

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CESAR OMAR BARAJAS,

Defendant-Appellant.

UNPUBLISHED

December 19, 2006

No. 265764

Wayne Circuit Court

LC No. 05-004755-01

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

Defendant was convicted of carrying a concealed weapon, MCL 750.227, and resisting and obstructing a police officer, MCL 750.81d(1), and was sentenced to two years' probation. Defendant was acquitted of resisting and obstructing a police officer causing a serious impairment of a body function, MCL 750.81d(3). Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that he was denied due process because the trial court rendered an inconsistent verdict. We disagree. When reviewing a preserved constitutional claim, a trial court's conclusions of law are reviewed de novo. *People v Hickman*, 470 Mich 602, 605; 684 NW2d 267 (2004). While juries may render inconsistent or illogical verdicts, "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), quoting *People v Walker*, 461 Mich 908; 603 NW2d 784 (1999). Inconsistent verdicts occur when a trial court's factual findings are inconsistent with the verdict and the two cannot be "rationally reconciled." *Id.* at 27.

The trial court in this case acquitted defendant of resisting or obstructing a police officer causing a serious impairment of a body function. To prove this crime the prosecution had to prove beyond a reasonable doubt that defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a person who he knew or had reason to know was performing his or her duties causing a serious impairment of a body function. *People v Thomas*, 263 Mich App 70, 73-74; 687 NW2d 598 (2004); MCL 750.81d(3). The trial court found that the prosecution had not proved beyond a reasonable doubt that the injury suffered by the officer was caused by defendant. However, the trial court still found that defendant had assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a person who the suspect knew or had reason to know was performing his or her duties in violation of MCL 750.81d(1).

Defendant argues that, under *People v Fairbanks*, 165 Mich App 551; 419 NW2d 13 (1987), the trial court's verdict is fatally inconsistent because the trial court determined that the injured officer's testimony concerning the incident was credible and yet still found that the officer's injuries were not caused by defendant. A trial judge sitting as trier of fact has the duty to weigh the testimony and assess the credibility of the witnesses, *People v Snell*, 118 Mich App 750, 755; 325 NW2d 563 (1982), and an appellate court must defer to the trial court's resolution of factual issues, especially where it involves the credibility of a witness. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997). Contrary to defendant's contention, the Court in *Fairbanks* did not hold that a trial judge in a bench trial must either accept or reject a witness's testimony in its entirety. Rather, the Court found that the trial court could not logically find that an assault occurred based on the defendant's use of a gun and still acquit the defendant of felony-firearm. *Id.* at 557. As the *Ellis* Court explained, "it is not within the power of the judicial branch to dismiss charges or acquit a defendant on charges that are supported by the case presented by the prosecutor." *Ellis, supra* at 28.

In the present case the trial court assessed the credibility of the officers and determined that they were truthful. Nevertheless, after weighing the weight of the medical evidence, the trial court concluded that the prosecution had not met its burden of proving beyond a reasonable doubt that defendant's actions caused the injured officer's fracture. These findings are not inherently inconsistent with the evidence presented at trial.

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly