THIRD DIVISION
June 15, 2011

No. 1-09-2539

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 16328
	)	
DON HOLMES,	)	The Honorable
	)	Thomas M. Davy,
	)	Judge Presiding.
Defendant-Appellant.	)	

JUSTICE STEELE delivered the judgment of the court.
Justices Neville and Murphy concurred in the judgment.

O R D E R

HELD: A stipulated bench trial in which the trial court stated that there was sufficient evidence for a conviction was tantamount to a guilty plea and therefore required Supreme Court Rule 402 admonishments.

Following a stipulated bench trial, defendant Don Holmes was found guilty of aggravated unlawful use of a weapon. He was sentenced to probation for 2 years and 49 days in jail, time

considered served. As a condition of probation, the court ordered defendant to obtain a GED.

On appeal, defendant contends that the stipulated bench trial was tantamount to a guilty plea, which required the trial court to provide Illinois Supreme Court Rule 402 (eff. July 1, 1997) admonishments.

The August 20, 2009, stipulated bench trial consisted of a stipulation that the testimony previously presented at a suppression hearing held on January 22, 2009, would be the testimony presented at trial. During the suppression hearing, the sole witness was Chicago police officer Bruno.

Bruno testified during the suppression hearing that at approximately 3:20 p.m. on August 1, 2008, he was driving two other officers in a squad car on South Evans Avenue, which was a one-way, one lane, northbound street, when he saw four individuals, including defendant, standing on a porch of an abandoned building at 6136 South Evans Avenue. The individuals were looking in the direction of the officers, who were dressed in plainclothes. Defendant walked to the window and dropped a slightly wrapped white T-shirt into that window, which was next to a door. Bruno did not have a search warrant or an arrest warrant, and defendant did not give Bruno permission to retrieve

the item. Bruno retrieved it and found that a loaded handgun was wrapped inside the white T-shirt.

The trial court denied defendant's motion to suppress.

On August 20, 2009, a stipulated bench trial was held. Neither Bruno nor any other witness testified at the trial. Instead, the parties stipulated that Bruno would testify at trial the same way that he had testified at the suppression hearing. The court stated it would make its decision based on the stipulated testimony because there would not be live testimony. Defendant indicated that he understood.

The court then admonished defendant that he would be entitled to a jury trial or a bench trial. The court explained that a jury trial would be a trial before 12 persons to be selected by defendant, defense counsel, and the assistant State's Attorney. The 12 persons would listen to the evidence, the lawyers' arguments, and the court's instructions on the law. The 12 persons would then decide whether the State had proved defendant to be guilty beyond a reasonable doubt. The court asked defendant if he understood what a jury trial was as the court had explained; defendant indicated that he understood. Upon the trial judge’s inquiry whether anyone had forced him to sign the jury waiver, defendant responded, "No." The court then

stated:

> "THE COURT: You also understand, Mr. Holmes, and I indicated to your lawyer, because of the stipulation that there would be sufficient evidence for me to find you guilty of the charge, and that after finding your [*sic*] guilty of the charge, I would then sentence you to a period of two years probation, forty-nine days Cook County Department of Corrections, time considered served and actually served, and as a condition of the probation you are to obtain your GED.
>
> Do you understand that that is what will happen after the finding of guilty?
>
> [DEFENDANT]: Yes.
>
> THE COURT: Do you also understand, sir, that the charge is a Class 4 felony. The sentence range for a Class 4 felony is one to three years in the Illinois Department of Corrections, with a one year period of mandatory supervised release.

> You could also receive a period of up to thirty months probation, you could be fined up to twenty-five thousand dollars, and given up to six months in the Cook County Department of Corrections as a condition of probation."

Defendant acknowledged that he understood the possible penalties. When the court asked defendant if anyone was forcing him "to plead guilty [*sic*] to this testimony," defendant answered, "No." Defendant then acknowledged that other than the court's promise as to the sentence, no one had made any other guarantees or promises to get him to stipulate to the testimony. The court then stated:

> "THE COURT: At this time, based upon the stipulation to the testimony of Officer Bruno heard at the motion to suppress on the 22nd of January, that specifically the Officer observed the defendant with a white T-shirt with an object in it, that the officer recovered that from inside a window that was inside an abandon[ed] building, that that did contain the weapon that was

> described in the charging document, there will be a finding of guilty as to the charge at this time."

Defendant proceeded to waive his right to a presentence investigative report, and the court imposed the agreed sentence.

On appeal, defendant contends that the trial court should have issued all of the admonishments required by Rule 402, not just some of them, because the stipulated bench trial was tantamount to a guilty plea. Defendant argues that his stipulation included a statement that the evidence was sufficient to convict. Defendant also maintains that the trial court did not substantially comply with Rule 402 because it did not discuss defendant's right to plead guilty or not guilty, his right to confront the witnesses against him, and his waiver of those rights. Defendant argues that the issue should be reviewed as plain error.

Whether a stipulated bench trial is tantamount to a guilty plea is a question of law subject to *de novo* review. *People v. Thompson*, 404 Ill. App. 3d 265, 270 (2010). A stipulated bench trial is tantamount to a guilty plea when either (1) the defendant stipulates that the evidence is sufficient to find him guilty beyond a reasonable doubt, or (2) the defendant fails to

present or preserve a defense where the State's entire case against him was by the stipulation. *People v. Clendenin*, 238 Ill. 2d 302, 324 (2010); *People v. Campbell*, 208 Ill. 2d 203, 218 (2003); see also *Thompson*, 404 Ill. App. 3d at 270.

Rule 402 applies to guilty pleas and stipulated bench trials in which the defense offers to stipulate that the evidence is sufficient to convict. Ill. S. Ct. R. 402 (eff. July 1, 1997); *Thompson*, 404 Ill. App. 3d at 270. The rules regarding criminal defendants and guilty pleas are not suggestions. *People v. Jamison,* 181 Ill. 2d 24, 29 (1998). Based upon the record before us, defendant's stipulated bench trial was the functional equivalent of a guilty plea, thereby triggering compliance with the admonishments afforded to defendant by Rule 402. During the proceedings, the trial judge stated to defendant that, as he also indicated to defendant's counsel, "because of the stipulation [for use of Bruno's testimony] there would be sufficient evidence for me to find you guilty of the charge." The trial judge then did indeed later find the defendant guilty after summarizing Bruno's testimony. Thus, defendant stipulated to the legal conclusion that the evidence was sufficient to find him guilty beyond a reasonable doubt and convict him of the weapon charge. Additionally, defendant failed to present or preserve a defense

where the State's entire case against him consisted of the stipulated testimony. Consequently, the trial court should have fully admonished defendant in accordance with Rule 402. See *People v. Horton*, 143 Ill. 2d 11, 27 (1991); see also *Jamison,* 181 Ill. 2d at 29 (defendant entitled to Rule 605(b) (eff. Oct. 1, 2001) admonishments in pleading guilty).

We have considered, and rejected, the State's arguments on appeal. Notably, the State contends that the stipulated bench trial was not tantamount to a guilty plea, because defense counsel preserved a defense and never stipulated to the sufficiency of evidence to convict him. In support, the State cites *Clendenin*, 238 Ill. 2d at 322. However, *Clendenin* is factually distinguishable. First, the stipulation in that case contained objections to the testimony for the same reasons presented in the defendant’s earlier suppression motion. *Id.* Here, the record reflects no such objections were attached to the stipulated testimony. Second, the stipulation in *Clendenin* explicitly stated it was not a concession to the sufficiency of the evidence to support a conviction, and thus, was not the functional equivalent of a guilty plea. *Id.* As stated previously, the trial court indicated that the stipulation was an agreement that Bruno’s stipulated testimony was sufficient to

convict the defendant.

Furthermore, we reject the State's contention that defendant's examination of Bruno at the suppression hearing rendered a right to confront witnesses useless at the stipulated bench trial. Yet, as the State concedes, the rule stated in *Campbell* (208 Ill. 2d at 217) does not apply where the stipulation is tantamount to a guilty plea (see *People v. Phillips*, 217 Ill. 2d 270, 287 (2005)).

Lastly, we acknowledge that the trial judge asked defendant if he voluntarily signed the jury and guilty plea waivers. However, because defendant was not fully admonished of his rights as provided under Supreme Court Rule 402 (eff. July 1, 1997), the inquiry does not excuse the court's failure to fully comply with Rule 402 in the first instance. See *Thompson*, 404 Ill. App. 3d at 267-68 (trial court's thorough admonishments to defendant pleading guilty).

Based upon the foregoing reasons, the judgment of the circuit court is reversed and the cause is remanded for further proceedings consistent with this order.

Reversed and remanded.