

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DANIEL CHARO,

Defendant-Appellant.

UNPUBLISHED

December 17, 1996

No. 163186

LC No. 92-001177

Before: Markey, P.J., and Holbrook, Jr., and M.J. Matuzak,* JJ.

MARKEY, P. J. (dissenting).

I disagree with my colleagues' legal analysis; therefore, I must dissent.

A trial court's decision on a motion for directed verdict is reviewed de novo on appeal. *People v Hammonds*, 210 Mich App 554, 556; 534 NW2d 183 (1995). This Court must view the evidence presented in the prosecution's case-in-chief in a light most favorable to the prosecutor and determine whether a rational trier of fact could have found the essential elements of the crime were proven beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 465-466; 502 NW2d 177 (1993). Circumstantial evidence and the reasonable inferences drawn from the evidence may be sufficient to establish the elements of the crime. *Jolly, supra* at 466. Thus, the requisite intent may be inferred from all the facts and circumstances. *Id.* In applying these standards, it appears to me that the trial court did not err by denying defendant's motion for directed verdict and that there existed sufficient evidence to support defendant's conviction for forfeiture of bond.

MCL 750.199a; MSA 28.396(1) provides that "[a]ny person who shall abscond on or forfeit a bond given in any criminal proceedings wherein a felony is charged shall be deemed guilty of a felony." The purpose of this statute is to ensure a defendant's presence at a court proceeding. *People v Perryman*, 432 Mich 235, 241; 439 NW2d 243 (1989). There are three ways of violating MCL 750.199a; MSA 28.396(1): by forfeiting the bond, by failing to comply with its conditions, or by absconding on that bond. CJI2d 13.16 and 13.17. Here, the prosecutor proceeded under the theory that defendant had forfeited his bond, and the trial court instructed the jury on the elements of forfeiture

* Circuit judge, sitting on the Court of Appeals by assignment.

rather than absconding. CJI2d 13.16 sets forth the required elements to prove a violation of MCL 750.199a; MSA 28.396(1) for forfeiting a bond:

First, that the defendant gave a bond in a criminal proceeding in which a felony was charged. Second, that the defendant forfeited that bond by intentionally or recklessly violating a condition of the bond. . . . Third, that the defendant had notice of the condition of the bond that the prosecution claims was violated.

Reviewing the evidence presented in the prosecutor's case-in-chief in a light most favorable to the prosecution indicates that a rational trier of fact could have found the essential elements of forfeiting bond proven beyond a reasonable doubt. The documentary evidence showed that defendant gave a bail bond regarding the cocaine possession charge against him which was, of course, a felony proceeding. It further showed that defendant's appearance at court dates was required as a condition of his bond, and that he was notified of his scheduled preliminary examination on January 30, 1992, as was shown by his signature on that notice. The prosecutor then presented evidence that defendant was not present at the time his preliminary examination was called, albeit somewhat later than the originally scheduled time, which resulted in the forfeiture of his bond. Finally, defendant's intent or recklessness in violating the condition of his bond requiring his presence for his preliminary examination could be inferred from the evidence that he knew when he was supposed to appear for his preliminary examination, in fact arrived and sat in the courtroom, then simply left before his case was called. These facts as adduced at trial support the trial court's refusal to grant defendant's motion for directed verdict.

The majority's discussion of the second means of violating MCL 750.199a; MSA 28.396(1), absconding to bond, is irrelevant to this case because the prosecutor did not proceed on that particular theory. Similarly, the majority's discussion that the defendant's bail bond could not have been properly forfeited by the district court in accordance with MCL 765.28; MSA 28.915 is also inappropriate. That issue was not raised below or on appeal; nor has the record been developed so that this issue may be adequately reviewed. We should, therefore, consider this issue waived or abandoned. See, e.g., *Severn v Sperry Corp*, 212 Mich App 406, 415; 538 NW2d 50 (1995).

Thus, based on the foregoing analysis and the correct application of the standard of review, I believe the trial court should be affirmed on this issue.

/s/ Jane E. Markey