

APPENDIX A

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TONYA MALLETT-RATHELL, also known as
TONYA YVONNE MALLET-RATHELL, also
known as TONYA RATHELL, and also known as
TONYA AUBERT,

Defendant-Appellant.

UNPUBLISHED

April 27, 2017

No. 330327

Wayne Circuit Court

LC No. 15-005035-01-FH

Before: MURPHY, P.J., and MURRAY and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right her bench trial convictions of assault and battery, MCL 750.81(1), and fourth-degree child abuse, MCL 750.136b(7). She was sentenced to two years' probation for both convictions. We affirm.

There was evidence that, during an unusual game called "lockout" in which persons attempted to chase and force opposing "team" members out of the family home, defendant physically pushed and dragged her 14-year-old daughter, JC, then grabbed and held her by the collar, causing JC to feel as if she were choking, and subsequently held a butcher's knife against JC's throat at the kitchen counter. There was also testimony that defendant had been drinking heavily and that she was angry at JC for supposedly choosing her father over defendant. The prosecution charged four counts in the information: count 1 charged assault with a dangerous weapon (felonious assault), MCL 750.82; count 2 charged fourth-degree child abuse; count 3 charged assault and battery; and count 4 also charged assault and battery. The factual theory behind each count did not become entirely clear until the trial. In addressing defendant's motion for a directed verdict, the prosecutor indicated that the felonious assault count concerned, of course, defendant's employment of the butcher's knife, that the "first assault" regarded the pushing and dragging of JC, that the "second assault" concerned the "grabbing of the collar" or choking incident, and that the child abuse count regarded "either the choking and/or the holding [of] the knife up to [JC's] throat."

In deciding defendant's motion for directed verdict, the trial court first noted that it was "concerned about those multiple counts of assault and battery." The court subsequently ruled

that “Count 4 will be dismissed.” Given the prosecutor’s description of the counts, the trial court necessarily dismissed the assault and battery count connected to the choking incident. The court denied the motion for directed verdict on the remaining counts. The trial court did state that “there’s just nothing . . . to suggest that this was more than one occurrence of assaultive behavior on behalf of the . . . defendant.” At the conclusion of the trial, the court acquitted defendant of felonious assault, concluding that she lacked the intent to actually injure JC or to place her in reasonable apprehension of an immediate battery. With respect to fourth-degree child abuse, the trial court found defendant guilty, given that “an unreasonable risk of harm . . . occur[s] . . . when you put a knife up to your child’s neck, even if you’re doing it playing.” Finally, absent any elaboration, the trial court found defendant guilty of assault and battery. In light of the fact that count 3 was still unresolved at that point, and considering that count 3 was predicated on, according to the prosecutor, an assault and battery arising out of defendant’s act of pushing and dragging JC through the house, we must necessarily conclude that the trial court found that defendant committed the offense of assault and battery when she pushed and dragged JC. The trial court’s earlier comment when addressing the motion for directed verdict that there was just “one occurrence of assaultive behavior” does not and cannot change this conclusion.

On appeal, defendant argues that because the trial court found that there was insufficient evidence to convict defendant of felonious assault, due to a lack of intent to injure JC or place her in reasonable apprehension of an immediate battery, there was likewise insufficient evidence to convict her of assault and battery and fourth-degree child abuse. Therefore, defendant argues that the trial court’s verdicts were inconsistent, and thus the child abuse and assault and battery convictions must be reversed.

A claim of error premised on inconsistent verdicts is a constitutional issue subject to de novo review. *People v Russell*, 297 Mich App 707, 722; 825 NW2d 623 (2012). Our Supreme Court has held that “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) (citation and quotation marks omitted). A verdict is inconsistent when it “cannot be rationally reconciled” with the court’s factual findings. *Id.* at 27. If there is no inconsistency in the trial court’s factual findings and its verdicts, reversal is not required. *People v Smith*, 231 Mich App 50, 53; 585 NW2d 755 (1998).

Defendant was acquitted of felonious assault, the elements of which are “(1) an assault, (2) with a dangerous weapon, and (3) the intent to injure or place the victim in reasonable apprehension of an immediate battery.” *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). The third or “intent” element of the offense was not sufficiently established here according to the trial court. An assault and battery, entailing an actual battery as opposed to a mere assault absent a battery, does require proof of an intent to either commit a battery or to make the victim reasonably fear an immediate battery. M Crim JI 17.2. The problematic aspect of defendant’s argument is that the trial court found a specific failure to show the requisite intent *relative to defendant placing the knife to JC’s throat*. The trial court did not expressly speak to the issue of criminal intent in regard to the assault and battery arising out of the pushing and dragging of JC, but given the conviction, we must assume that the court found that there was sufficient evidence of intent on that particular offense. Defendant’s appellate argument simply does not reach the assault and battery conviction and the facts underlying that conviction; there was no inconsistency in finding a lack of intent as to felonious assault while implicitly finding that intent was proven with respect to the assault and battery charge. We note that our analysis

and ruling would necessarily be the same if the choking incident was the basis for the assault and battery charge that went to verdict following trial. Reversal is unwarranted.¹

With respect to the conviction for fourth-degree child abuse, MCL 750.136b provides, in relevant part, as follows:

(7) A person is guilty of child abuse in the fourth degree if any of the following apply:

(a) The person's omission or reckless act causes physical harm to a child.

(b) The person knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, regardless of whether physical harm results.

Concluding, under a set of circumstances, that a person knowingly or intentionally created an unreasonable risk of harm or injury to a child is not inconsistent with a finding that, under the same circumstances, the person lacked the intent to injure or to place the child in reasonable apprehension of an immediate battery. While defendant may not have had the intent to injure JC or to place her in reasonable apprehension of an immediate battery when defendant put the butcher's knife to JC's throat, the evidence could still support, absent contradiction, a finding that defendant knowingly or intentionally committed an act that posed an unreasonable risk of harm or injury to JC. And the evidence certainly supported a ruling that defendant's act of placing the butcher's knife to JC's throat constituted the knowing and intentional commission of an act that posed an unreasonable risk of harm or injury to JC. Reversal is unwarranted.

Affirmed.

/s/ William B. Murphy
/s/ Christopher M. Murray
/s/ Michael J. Kelly

¹ We do note that this case has been somewhat difficult to analyze, considering the trial court's lack of elaboration and clarity in ruling on the motion for directed verdict and in rendering the final verdicts.

APPENDIX B

Court of Appeals, State of Michigan

ORDER

People of MI v Tonya Mallett-Rathell

Docket No. 330327

LC No. 15-005035-01-FH

William B. Murphy
Presiding Judge

Christopher M. Murray

Michael J. Kelly
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The Court further orders that the motion for reconsideration is DENIED.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAY 01 2017

Date

Chief Clerk

APPENDIX C

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
WAYNE COUNTYORDER OF PROBATION
(Misdemeanor)CASE NO.
15-005035-01-FH

ORI MI- 821095J Court address 1441 St. Antoine - Detroit, MI 48226 Courtroom 502 Court Telephone No. 313-224-2520

Police Report No.

THE PEOPLE OF

☐ The State of Michigan

v

Defendant's name, address, and telephone no.

Tonya Yvonne Mallet-Rathell

26127 Stanford

Dearborn Heights, MI 48125

CTN/TCN

14712211-01

SID

DOB

07/30/1973

Probation Officer

Term: 2 YEARS

Offense 2) CHILD ABUSE-4TH
DEGREE 3) ASSAULT & BATTERY☐ Judgment of guilt is deferred under:☐ MCL 333.7411, Controlled Substance Act☐ *MCL 436.1703, Minor in Possession☐ MCL 750.430, Practicing under the Influence☐ MCL 769.4a, Spouse Abuse Act☐ MCL 762.14 Youthful Trainee Status☐ MCL 600.1076, Drug Treatment Court☐ Pursuant to 18 USC 922(g)(8), the court found, at a hearing, that the defendant represents a credible threat to the physical safety of one or more persons as defined in 18 USC 9ss(g)(8) and 18 USC 921(32) and named in item 8. ** Needed for NCIC entry.**IT IS ORDERED** that the defendant be placed on probation under the supervision of the probation officer named above for the term indicated, and the defendant shall:

1. Not violate any criminal law of any unit of government.
2. Not leave the state without the consent of this court.
3. Make a truthful report to the probation officer monthly, or as often as the probation officer may require, either in person or in writing, as required by the probation officer.
4. Notify the probation officer immediately of any change of address or employment status.
- ☐ 5. Not purchase or possess a firearm. (Needed for NCIC entry.)

6. Pay the following to the court:

Crime Victim Assessment	\$ 75	Costs	\$ 1300
Restitution	\$	Supervision	\$ 20 p/mo
State minimum costs	\$ 106	Other (including DNA assessment).	\$ 60
Fine	\$	Total	\$

☐ a. The due date for payment is☐ b. The total amount due shall be paid in installments of \$ _____ per _____ starting on _____ and paid in full by the due date stated in the judgment of sentence or by _____ Date.

Fines, costs, and fees not paid within 56 days of the date owed or of any installment payment date are subject to a 20% late penalty on the amount owed.

☐ 7. Comply with the attached wage assignment order.☒ 8. Other: (Use this space for conditions for the protection of one or more named persons - also complete the LEIN order on Part 2 of this form. See back of form for required language when conditions are ordered pursuant to 18 USC 922[g](8).)

ANGER MGMT;ALCOHOL TETHER;PARENTING CLASSES;NO ALCOHOL;

Failure to comply with this order may result in a revocation of probation and incarceration.

Date

Judge/Magistrate

Bar No.

I have read or heard the above order of probation and have received a copy. I understand and agree to comply with this order. I also understand that federal and/or state law may prohibit me from possessing or purchasing ammunition or a firearm (including a rifle, pistol, or revolver) if the court found I represent a credible threat to the physical safety of a named person and/or explicitly prohibited (in item 8) the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury to that named person.

Defendant signature

Date

If the judgment of guilt is deferred as stated above, the clerk of the court shall advise the Michigan State Police Criminal Justice Information Center of the disposition, except those noted with an asterisk, as required under MCL 769.16a. A case in which judgment of guilt is deferred shall be maintained as a nonpublic record. *If the judgment of guilt is deferred and the defendant is incarcerated, the clerk of the court should also advise the incarcerating agency of nonpublic record.

MCL 600.4803, MCL 769.1a, MCL 771.1 et seq., MCL 775.22, MCL 780.826,

APPENDIX D

Order

Michigan Supreme Court
Lansing, Michigan

June 27, 2017

Stephen J. Markman,
Chief Justice

155698 & (68)

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen
Kurtis T. Wilder,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 155698
COA: 330327
Wayne CC: 15-005035-FH

TONYA MALLETT-RATHELL, a/k/a
TONYA YVONNE MALLETT-RATHELL,
a/k/a TONYA RATHELL, and a/k/a
TONYA AUBERT
Defendant-Appellant.

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the April 27, 2017 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.



a0619

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 27, 2017

Clerk

APPENDIX E

Order

Michigan Supreme Court
Lansing, Michigan

September 12, 2017

Stephen J. Markman,
Chief Justice

155698(78)(79)

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen
Kurtis T. Wilder,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 155698
COA: 330327
Wayne CC: 15-005035-FH

TONYA MALLET-RATHELL, a/k/a
TONYA YVONNE Mallet-Rathell,
a/k/a TONYA RATHELL, and a/k/a
TONYA AUBERT,
Defendant-Appellant.

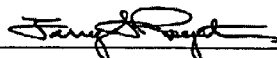
On order of the Court, the motion for immediate consideration is GRANTED.
The motion for reconsideration of this Court's June 27, 2017 order is considered, and it is
DENIED, because it does not appear that the order was entered erroneously.



a0906

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the
foregoing is a true and complete copy of the order entered at the direction of the Court.

September 12, 2017


Clerk