

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MILES DEVELL FAISON,

Defendant-Appellee.

UNPUBLISHED

March 23, 2004

No. 244385

Wayne Circuit Court

LC No. 02-007782

Before: Zahra, P.J., and Saad and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to two years' imprisonment for the felony-firearm conviction, to be served consecutively to two years' probation for the felonious assault conviction. We affirm.

I. Facts and Procedure

After defendant finished mowing his lawn and went into his house, Curtis Gulley, Jr., defendant's next-door neighbor, walked over and told defendant through his window not to blow debris onto his driveway. According to defendant, Gulley swore at him and threatened to beat him. Gulley denied this, and testified that, in response to his request not to blow debris onto his driveway, defendant swore at Gulley. Defendant came out of his house about three to ten minutes later and went to his car on the street. Gulley again told defendant not to blow debris onto his driveway, and an argument began. According to defendant, Gulley walked up to defendant's car, opened the car door, and threatened to beat him again. Defendant testified that Gulley then followed him up the driveway, yelling at him and threatening him. Gulley denied this. In contrast, Gulley testified that, as the two exchanged insults, defendant walked back to his house and stood at the side door as Gulley stood about forty-five feet away on the sidewalk at defendant's driveway. Defendant testified that when he told Gulley to get off his property, Gulley said "you ain't got no property" and pulled up his shirt to reveal a large gun in his waistband. Once again, Gulley denied this. Defendant also testified that when he then told Gulley to leave his property and opened his side door, Gulley walked away. In contrast, Gulley testified that as they were arguing, defendant stuck his hand through the side door, retrieved a 7.62 millimeter Ruger assault rifle, pointed it at Gulley, and walked toward him. According to

Gulley, defendant walked until he was about twenty or twenty-five feet from Gulley, stopped, laughed, and walked back into the house.

The trial court found that Gulley had not flashed a gun at defendant and that, as Gulley was standing about forty feet away on the sidewalk, defendant had retrieved an assault rifle from his house and pointed it at Gulley. The trial court found that defendant had pointed the gun at Gulley with the intent to cause Gulley to fear being shot, and found him guilty of felonious assault and felony-firearm.

II. Analysis

A. Sufficiency of the Evidence

Defendant argues that the prosecution failed to present sufficient evidence to prove beyond a reasonable doubt that defendant was not acting in self-defense and was guilty of felonious assault. In reviewing a claim of insufficient evidence, this Court must determine whether, taking the evidence in the light most favorable to the prosecution, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002). “Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime.” *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

“The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery.” *Id.* The intent element of felonious assault may be proven indirectly by inference from the conduct of the accused and the surrounding circumstances. *People v Lawton*, 196 Mich App 341, 349-350; 482 NW2d 810 (1992). Here, the trial court determined that defendant retrieved an assault rifle from his home and pointed it at Gulley after an argument. Although defendant never verbally threatened to shoot Gulley, it can be inferred from defendant’s actions that he intended to place Gulley in reasonable apprehension of being shot by pointing the rifle at him in the middle of an argument. Therefore, there was sufficient evidence to prove the elements of felonious assault.

We also conclude that the prosecution introduced sufficient evidence to prove beyond a reasonable doubt that defendant was not acting in self-defense. A claim of self-defense requires proof that the defendant acted in response to an assault. *Detroit v Smith*, 235 Mich App 235, 238; 597 NW2d 247 (1999). A person is not required to retreat from an attacker who he reasonably believes is about to use a deadly weapon. *People v Riddle*, 467 Mich 116, 119, 128-131; 649 NW2d 30 (2002). Nor is a person required to retreat from his home before he may act in self-defense. *Id.* at 120-121, 134-140. Here, the only evidence to support defendant’s claim of self-defense was defendant’s own testimony that Gulley followed him up his driveway, yelling at him and threatening him, and then displayed a gun tucked in his waistband. However, defendant also testified that when he told Gulley to get off his property, Gulley walked away. Furthermore, in contrast to defendant’s testimony, Gulley testified that he did not display a gun to defendant, and that he was standing approximately forty feet away from defendant when defendant retrieved his rifle. This Court must defer to the trier of fact in regard to the credibility of witnesses. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Viewing this testimony in the light most favorable to the prosecution, we conclude that the evidence was

sufficient to prove that defendant did not justifiably act in self-defense when he pointed the rifle at Gulley.

B. Intentionally Aiming a Firearm Without Malice

Next, defendant argues that the trial court erred in failing to consider the misdemeanor offense of intentionally aiming a firearm without malice, MCL 750.233, as a lesser included offense of felonious assault. We disagree. In a jury trial, “a requested instruction on a necessarily included lesser offense is proper if the charged greater offense requires the jury to find a disputed factual element that is not part of the lesser included offense and a rational view of the evidence would support it.” *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002). In contrast to a jury trial, a trial judge in a bench trial should be aware of lesser included offenses without the need for instruction. *People v Casal*, 412 Mich 680, 686; 316 NW2d 705 (1982). A trial court’s failure to consider a lesser included offense argued by the defendant in a bench trial is analogous to those cases in which the jury was not instructed as to requested lesser included offenses. *People v Maghzal*, 170 Mich App 340, 347; 427 NW2d 552 (1988).

Here, defendant was not charged with intentionally aiming a firearm without malice, and he did not request the trial court to consider this charge. Furthermore, defendant does not cite any law or make any argument in support of his claim that intentionally aiming a firearm without malice is a lesser included offense of felonious assault. In a bench trial, the trial court has no authority to convict a defendant of an offense not specifically charged unless the defendant has adequate notice. *People v Quinn*, 136 Mich App 145, 147; 356 NW2d 10 (1984). The notice is adequate if the conviction is for a lesser included offense of the charged offense. *Id.* Because defendant was not charged with intentionally aiming a firearm without malice, defendant did not request the trial court to consider this offense, and there is no support for defendant’s argument that this offense is a lesser included offense of felonious assault, the trial court did not err in failing to consider this offense as a lesser included offense of felonious assault.

C. Trial Court’s Factual Findings

Next, defendant argues that the trial court made insufficient findings of fact and conclusions of law by neglecting to address his claim that he acted in self-defense. MCR 6.403 is the court rule regarding findings in bench trials:

When trial by jury has been waived, the court with jurisdiction must proceed with the trial. The court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

A trial court’s findings are sufficient if they establish that the trial court was aware of the relevant issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). The court does not need to make specific findings of fact regarding each element of the crime. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). “Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts.” MCR 2.517(A)(2). Yet the trial court’s factual findings must be specific enough to disclose the basis for each critical

determination. *People v Jackson*, 63 Mich App 249, 254; 234 NW2d 471 (1975). “A court’s failure to find the facts does not require remand where it is manifest that the court was aware of the factual issue, that it resolved the issue, and that further explication would not facilitate appellate review.” *Legg, supra* at 134-135.

Here, the trial court did not make any express findings regarding whether it believed defendant’s testimony that Gulley revealed a gun in his waistband or whether defendant acted in justifiable self-defense. However, it is clear in this case that the trial court was aware of defendant’s claim of self-defense and rejected that claim. The trial court found that defendant and Gulley had been arguing from a distance of about forty feet when defendant retrieved a rifle from his house and pointed it at Gulley. The trial court’s omission in its findings of fact of any reference to a gun in Gulley’s waistband reveals that it did not believe defendant’s testimony in this regard. We conclude that remand is not required because it is clear that the court was aware of the self-defense issue, it resolved the issue, and further explication would not facilitate appellate review. *Legg, supra* at 134-135.

D. The Right to Bear Arms

Finally, defendant argues that his felony-firearm conviction unconstitutionally infringes on his right to bear arms in defense of himself under the Michigan constitution. We review constitutional issues de novo. *People v Garza*, 469 Mich 431, 433; 670 NW2d 662 (2003). Const 1963, art 1, § 6, provides, “Every person has a right to keep and bear arms for the defense of himself and the state.” However, this Court has held that “[a] right to bear arms does not encompass the possession of a firearm during the commission of a felony.” *People v Graham*, 125 Mich App 168, 172-173; 335 NW2d 658 (1983). Here, the trial court rejected defendant’s self-defense claim and found him guilty of felonious assault. Therefore, his conviction for felony-firearm did not infringe on his constitutional right to bear arms and was proper.

Affirmed.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Bill Schuette