STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 5, 1999
v	No. 203501 Antrim Circuit Court
WILLIAM B. MILLER, Defendant-Appellant.	LC No. 96-003046 FH

Before: Gage, P.J., and MacKenzie and White, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of absconding or forfeiting bond in a criminal proceeding, MCL 750.199a; MSA 28.396(1). He was subsequently convicted of being a second habitual offender, MCL 769.10; MSA 28.1082, and was sentenced to an enhanced term of forty-eight to seventy-two months. This sentence was to be served consecutively to the sentence imposed for defendant's conviction of the crime for which he had been out on bond. Defendant appeals as of right. We affirm.

Defendant first contends that the evidence was insufficient to convict him of absconding on bond, asserting that the prosecution did not prove that he had actual notice of the final conference date at which he failed to appear or that he intentionally avoided notice. In determining a question regarding the sufficiency of evidence, we review the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the crime were proved beyond a reasonable doubt. *People v Stevens*, 230 Mich App 502, 504; 584 NW2d 369 (1998).

We note initially that defendant's argument regarding intent is without merit. This Court has previously held that conviction under the absconding statute does not require the specific intent to abscond. *People v Demers*, 195 Mich App 205, 208; 489 NW2d 173 (1992), citing *People v Litteral*, 75 Mich App 38, 43-44 n 2; 254 NW2d 643 (1977). We also find unpersuasive defendant's actual notice argument. In light of defendant's agreement to the bond condition that any notices to appear "may be given to my attorney in place of personal notice to me," actual notice to defendant was not required in this case. Defendant assumed the responsibility of maintaining contact with his attorney regarding the proceedings against him. Concerning defendant's former counsel's receipt of notice of the

final conference that defendant failed to attend, the trial court file copy of the notice indicated that it was mailed to defendant's attorney. Because those in charge of receiving and transmitting mail are presumed to perform the duties entrusted to them, *People v Hammond*, 132 Mich 422, 427; 93 NW 1084 (1903), defense counsel presumably received this notice. We find sufficient evidence to support a conclusion that defendant's former counsel received notice of the final hearing. Given defendant's agreement that notice to his attorney was appropriate, we conclude that this notice was sufficient to apprise defendant of the final conference.

Defendant next argues that in convicting him the jury improperly relied on a chain of inferences. Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994). A prosecutor is free to argue the evidence and all reasonable inferences therefrom as it relates to the prosecution's theory of the case. *People v Fisher*, 220 Mich App 133, 159; 559 NW2d 318 (1996).

Our review of the record reveals that the jury did not rely on a series of impermissible inferences. The necessary elements that must be established to support a conviction under MCL 750.199a; MSA 28.396(1) are that the defendant did abscond and that he did so from a criminal proceeding wherein a felony was charged. *Litteral*, *supra* at 42. Absconding involves "a design to withdraw clandestinely, to hide or conceal one's self, for the purpose of avoiding legal proceedings." *Id*., quoting *McMorran v Moore*, 113 Mich 101, 104; 71 NW 505 (1897). Regarding scienter, the statute requires minimal proof of reckless neglect or disregard of a known obligation to appear and defend. *People v Rorke*, 80 Mich App 476, 478; NW2d (1978). The testimony and evidence demonstrated that defendant was charged with first-degree criminal sexual conduct and was bonded out on that charge. Further, the trial court received a copy of the final conference notice that indicated it had been sent to defendant's attorney. As discussed above, that notice was sufficient to apprise defendant of the November 19, 1990 final conference. The former prosecuting attorney testified that no final conference was ever held and that a bench warrant for defendant's arrest was issued. Defendant was ultimately arrested on this bench warrant in October 1996. We conclude that sufficient evidence was presented at trial from which a rational trier of fact could have found beyond a reasonable doubt all elements required for defendant's conviction under MCL 750.199a; MSA 28.396(1). *Stevens*, *supra*.

Lastly, defendant claims that the prosecutor made several statements in his closing argument that improperly shifted the burden of proof. Because defendant failed to object to the prosecutor's statements, appellate review is precluded absent a miscarriage of justice. *People v Gonzalez*, 178 Mich App 526, 534-535; 444 NW2d 228 (1989). A miscarriage of justice will not be found if any prejudicial effect could have been eliminated by a timely instruction, had defendant requested one. *Id*. at 535.

When reviewing instances of alleged prosecutorial misconduct, this Court must examine the pertinent portion of the record and evaluate the prosecutor's remarks in context. *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996). A prosecutor is free to respond to the arguments and theories of the defense. *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997). At trial, defense counsel questioned prosecution witnesses' knowledge whether defendant ever received notice of the final conference, thus implying that defendant never received this notice.

After reviewing the alleged instances of prosecutorial misconduct in the context of the entire argument and in light of the defense theory, we find that the prosecutor did not improperly reference defendant's failure to testify. See *People v Fields*, 450 Mich 94, 108-109; 538 NW2d 356 (1995). The prosecutor's argument was simply fair comment on the testimony elicited by defense counsel. Furthermore, the trial court could have eliminated any unfair prejudice arising from the prosecutor's comments with a curative instruction, had defendant requested one. Therefore, we conclude that no miscarriage has occurred, and further review is precluded. *Gonzalez*, *supra*.

Affirmed.

/s/ Hilda R. Gage
/s/ Barbara B. MacKenzie
/s/ Helene N. White