

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM TIWAN DOTSON,

Defendant-Appellant.

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UNPUBLISHED

June 13, 2006

No. 261411

Wayne Circuit Court

LC No. 04-009343-01

Before: Davis, P.J., and Sawyer and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with two counts of kidnapping, MCL 750.349, two counts of armed robbery, MCL 750.529, two counts of felonious assault, one count of carjacking, MCL 750.529a, and one count of felony-firearm, based on allegations that he entered a car occupied by Marcye Pruitt and Deshanti Lile, directed Pruitt to drive the car, displayed a gun, pointed the gun at Lile, and took various items, including cell phones, from both women. Both Pruitt and Lile identified defendant as the person who entered the car. The evidence also showed that defendant made a call with the cell phone he commandeered from Pruitt.

The trial court found that the issue for resolution was the identity of the perpetrator who entered the car and robbed Pruitt and Lile. The trial court rejected Lile's identification testimony as not credible, found defendant guilty of felonious assault of Pruitt and felony-firearm, and acquitted him of all other charges.

In a bench trial, the trial court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). A trial court's findings of fact are reviewed for clear error. MCR 2.613(C). A finding is considered to be clearly erroneous if, after a review of the entire record, we are left with the firm and definite conviction that a mistake was made. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

A trial court sitting as the trier of fact in a criminal case may not render an inconsistent verdict. *People v Ellis*, 468 Mich 25, 26; 658 NW2d 142 (2003). A verdict is inconsistent when the factual findings underlying the verdict are inconsistent. See *People v Fairbanks*, 165 Mich App 551, 557; 419 NW2d 13 (1987).

The elements of felonious assault are: (1) an assault; (2) with a dangerous weapon; and (3) with the intent to place the victim in reasonable apprehension of an immediate battery. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). An assault is an attempt to commit a battery or an unlawful act that places another person in reasonable apprehension of receiving an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). The elements of felony-firearm are: (1) the possession of a firearm; (2) during the commission of, or the attempt to commit, a felony. MCL 750.227b.

Defendant argues that his convictions of felonious assault of Pruitt and felony-firearm must be reversed because the trial court rendered inconsistent verdicts by convicting him of these charges while acquitting him of the remaining charges. We agree that the trial court rendered inconsistent verdicts, but affirm defendant's convictions. The trial court stated that it did not doubt that Pruitt and Lile were robbed by a man who entered the car, and that the question for resolution was the identity of the perpetrator. Both Pruitt and Lile selected defendant's photograph from an array, and identified him as the perpetrator of the charged offenses. The testimony given by Pruitt and Lile, if accepted, established the elements of the charged offenses. The trial court made much of the fact that the person who entered the car called a telephone number that was assigned to defendant's cell phone, and reasoned that defendant would not attempt to call his own cell phone. The trial court found that the person who entered the car committed felonious assault against Pruitt, and that he used a gun in the commission of the offense. The trial court found that Lile's identification testimony was not credible, notwithstanding the fact that that testimony was consistent throughout the proceedings. The trial court's conclusion that Lile's identification testimony was not credible was inconsistent with its finding that the same man, defendant, feloniously assaulted Pruitt while in possession of a firearm.

The evidence was sufficient to convict defendant as charged against both complainants. However, that fact does not entitle defendant to the reversal of his convictions of felonious assault against Pruitt and felony-firearm. Pruitt's testimony that defendant displayed a gun and stated that he intended to kill her and Lile, and that she was frightened by his actions, established the elements of felonious assault and felony-firearm. *Davis, supra; Grant, supra*; MCL 750.227b. An improper acquittal is constitutionally protected; thus, the trial court's apparently erroneous acquittal of defendant on some charges has no remedy. *Ellis, supra* at 28. Similarly, defendant is not entitled to reversal of convictions for which the evidence, including identification evidence, was sufficient.

Affirmed.

/s/ Alton T. Davis  
/s/ David H. Sawyer  
/s/ Bill Schuette