

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
November 27, 2018

v

IVAN ALEXANDER,

No. 339579
Wayne Circuit Court
LC No. 16-008770-01-FH

Defendant-Appellant.

Before: M. J. KELLY, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Defendant appeals by right convictions after a bench trial of one count of assault with a dangerous weapon (felonious assault), MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b.¹ Defendant was sentenced to 27 months' probation for felonious assault, and two years' imprisonment for felony-firearm. We affirm.

Defendant argues that because Natosha Tallman, his wife, and Cheryl Reed, his mother-in-law, testified almost identically, and the two felonious assault charges were based on the same action by defendant, pointing his gun back and forth between Tallman and Reed, the trial court entered inconsistent verdicts when it convicted him of the felonious assault of Tallman but acquitted him of the felonious assault of Reed. Defendant also argues that the court failed to make a sufficient factual finding regarding the third element of felonious assault, which requires intent to either injure or cause a victim to reasonably apprehend an immediate battery. We disagree.

“This Court reviews de novo questions regarding inconsistent verdicts, which are constitutional issues.” *People v Russell*, 297 Mich App 707, 722; 825 NW2d 623 (2012). The trial court’s findings of fact are reviewed for clear error. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012). “A ruling is clearly erroneous ‘if the reviewing court is left with a definite

¹ Defendant was acquitted of another count of felonious assault and assault and battery, MCL 750.81.

and firm conviction that the trial court made a mistake.’ ” *Id.*, quoting *People v Armstrong*, 490 Mich 281, 289; 806 NW2d 676 (2011).

A court acting as trier of fact must, on the record, “find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.” MCR 6.403. See also MCR 2.517(A). “ ‘[A] trial judge sitting as the trier of fact may *not* enter an inconsistent verdict.’ ” *People v Ellis*, 468 Mich 25, 26; 658 NW2d 142 (2003)(emphasis in original; citation omitted). The court’s verdict must be consistent with its factual findings, and a verdict is inconsistent when it “cannot be rationally reconciled” with the court’s findings of fact. *Id.* at 27. This Court will not set aside a conviction where there is no factual inconsistency between the court’s findings and the court’s judgment. *People v Smith*, 231 Mich App 50, 53; 585 NW2d 755 (1998).

Felonious assault requires three elements: (1) an assault, (2) made with a dangerous weapon, and (3) the defendant’s intent to injure or place the victim in reasonable apprehension of an immediate battery. *People v Bosca*, 310 Mich App 1, 20; 871 NW2d 307 (2015). Defendant argues that the court made insufficient factual findings regarding the third element. The court explicitly stated that defendant did not intend to injure Tallman or Reed, saying that defendant did not “want to hurt anybody,” and used the gun to make himself “feel powerful, [to] control his environment, [and] to control other people.” The court did not make a specific factual finding regarding whether defendant intended to place Reed or Tallman in reasonable apprehension of an immediate battery by defendant.

But the trial court’s finding that defendant used the gun to control Tallman and Reed indicates that the court found defendant intended to make Tallman and Reed apprehend an immediate battery. This interpretation is supported by the trial court’s assertion at defendant’s sentencing hearing that its finding regarding defendant’s desire to control Tallman and Reed implied that defendant wanted to make “[Reed and Tallman] feel threatened that they might have an immediate battery.” Furthermore, the trial court is not required to “make specific findings of fact regarding each element of the crime.” *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). A court’s “factual findings are sufficient so long as it appears that the trial court was aware of the issues in the case and correctly applied the law.” *Id.* Accordingly, the court’s failure to make a specific factual finding regarding the third element of felonious assault is not dispositive. See *id.*

Defendant also argues that the court’s verdicts are inconsistent because the court acquitted defendant of felonious assault of Reed while convicting him of felonious assault of Tallman based on evidence concerning the same physical act of defendant. However, the court indicated that it doubted the credibility of the witnesses, and that the only witness who “could [] answer a question straight to save their lives” was an officer who responded to Reed’s 911 call. “This Court will not interfere with the trier of fact’s role of determining the weight of the evidence or the credibility of witnesses.” *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). The trial court failed to explain which portions of the testimony it found credible and which it did not. Based on its verdicts, however, it is clear that the court found the testimony that defendant pointed the gun at Tallman credible but not the testimony that defendant pointed the gun at Reed. This is further supported by the court’s remark at defendant’s sentencing hearing that Reed and Tallman had “different interests,” meaning “that one had an interest to lie.” The

court was entitled to make this credibility determination, and it does not render its verdict inconsistent. See *id.* Accordingly, the trial court's verdicts can be "rationally reconciled" with its factual findings. *Ellis*, 468 Mich at 27. Therefore, the trial court's verdicts were not inconsistent because it credited testimony that defendant pointed the gun at Tallman, while it simultaneously discounted testimony that defendant also pointed the gun at Reed.

We affirm.

/s/ Michael J. Kelly
/s/ David H. Sawyer
/s/ Jane E. Markey