he would not allow defense counsel to continue to ask C.J. which parent he wanted to live with in the summer of 2007.

The State objected to defense counsel's question asking, "So how long after it was that you were there did you first tell your mom you wanted to stay there?" The basis of the objection was the question had been asked and answered. The trial court stated, during a side bar on the issue, "You're not entitled to ask the same question so the jury hears the same answer ten times and that's what is occurring here." During the side bar, defense counsel speculated that defendant might testify, "I want to stay with you. I'm afraid of my dad might give rise to the defense of necessity at a minimum, but certainly gives rise to an explanation for her conduct to protect her son from harm as to why then she goes and gets an order of protection from the court."

We find no other reference in the record to the defense of necessity during C.J.'s testimony. Defendant gave no real indication that C.J.'s testimony was essential to her ability to raise the defense of necessity and never requested to make an offer of proof during C.J.'s testimony concerning the defense of necessity. As such, we find defendant's argument that the trial court improperly terminated C.J.'s testimony is waived. An offer of proof allows a reviewing court to determine whether evidence was

properly excluded. *People v. Armstrong*, 183 Ill. 2d 130, 155 (1998). When evidence is refused, no appealable issue remains unless a formal offer of proof is made. *People v. Peeples*, 155 Ill. 2d 422, 457 (1993). An adequate offer of proof is made if counsel reveals, with particularity, the substance of the witness's anticipated answer. *People v. Andrews*, 146 Ill. 2d 413, 421 (1992). An offer of proof must be specific. *Peeples*, 155 Ill. 2d at 457. The lack of an offer of proof waives the issue. *Andrews*, 146 Ill. 2d at 421. Defendant has forfeited this issue.

CONCLUSION

For the foregoing reasons, the order of the circuit court of Kankakee county is affirmed.

Affirmed.