

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
January 29, 2013

v

FRANK ANTONIA CLARK,

Defendant-Appellant.

No. 306761
Monroe Circuit Court
LC No. 11-038937-FH

Before: TALBOT, P.J., and JANSEN and METER, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial conviction of absconding or forfeiting bond, MCL 750.199a, for which he was sentenced as a fourth habitual offender, MCL 769.12, to 2 to 15 years in prison. We affirm.

Defendant argues that there was insufficient evidence presented at trial to support his conviction of absconding or forfeiting bond. We disagree.

We review the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Circumstantial evidence and reasonable inferences arising therefrom can constitute sufficient proof of the elements of the crime. *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007).

The felony of absconding or forfeiting bond, MCL 750.199a, contains two separate bases for conviction: (1) forfeiting bond, and (2) absconding on a bond. See CJI2d 13.16; CJI2d 13.17. “The Legislature enacted this statute to ensure that criminal defendants do not impede the judicial process by failing to be present at court proceedings.” *People v Demers*, 195 Mich App 205, 208; 489 NW2d 173 (1992). Forfeiting bond requires proof of the following elements: (1) the defendant gave a bond in a criminal proceeding in which a felony was charged, and (2) the defendant forfeited the bond with the specific intent of intentionally or recklessly violating a condition of the bond. CJI2d 13.16. Defendant does not contest that he gave a bond in a felony criminal proceeding. The crux of the appeal centers on whether defendant had the requisite state of mind.

There was sufficient evidence adduced at trial to allow a rational jury to conclude that defendant recklessly or willingly neglected or disregarded his obligation to appear for court. See *People v Rorke*, 80 Mich App 476, 478-479; 264 NW2d 30 (1978).

Defendant failed to show up for required court dates on October 23, 2009, January 8, 2010, and January 25, 2010. Regarding the first date, defendant showed up 15 minutes late and missed the case call. This, standing alone, does not rise to the level of reckless or willing neglect.

Defendant's incarceration in the Washtenaw County jail precluded him from attending his January 8, 2010, pretrial hearing. Although it is difficult to conclude that his failure to attend was completely beyond his control given that he was in jail, the details of his incarceration are unclear, and he was unable to be transported to his court date despite bringing it to the attention of someone at the jail. Because the prosecution offered no evidence other than defendant's mere absence from court on January 8, 2010, it would be improper to conclude that he recklessly or intentionally neglected this court date when he was physically unable to be present.

Defendant's failure to appear on January 25, 2010, however, requires a different conclusion. Although the jury trial originally set for January 25, 2010, was cancelled, defendant was still required to appear. Defendant testified that, after he was released from jail (but prior to January 25, 2010), "I called my lawyer 'cause that's actually what I did the first time to try to reschedule the date, and then I called the Court to see if I was on the docket because I know that I had the—the 25th date from the last time I was in court." In other words, even after missing two previous dates, and knowing he had a court date, defendant failed to show up. Although it is a close case given the dearth of evidence offered by the prosecutor, this Court must view the evidence in a light most favorable to the prosecution. *Johnson*, 460 Mich at 723. This third absence from court could be seen by a rational jury as evidence of defendant's intentional or reckless neglect of a known obligation to appear. See *Rorke*, 80 Mich App at 478-479. There was sufficient evidence to support defendant's conviction of forfeiting bond.

Although the jury based its verdict on a theory of forfeiting bond, the evidence at trial would have allowed a rational trier of fact to conclude that defendant absconded on his bond as well.¹ The elements of absconding on a bond are: (1) the defendant gave a bond in a criminal proceeding in which a felony was charged, and (2) the defendant absconded on the bond. CJI2d 13.17. Absconding involves "'a design to withdraw clandestinely, to hide or conceal one's self, for the purpose of avoiding legal proceedings.'" *People v Litteral*, 75 Mich App 38, 42; 254 NW2d 643 (1977), quoting *McMorran v Moore*, 113 Mich 101, 104; 71 NW 505 (1897). Absconding on bond is a general intent crime. *Demers*, 195 Mich App at 208.

Although defendant was merely 15 minutes late to his first court date on October 23, 2009, this was not the only incidence of failing to appear. Defendant failed to appear while held

¹ Although defendant was only convicted of forfeiting bond, he also argues on appeal that there was insufficient evidence to convict him of absconding on bond.

in the Washtenaw County jail on January 8, 2010, though this fact would not permit a finding that he “withdrew clandestinely” or “hid[] or concealed” himself from the legal process.

But, again, defendant failed to appear on January 25, 2010, despite knowing of his court date. Furthermore, on at least two occasions after defendant missed his pretrial conference date, the Michigan State Police Monroe Area Narcotics Team and Investigative Services (MANTIS) unit attempted to locate defendant at two different addresses. Though the prosecution offered no evidence of other attempts to locate defendant, after MANTIS failed to locate him it turned the task over to the State Police “fugitive team.” The fugitive team only arrested defendant months later, in the summer or fall of 2010. And despite missing a court date that he knew he was obligated to attend, defendant made only sparse contact with his attorney—and, for that matter, the court—over the following nine months.

A jury could draw the reasonable inference that defendant was hiding or concealing himself from the court because, despite his knowledge of the court date, he failed to appear on January 25, 2010. In addition, the MANTIS unit and the State Police fugitive team were unable to track him down for over nine months, defendant made only “intermittent” contact with his attorney, and he had no contact with the court over that time period. Given these facts, we conclude that the prosecution presented sufficient evidence from which a jury could find beyond a reasonable doubt that defendant was guilty of forfeiting or absconding bond.

Affirmed.

/s/ Michael J. Talbot
/s/ Kathleen Jansen
/s/ Patrick M. Meter