

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).

NO. 4-09-0905

Order Filed 3/7/11

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
DEHRONE M. HOBBS,)	No. 08CF1337
Defendant-Appellant.)	
)	Honorable
)	Robert L. Freitag,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann
concurred in the judgment.

ORDER

- Held:*
- (1) Stipulation was not tantamount to a guilty plea requiring that defendant receive personal admonishments and that he agree to its entry;
 - (2) Defense counsel validly waived defendant's confrontation right by entering into stipulation; and
 - (3) Defense counsel's failure to inform defendant of the specific content of stipulation was not deficient.

Following a July 2009 bench trial, the trial court found defendant, Dehrone M. Hobbs, guilty of two counts of delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2008)). In September 2009, the court sentenced defendant to two concurrent 12-year terms of imprisonment.

Defendant appeals, arguing he was denied his constitutional right to confront witnesses when defense counsel stipulated to the admission of evidence without defendant's

knowledge. We affirm.

I. BACKGROUND

In December 2008, a grand jury indicted defendant on three counts of delivery of a controlled substance, alleging he knowingly and unlawfully possessed with the intent to deliver a substance containing (1) methylenedioxymethamphetamine (count I), (2) clonazepam (count II), and (3) promethazine (count III). In July 2009, defendant waived his right to a jury trial and the parties proceeded to a bench trial. Upon the tender of a stipulation to the court, the following exchange occurred:

"MR. HORVE [(Assistant State's Attorney)]: I prepared a stipulation that Mr. McEldowney [(defense counsel)] has reviewed related to the substances involved since that's not the issue in this case and that the issue is going to be identification of the defendant as the person who did the deal.

MR. MCELLOWNEY: That's correct, Your Honor. We would stipulate to that, the entry of that document in lieu of testimony by the forensic expert and witnesses regarding chain of custody.

THE COURT: All right. And, Mr.

McEldowney, you agree with Mr. Horve's assessment that the defense in this case was it was not defendant who delivered the substance. That is the thrust of your defense and that, therefore, whether or not it is actually a controlled substance is not an issue of the defense.

MR. MCELLOWNEY: That is correct, Judge. The defendant is adamant he did not provide the drugs."

Following a recess, the trial court granted the State's motion to dismiss count III of the indictment. The court received evidence and testimony concerning the remaining counts. Bloomington police detective Todd McCluskey testified that he worked undercover in the vice and narcotics unit on November 19, 2008. That same day he purchased 10 pills from defendant. Bloomington police detective Todd Walcott testified that he was present on November 19, 2008, and equipped with a video surveillance camera. Walcott identified defendant as the individual who sold McCluskey pills.

After the State offered the stipulated evidence, the following colloquy took place:

"THE COURT: All right. The court has previously received an evidence stipulation

signed by counsel which references People's exhibits one, two, 2A, three and 3A, which include the testimony of Ms. Denise Hanley and chain of custody testimony.

Mr. McEldowney, you previously have signed off on the stipulation. I guess for the record, you are stipulating to the evidence as indicated within the written stipulation. Is that correct?

MR. MCELDOWNEY: Yes, we are, Judge.

THE COURT: All right. That will be accepted then."

The trial court found defendant guilty of two counts of delivery of a controlled substance and later sentenced defendant to two concurrent 12-year extended terms based on his prior criminal history.

On September 22, 2009, defendant *pro se* filed a posttrial motion alleging "unfair trial" and "insufficient counsel." In an exchange with the trial court on November 3, 2009, defendant objected to defense counsel's stipulation to the chain of custody and to the chemical composition of the recovered substances. Defense counsel responded the decision to stipulate was a matter of trial strategy. The court found defendant's objection without merit.

This appeal followed.

II. ANALYSIS

Defendant argues his sixth-amendment right of confrontation was violated by defense counsel's stipulation to the chain of custody and to the chemical composition of the recovered substances.

When the issue raised is purely one of law, the court reviews the record *de novo*. *People v. Daniels*, 187 Ill. 2d 301, 307, 718 N.E.2d 149, 155 (1999).

"[D]efense counsel may waive a defendant's right of confrontation as long as the defendant does not object and the decision to stipulate is a matter of trial tactics and strategy." *People v. Campbell*, 208 Ill. 2d 203, 217, 802 N.E.2d 1205, 1213 (2003). However, a defendant must personally waive the right of confrontation "when the State's entire case is to be presented by stipulation and the defendant does not present or preserve a defense *** or where the stipulation includes a statement that the evidence is sufficient to convict the defendant." *Campbell*, 208 Ill. 2d at 218, 802 N.E.2d at 1213.

"We attach[] no other restrictions to defense counsel's authority to stipulate to the admission of evidence, and, except in those specified instances where the stipulation is tantamount to a guilty plea, we impose[] no

obligations on the trial court or counsel to admonish the defendant and ensure that the advisement is made a part of the record."

People v. Phillips, 217 Ill. 2d 270, 283, 840 N.E.2d 1194, 1202 (2005).

Neither of the exceptions set forth in *Campbell* is applicable in this case. Defendant's theory at trial was misidentification. In addition to the stipulation as to the chain of custody and the chemical composition of the recovered substances, the State presented the testimony of the police officers involved in the drug transaction. The stipulation was not tantamount to a guilty plea since the defendant's position at trial was he was not the individual involved in the drug transaction. Defendant was present in the courtroom each time defense counsel addressed the stipulation of evidence but failed to raise an objection to the stipulation.

We conclude defense counsel's stipulation to the chain of custody and to the composition of the recovered substance did not violate defendant's sixth-amendment right to confront the witnesses against him.

III. CONCLUSION

For the reasons stated above, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this

appeal.

Affirmed.