

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MONTREAL WILSON,

Defendant-Appellant.

UNPUBLISHED

July 8, 1997

No. 191791

Recorder's Court

LC No. 94-002640 FH

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial conviction of receiving and concealing stolen property over \$100. This case is being decided without oral argument pursuant to MCR 7.214(E).

After the prosecution had rested and the defense had presented its sole witness, defendant, and concluded direct examination, the trial judge in this case indicated that there was no need for cross-examination. After closing arguments, the trial court found defendant guilty, rejecting his testimony as not credible.

Defendant had a due process right to present closing argument as an adjunct of his Sixth Amendment right to the effective assistance of counsel. *Herring v New York*, 422 US 853; 95 S Ct 2550; 45 L Ed 2d 593 (1975). It would similarly be erroneous for a trial judge, in a bench trial, to finally settle his mind before defense counsel is given the opportunity to review the facts from defendant's point of view during closing argument. *People v Thomas*, 390 Mich 93, 95; 210 NW2d 776 (1973). However, that the trial judge may have preliminarily evaluated the credibility of one or more witnesses or tentatively made factual conclusions does not deprive defendant of his right to a fair trial. In *Herring, supra*, the Court recognized that a trial judge may well prematurely judge the case, and it is only denial of closing argument, which offers the opportunity to "correct a premature misjudgment and avoid an otherwise erroneous verdict" that violates due process. 422 US at 863.

* Circuit judge, sitting on the Court of Appeals by assignment.

A judge who presides at a bench trial necessarily and properly acquires a view of the credibility and character of every witness, including the defendant. *Liteky v United States*, 510 US ____; 114 S Ct 1147; 127 L Ed 2d 474, 488 (1994). Even in a jury trial, recognition that further questions of a witness may or may not be necessary, emanating from the jury itself, does not indicate any violation of defendant's right to fair trial. *People v Rutherford*, 208 Mich App 198, 203; 526 NW2d 620 (1994); *People v White*, 144 Mich App 698, 700-701; 376 NW2d 184 (1985). The principal and prudential concerns that counsel against allowing a jury to prematurely deliberate a case derive from the collegial nature of the jury process and therefore have no application to a bench trial with a single factfinder. See *People v Hunter*, 370 Mich 262, 272-273; 121 NW2d 442 (1963). This record indicates no violation of defendant's right to a fair trial.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Donald A. Teeple