

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
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Stephenson County.
)	
Plaintiff-Appellee,)	
)	
v.)	Nos. 09-CF-38
)	09-CM-77
)	
PHILLIP M. SHIPP,)	Honorable
)	James M. Hauser,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Although defendant's stipulated bench trial was tantamount to a guilty plea, Rules 604(d) and 605(c) were not applicable and thus no remand for compliance with those rules was required; (2) we vacated defendant's conviction of unlawful possession of a controlled substance with intent to deliver, which was included in his conviction of armed violence.

¶ 2 Defendant, Phillip M. Shipp, appeals from his convictions of possession of cannabis (720 ILCS 550/4(a) (West 2008)), armed violence (720 ILCS 5/33A-2(a) (West 2008)), unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(2) (West 2008)),

unlawful possession of a firearm by a felon (720 ILCS 5/24-1.1(a) (West 2008)), and unlawful use of weapons (720 ILCS 5/24-1(a)(4) (West 2008)). Defendant contends that his stipulated bench trial was the equivalent of a guilty plea, requiring a remand for compliance with Illinois Supreme Court Rules 604(d) (eff. July 1, 2006) and 605(c) (eff. Oct. 1, 2001), and that his conviction of possession of a controlled substance with intent to deliver must be vacated under the one-act, one-crime doctrine. We affirm in part, but vacate the conviction of possession with intent to deliver.

¶ 3

I. BACKGROUND

¶ 4 Defendant was charged in March 2008 after police responded to a report of a fight that possibly included guns. Defendant was found at the scene with a loaded pistol, 7.5 grams of cocaine, and 1.1 grams of cannabis. The complaint alleged in part that, while armed with a dangerous weapon, defendant possessed cocaine with the intent to deliver it to another person. The parties agree that the armed violence offense was predicated on unlawful possession of a controlled substance with intent to deliver.

¶ 5 In April 2008, defendant moved to suppress physical evidence. After a hearing, that motion was denied. On March 11, 2010, the parties agreed to a stipulated bench trial for purposes of preserving for appeal the issue of the suppression of evidence. The State then dismissed an unrelated charge in another case.

¶ 6 The parties entered a written stipulation providing a factual basis for the charges. The stipulation also provided that the trial court would continue to rule as it did on the suppression of evidence and that the court would find defendant guilty of all charges. The stipulation also included an agreed recommended sentence for each offense and stated that defendant wished to preserve the suppression issue for appellate review.

¶ 7 In response to a question from the court, both parties agreed that the stipulation was tantamount to a guilty plea. The court then admonished defendant in accordance with Illinois Supreme Court Rule 402 (eff. July 1, 1997). Defendant stated that he understood, and the court found him guilty. The parties waived a presentence investigation, and the court sentenced defendant as agreed in the stipulation. The court advised defendant that he had 30 days to appeal. The court did not admonish defendant in accordance with Rule 605(c), which requires admonishments that, per Rule 604(d), before a defendant may appeal from a negotiated guilty plea, he must file a motion seeking to withdraw the plea, and that any issue not raised in the motion is waived. No posttrial motions were filed. Defendant appealed.

¶ 8

II. ANALYSIS

¶ 9 Relying on cases from the Third and Fourth Districts, defendant contends that the stipulated bench trial was the same as a guilty plea such that a remand is necessary for compliance with Rules 604(d) and 605(c). *People v. Smith*, 2011 IL App (4th) 100430; *People v. Thompson*, 404 Ill. App. 3d 265 (2010). However, this court has held otherwise. *People v. Bond*, 257 Ill. App. 3d 746, 750 (1994).

¶ 10 In *Bond*, we applied the supreme court case of *People v. Horton*, 143 Ill. 2d 11 (1991), to hold that, at a stipulated bench trial in which there is a stipulation that the evidence is sufficient to convict, the defendant must be admonished in accordance with Rule 402. *Bond*, 257 Ill. App. 3d at 749. We first observed that there are two types of stipulated bench trials. In the first type, the defendant stipulates to the State's evidence, but does not stipulate to his guilt. *Id.* (citing *Horton*, 143 Ill. 2d at 21. Instead, the defendant leaves it to the trial court to determine whether the evidence is sufficient to prove the defendant guilty beyond a reasonable doubt. *Id.* (citing *Horton*, 143 Ill. 2d

at 21). In the second type, the defendant stipulates to the sufficiency of the State's evidence. *Id.* (citing *Horton*, 143 Ill. 2d at 22). "This type of stipulation is, in essence, a private agreement between the parties that the defendant is guilty." *Id.* "As such, it is therefore tantamount to a guilty plea, except that the defendant does not necessarily waive his right to appeal every issue that is not jurisdictional." *Id.* (citing *Horton*, 143 Ill. 2d at 22). "Either type of stipulated bench trial allows the parties the 'benefits and conveniences' of a guilty plea without requiring the defendant to waive issues such as the trial court's refusal to suppress evidence." *Id.* (quoting *Horton*, 143 Ill. 2d at 22).

¶ 11 Before the trial court can accept a defendant's stipulation of guilt in the second type of stipulated bench trial, the trial court must afford the defendant the protections of Rule 402. *Id.* (citing *Horton*, 143 Ill. 2d at 22); see also *People v. Mitchell*, 353 Ill. App. 3d 838, 844 (2004); *People v. Torres*, 279 Ill. App. 3d 599, 601 (1996) (applying *Horton*). Indeed, this is built into the rule itself, as Rule 402 provides that certain admonitions must be given "[i]n hearings on pleas of guilty, or in any case in which the defense offers to stipulate that the evidence is sufficient to convict ***." Ill. S. Ct. R. 402 (eff. July 1, 1997). Rules 604(d) and 605(c), however, specifically apply to guilty pleas. Thus, we held in *Bond* that, although a stipulation of guilt is similar to a guilty plea, it is not merely a mislabeled guilty plea, and the trial court need not refer to it as a guilty plea. *Bond*, 257 Ill. App. 3d at 749 (citing *People v. Manuel*, 242 Ill. App. 3d 20, 23 (1993)). Thus, the defendant does not need to file a motion to withdraw his or her guilty plea in order to appeal the trial court's denial of a motion to suppress evidence. *Id.* at 750 (citing *Manuel*, 242 Ill. App. 3d at 23).

¶ 12 Here, the trial court admonished defendant under Rule 402 as required and, under our previous holding in *Bond*, it was not required to admonish defendant under Rule 605(c). Under the same reasoning, the court was not required to comply with Rule 604(d). Defendant, however, asks

this court to instead apply cases from the Third and Fourth Districts, which he contends hold otherwise. *Smith*, 2011 IL App (4th) 100430; *Thompson*, 404 Ill. App. 3d 265. His reliance on those cases is misplaced.

¶ 13 In *Thompson*, the Third District, in *dicta*, and following a concession by the State on the matter, generally cited *Horton* for the proposition that, when there is a stipulation that the evidence is sufficient to convict, “the supreme court rules pertaining to guilty pleas must be followed.” *Thompson*, 404 Ill. App. 3d at 270. The court then stated, without citation to on-point authority, that such rules would include Rules 604(d) and 605(c). But *Horton* did not require compliance with Rules 604(d) and 605(c). Instead, it held that admonitions under Rule 402 were required.

¶ 14 In *Smith*, the Fourth District, citing to *Thompson*, stated that, when there is a stipulation tantamount to guilty plea, the rules pertaining to guilty pleas apply. *Smith*, 2011 IL App (4th) 100430, ¶ 13. The court then went on to hold that a motion to reconsider the sentence was untimely filed under Rule 604(d). The court did not discuss *Horton* or its own previous decision in *Manuel*, where it held that a motion to withdraw a guilty plea was not required in order to vest authority in the appellate court to address issues arising from a stipulated bench trial. *Manuel*, 242 Ill. App. 3d at 23.

¶ 15 We decline to depart from our previous holding in *Bond* and to follow *Smith* and *Thompson*. *Horton* held only that Rule 402 admonitions were required. That determination is logical in light of the inclusion of a stipulation of guilt in Rule 402. However, while a stipulation of guilt is similar to a guilty plea, it is not actually a guilty plea subject to Rules 604(d) and 605(c). Nothing in *Thompson* or *Smith* is persuasive that Rules 604(d) and 605(c) should apply.

¶ 16 Defendant next argues that his conviction of possession with intent to deliver is included in his armed violence conviction and thus must be vacated under the one-act, one-crime doctrine. The State agrees that the conviction should be vacated.

¶ 17 “Whether multiple convictions must be vacated under the one-act, one-crime doctrine is a question of law, which we review *de novo*.” *People v. Young*, 362 Ill. App. 3d 843, 852 (2005). Defendant did not raise the issue in a posttrial motion. However, one-act, one-crime violations adversely affect the integrity of the judicial process and are reviewable under the second prong of the plain-error rule. *People v. Artis*, 232 Ill. 2d 156, 167-68 (2009). The one-act, one-crime doctrine provides that multiple convictions are improper where (1) only one physical act was manifested, or (2) multiple acts were manifested, but some of the convictions are of included offenses. *People v. Isunza*, 396 Ill. App. 3d 127, 133 (2009).

¶ 18 Here, the State concedes that the armed violence offense was predicated on the lesser included offense of possession with intent to deliver. Accordingly, we vacate the conviction of possession with intent to deliver.

¶ 19 **III. CONCLUSION**

¶ 20 Rules 604(d) and 605(c) were not applicable. Accordingly the judgment of the circuit court of Stephenson County is affirmed in part. However, we vacate the conviction and sentence of unlawful possession of a controlled substance with intent to deliver.

¶ 21 Affirmed in part and vacated in part.