

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH MICHAEL ROATH,

Defendant-Appellant.

UNPUBLISHED

October 7, 1997

No. 192298

Barry Circuit Court

LC No. 95-000101 FH

Before: Doctoroff, P.J., and Cavanagh and Saad, J.J.

MEMORANDUM.

Defendant was convicted following a bench trial of breaking or escaping while in a courtroom or court house, MCL 750.197(2); MSA 28.394(2). He received an enhanced sentence of 1-1/2 to 15 years imprisonment, reflecting his status as a fourth offender, MCL 769.12; MSA 28.1084. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The trial court erroneously determined that the offense for which defendant stands convicted is essentially a strict liability offense. *People v Benevides*, 204 Mich App 188, 191-192; 514 NW2d 208 (1994). Nevertheless, reversal is unwarranted. After the court stated its erroneously held belief that escape was a strict liability offense, the court engaged in an analysis of defendant's intent and found that the prosecutor had proved beyond a reasonable doubt that defendant possessed the requisite intent to escape from known custody. In light of the court's alternate analysis, the error was harmless. *People v Sabin*, 223 Mich App 530, 540; 566 NW2d 677 (1997).

The trial court's finding that defendant possessed the requisite intent is supported by the evidence adduced at trial. To the extent that defendant challenges the court's refusal to accept defendant's explanation of why he dove through the courtroom window, we observe that, in a bench trial, such as this case was, it is the role of the trial court sitting as the trier of fact to observe the witnesses and decide the weight and credibility to be given to their testimony. *People v Garcia*, 398 Mich 250, 262-263; 247 NW2d 547 (1976). The court determined defendant's testimony concerning a suicide attempt to be lacking in credibility. Under these circumstances, the court's failure to accept

defendant's explanation for his actions cannot be deemed error warranting reversal. *People v Jackson*, 390 Mich 621, 625 n 2; 212 NW2d 918 (1973).

Moreover, viewing the evidence presented during the prosecutor's case-in-chief in a light most favorable to the prosecutor, we conclude that a rational trier of fact could have found that the prosecutor proved beyond a reasonable doubt that defendant possessed the requisite intent to escape known custody. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, modified 441 Mich 1201 (1992); *Benevides, supra* at 192-193.

Any errors in the trial court's findings of fact were harmless because the evidence was sufficient to support defendant's conviction in absence of any reliance on any such erroneous factual findings. *Sabin, supra*.

Finally, the rebuttal testimony was properly admitted. *People v Figgures*, 451 Mich 390, 399; 547 NW2d 673 (1996).

Affirmed.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh

/s/ Henry W. Saad