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2011 IL App (3d) 090886-U

Order filed August 5, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
ILLINOIS,	)	of the 14th Judicial Circuit
	)	Henry County, Illinois
Plaintiff-Appellee,	)	
	)	Appeal No. 3-09-0886
v.	)	Circuit No. 08-CF-165
	)	
NORMAN E. THOMAS,	)	Honorable
	)	Charles H. Stengel
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices Holdridge and Schmidt concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* Following the court's decision to find defendant guilty based on stipulated evidence, the trial court should have admonished defendant of his appeal rights pursuant to Supreme Court Rule 605(a) rather than Supreme Court Rule 605(b). The cause is remanded to the trial court for proper admonishments and further posttrial proceedings.
- ¶ 2 Following the trial court's denial of defendant's amended motion to suppress evidence in this case, the parties conducted a stipulated bench trial. The trial court found defendant guilty. The trial court admonished defendant pursuant to Supreme Court Rule 605(b). Following denial

of his posttrial motion, defendant appealed and challenged the trial court's denial of his amended motion to suppress evidence.

¶ 3 The State argues that this court does not have jurisdiction to consider defendant's appeal because defendant did not file a motion to withdraw his guilty plea pursuant to Supreme Court Rules 604(d) and 605(b). We conclude that the trial court failed to properly admonish defendant, and therefore, the cause is remanded to the trial court with directions.

¶ 4 **FACTS**

¶ 5 On May 12, 2008, the State filed an amended information in this case alleging that on May 3, 2008, defendant committed the offenses of unlawful possession of a controlled substance, resisting or obstructing a peace officer, and obstructing justice. On January 23, 2009, defendant tendered a jury trial waiver to the court.

¶ 6 On April 2, 2009, defendant filed an amended motion to suppress evidence illegally seized. The trial court conducted a hearing on the amended motion on April 29, 2009. After taking the matter under advisement, the trial court denied defendant's amended motion to suppress evidence illegally seized.

¶ 7 On June 16, 2009, the trial court conducted a Rule 402 conference with the parties regarding this cause, No. 08-CF-165, and two other, unrelated criminal proceedings also pending against defendant in cause Nos. 08-CF-336 and 08-CF-337. After a short recess, the prosecutor advised the court that defendant agreed to plead guilty to count I in both cause No. 08-CF-336 and cause No. 08-CF-337, and in exchange for the guilty plea, all other counts in those cases would be dismissed. With regard to this cause, No. 08-CF-165, the prosecutor informed the trial court that defendant agreed to stipulate to the evidence presented during the

preliminary hearing and the hearing on defendant's amended motion to suppress. In exchange for the stipulation, the State agreed to dismiss count III of the amended information in cause No. 08-CF-165.

¶ 8 The court then inquired if it was an open plea, and defense counsel responded, "Correct." After receiving signed guilty pleas for cause Nos. 08-CF-336 and 08-CF-337, the judge observed that he did not receive a signed guilty plea for cause No. 08-CF-165. Defense counsel explained that a guilty plea was not provided to the court because defendant would be stipulating to the evidence presented at the preliminary hearing and the motion to suppress hearing in order to preserve defendant's right to appeal the ruling on the amended motion to suppress in cause No. 08-CF-165.

¶ 9 In response to this information, the court stated that it needed to admonish defendant differently in this case since defendant was not pleading guilty but stipulating to certain evidence. Shortly thereafter, the following discussion occurred between the court and defense counsel:

“THE COURT: OK. Now, I want to ask the attorneys, am I being called upon to determine whether the stipulated evidence is sufficient to find the defendant guilty?”

MR. STOCKTON [defense counsel]: No, I –

THE COURT: Then the defendant – then the defendant is not stipulating to the evidence, that it is sufficient to find him guilty. Basically – let me rephrase that. Is the defense attorney, Mr. Stockton, are you stipulating to the sufficiency of the evidence, thereby participating in a stipulated bench trial, or stipulating that

the evidence is sufficient to convict, thereby participating – participating in a stipulated bench trial that is tantamount to a guilty plea?

MR. STOCKTON: The second, yes.

THE COURT: So there's two types. Stipulating to the sufficiency – stipulating to the evidence.

MR. STOCKTON: Yes.

THE COURT: And that's a stipulated bench trial, and then I decide as to whether or not there's enough evidence to find him guilty.

MR. STOCKTON: Mm-hm.

THE COURT: Or stipulating that the evidence is sufficient to convict, thereby participating in a stipulated bench trial tantamount to a guilty plea.

MR. STOCKTON: We're just – what we're doing is we're preserving his right to appeal.

THE COURT: I was just going to say that. Your right is still preserved in a stipulated bench trial, to take it up on appeal, no matter which way. So are you stipulating that there is sufficient evidence to convict since I denied the motion to suppress?

MR. STOCKON: Yes.

THE COURT: OK. Now, then all those admonishments

that I gave you are correct, that this case here is a stipulated bench trial which your attorney is stipulating that the evidence is sufficient to convict; thereby, this is tantamount to a plea of guilty. Do you understand that? But it still preserves your right to appeal. Do you follow me?"

¶ 10 Defendant replied, "Yeah, I believe I do." The court again stated that there were two types of stipulated bench trials and that both preserved defendant's right to appeal. The court said that defendant was agreeing that there was sufficient evidence to prove defendant guilty beyond a reasonable doubt. Defense counsel said, "Correct."

¶ 11 The court entered a finding of guilty on all cases and set the cause for sentencing. The minute entry of June 16, 2009, stated as follows:

"PARTIES STIPULATE TO TO [sic] FACTS OF CASE BASED OF [sic] EVIDENCE IN PRELIM HRG & MOTION TO SUPPRESS AS TO COUNTS 1 & 2, COUNT 3 DISMISSED MOTION STATE. COURT FINDS DEF GUILTY TO COUNTS 1 & 2." (Emphasis in original).

¶ 12 On August 18, 2009, the trial court conducted a joint sentencing hearing in this case, cause No. 08-CF-165, and in cause Nos. 08-CF-336 and 08-CF-337. The trial court sentenced defendant to 30 months conditional discharge in cause No. 08-CF-165, to be served consecutive to defendant's sentences to the Illinois Department of Corrections in cause Nos. 08-CF-336 and 08-CF-337. After pronouncing sentence, the court told defendant that he had the right to appeal but prior to taking an appeal, defendant:

"must file in the trial court within 30 days of the date on which

sentence is imposed a written motion asking to have the trial court reconsider the sentence or to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion. That if the motion is allowed, the sentence would be modified or the plea of guilty, sentence, and judgment would be vacated and a trial date would be set on the charges to which the plea of guilty was made. \*\*\* That in any appeal taken from the judgment on the plea of guilty, any issue or claim of error not raised in the motion to reconsider the sentence or to vacate the judgment and to withdraw the plea of guilty shall be deemed waived.”

¶ 13 On August 20, 2009, defendant filed a posttrial motion claiming that the State failed to prove defendant guilty beyond a reasonable doubt and that the court erred by denying defendant’s motion to suppress. On October 13, 2009, the trial court conducted a hearing on defendant’s posttrial motion. Defense counsel stated that he did not have any further argument and that the motion was “basically to set up his appeal.” The State neither commented on the motion nor objected to the motion. The trial court stated that it recalled the stipulated bench trial; that defendant was proved guilty beyond a reasonable doubt; and that the court did not err in denying defendant’s motion to suppress. The trial court denied defendant’s posttrial motion. On October 30, 2009, defendant filed a notice of appeal.

¶ 14 ANALYSIS

¶ 15 On appeal, defendant claims that the trial court erred by denying defendant’s amended

motion to suppress evidence because the police stopped defendant's car without probable cause. Alternatively, defendant claims the police violated defendant's constitutional rights by conducting a free air sniff with a canine without defendant's consent and without reasonable suspicion to conduct this search. Defendant further claims, that if for the sake of argument trial counsel did not properly preserve these issues for review, this court should review these issues based upon plain error and should grant defendant the relief requested.

¶ 16 In its brief, the State does not address the merits of defendant's claims raised on appeal. Instead, the State responds that defendant's stipulation was tantamount to a guilty plea in cause No. 08-CF-165. Consequently, the State requests this court to dismiss defendant's appeal because defendant did not file a motion to withdraw his guilty plea prior to taking this appeal as required by Supreme Court Rule 604(d).

¶ 17 A reviewing court has a duty to consider its jurisdiction and to dismiss an appeal if jurisdiction is lacking. *People v. Dominguez*, 366 Ill. App. 3d 468, 472 (2006) (citing *Ferguson v. Riverside Medical Center*, 111 Ill. 2d 436, 440 (1985)). Therefore, we begin by addressing the State's argument that this court lacks jurisdiction. We review *de novo* the issue of subject matter jurisdiction. *Blount v. Stroud*, 232 Ill. 2d 302, 308 (2009).

¶ 18 It is well established that a stipulated bench trial is not tantamount to a guilty plea if a defendant presented and preserved a defense. *People v. Horton*, 143 Ill. 2d 11, 22 (1991). Presenting and preserving a defense includes a defense theory of suppressing the relevant evidence. *Id.* A stipulated bench trial allows a defendant to "avoid the waiver rule while still allowing the parties to proceed with the benefits and conveniences of a guilty plea procedure." *Id.* However, if a defendant stipulates to the sufficiency of the evidence to convict, then

defendant's stipulated bench trial constitutes a guilty plea. *People v. Horton*, 143 Ill. 2d at 21-22 (citing *People v. Smith*, 59 Ill. 2d 236, 243 (1974)).

¶ 19 In this case, the record reveals that near the end of the stipulated bench trial, the court was partially mistaken and stated that defendant's "right is still preserved in a stipulated bench trial, to take it up on appeal, no matter which way." Nonetheless, it is clear from the record that the court believed the nature of this stipulated proceeding would preserve defendant's right to appeal the pretrial ruling on the amended motion to suppress evidence

¶ 20 In addition, at the hearing on defendant's posttrial motion on October 13, 2009, defense counsel stated that the motion was "basically to set up his appeal." The State did not take exception to this statement or object to the motion on the grounds that defendant should be considered to have entered a plea of guilty.

¶ 21 Based on this record, both the parties and the court recognized that the stipulated proceedings in this case were not intended to operate as a guilty plea. Consequently, the trial court should not have admonished defendant pursuant to Supreme Court Rule 605(b) (Ill. Sup. Ct. R. 605(b) (effective Oct. 1, 2001)). Instead, after finding defendant guilty, the trial court should have admonished defendant of his appeal rights pursuant to Supreme Court Rule 605(a). Ill. Sup. Ct. R. 605(a) (effective Oct. 1, 2001). Here, the trial court failed to provide Supreme Court Rule 605(a) admonishments following defendant's not guilty plea.

¶ 22 This court has previously held that when the trial court has not substantially complied with Supreme Court Rule 605(a), "remandment is only required when (1) real justice has been denied; or (2) the defendant has been prejudiced by the lack of proper admonishment." *People v. Jones*, 358 Ill. App. 3d 1072, 1074 (2005) (citing *People Williams*, 344 Ill. App. 3d 334, 340

(2003)). Since the State requests a dismissal of the appeal in this case, we believe that the matter should be remanded to the trial court for proper admonishments.

¶ 23 Therefore, the trial court's order denying defendant's posttrial motion is reversed. The cause is remanded to the trial court for proper admonishments pursuant to Supreme Court Rule 605(a) and for further posttrial and postsentencing matters.

¶ 24 CONCLUSION

¶ 25 The judgment of the circuit court of Henry County denying defendant's posttrial motion is reversed, and the cause is remanded to the trial court for proper admonishments pursuant to Supreme Court Rule 605(a) and for further posttrial and postsentencing proceedings.

¶ 26 Reversed and remanded with directions.