STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 31, 2001
v	No. 222668 Wayne Circuit Court
WILLIAM CALVIN HUNT, Defendant-Appellant.	Criminal Division LC No. 99-003391

Before: Doctoroff, P.J., and Murphy and Zahra, JJ.

PER CURIAM.

Defendant was convicted following a bench trial of assault and battery, MCL 750.81, and was sentenced to ninety days' incarceration. Defendant appeals as of right. We affirm.

Defendant was originally charged with two counts of unarmed robbery, MCL 750.530, after he and another man were observed fleeing a Farmer Jack grocery store in Dearborn. There was evidence at trial to suggest that although defendant was not seen taking anything from the store, he sprayed a clerk who was trying to lock the exit doors with a yellow substance before fleeing the store. The trial court concluded that defendant was not guilty of unarmed robbery. However, the court found defendant guilty of assault and battery for spraying the clerk.

As his only claim of error, defendant argues that it was improper for the trial court to have considered the lesser misdemeanor offense of assault and battery where defendant faced two counts of unarmed robbery because there was no factual relationship between the lesser and greater offense. Reviewing the court's factual findings for clear error and its legal conclusions de novo, we find no error. See *People v Crear*, 242 Mich App 158, 162; 618 NW2d 91 (2000) and *People v Joseph*, 237 Mich App 18, 20; 601 NW2d 882 (1999).

Our Supreme Court abolished the "misdemeanor cutoff" rule established in jury trials and set forth five conditions that must be met before a trial judge can instruct a jury on a lesser misdemeanor offense where a defendant faces felony charges. *People v Stephens*, 416 Mich 252, 261-264; 330 NW2d 675 (1982). However, the *Stephens* conditions do not apply where the trial is a bench trial. As our Supreme Court has recognized, bench trials do not present the same dangers when consideration of a lesser misdemeanor offense is at issue. While a large number of offenses, elements, and verdicts may confuse a jury, a trial judge has a duty to know the law and has the opportunity to study and reflect upon lesser offenses. *People v Cazal*, 412 Mich 680,

686-687; 316 NW2d 705 (1982). These factors reduce the possibility that consideration of misdemeanor offenses will confuse a judge's deliberations. *Id*. at 687. Likewise, while a jury's role as "a spokesman for the community conscience" may result in compromise verdicts, a judge's role is limited to finding the facts from the evidence presented and applying the law to those facts. *Id*. at 687-689. That role is further constrained by the fact that judges are required to articulate the facts found and their conclusions of law. *Id*. at 689.

Thus, we conclude that many of the policy concerns which led our Supreme Court to create the misdemeanor cutoff rule and to replace that rule with the five conditions enunciated in *Stephens* are absent where the trial is a bench trial. Because the conditions set forth in *Stephens* only apply to jury trials where a trial court must instruct the jury on possible offenses, demonstration of an "appropriate or inherent relationship" between the lesser and greater offenses in this bench trial was not required. Thus, the trial court's consideration of the cognate lesser offense of assault and battery, *People v Bryant*, 80 Mich App 428, 433-434; 264 NW2d 13 (1978), was not an error and did not deprive defendant of his right to due process.

Affirmed.

/s/ Martin M. Doctoroff
/s/ William B. Murphy
/s/ Brian K. Zahra