2017 IL App (3d) 150072-U

Order filed December 7, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-15-0072 Circuit No. 13-CF-921
TIMOTHY J. BRANDT,	)	Honorable David M. Carlson, Judge, presiding.
Defendant-Appellant.	)	

JUSTICE CARTER delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice McDade dissented.

ORDER

¶ 1 *Held*: Defendant's convictions were upheld where his stipulated bench trial was not tantamount to a guilty plea so that guilty plea admonishments were not required. The mittimus is corrected on appeal to reflect the correct citation to the applicable criminal statute under which defendant was convicted and to indicate defendant's four Class X felony convictions for aggravated child pornography in addition to his two Class X felony convictions for predatory criminal sexual assault.

¶ 2 Defendant, Timothy J. Brandt, appeals the six convictions he received related to child pornography and predatory criminal sexual assault. On appeal, defendant argues his convictions

must be reversed because his bench trial was tantamount to a guilty plea and he was not properly admonished in substantial compliance with Illinois Supreme Court Rule 402(a) (eff. July 1, 2012), which requires certain admonishments be made to a defendant who enters a guilty plea. The State contends that defendant's bench trial was not tantamount to a guilty plea so that guilty plea admonishments were not required. Also, the State requests that this court amend the mittimus in this case to reflect the correct citations to the applicable criminal statute under which defendant was convicted. We affirm defendant's convictions and correct the mittimus accordingly.

¶ 3 FACTS

¶ 4 On May 23, 2013, defendant was charged by way of a 14-count indictment, which included: three Class X felony counts for "child pornography" pursuant to section 11-20.1(a)(1) of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/11-20.1(a)(1) (West 2012)) for filming or videotaping child pornography of a child defendant knew to be "under the age of 13," depicting the child "actually or by simulation engaged in any act of sexual penetration or sexual conduct" (counts I, II, and III); two Class X felony counts for "predatory criminal sexual assault of a child" pursuant to section 11-40(a)(1) of the Criminal Code (720 ILCS 5/11-40(a)(1) (West 2012)) for "knowingly commit[ing] an act of sexual penetration" with a child "under thirteen years of age" (counts IV and V); and one Class 1 felony count pursuant to section 11-20.1(a)(1) of the Criminal Code (720 ILCS 5/11-20.1(a)(1) (West 2012), for "aggravated child pornography" for photographing pornography of a child, who defendant knew to be "under the age of 13," depicting the child "actually or by simulation engaged in any act of sexual penetration or sexual conduct" (count VI). The remaining eight counts were related to allegations of defendant either photographing child pornography or possessing child

pornography. Each pornography count identified the "partial pathname on a computer hard drive" with the specific file name.

¶ 5 On November 15, 2013, defendant's counsel filed a motion to suppress evidence. In the motion, defendant's counsel argued that police conducted an illegal remote search of defendant's computer that resulted in the illegal gathering of the information used to obtain a search warrant. Defendant's attorney argued that the State should be precluded from introducing any evidence against defendant that was recovered as a result of the alleged illegal search.

¶ 6 In response to the motion to suppress, the State argued that the use of law enforcement software to remotely monitor defendant's peer-to-peer (P2P) network traffic did not constitute an illegal search of defendant's computer. The State contended that the defendant was in the process of publishing information on the internet when his P2P network was being monitored by law enforcement and there was no illegal intrusion into defendant's residence. The State explained that P2P software allows a user of the software to conduct a search for content (i.e., a certain music album) and transfer files containing the searched-for term from a peer computer. The State argued that there was no expectation of privacy in the files the user downloaded from the network because the software was designed to allow the transferring of files between strangers on the internet. The State cited numerous cases from other jurisdictions that have held there was no reasonable expectation of privacy in files made available on a person's computer for P2P file sharing.

¶ 7 The trial court denied defendant's motion to suppress. The parties agreed to proceed to a stipulated bench trial. On September 9, 2014, defendant's attorney stated, "[w]hat we're suggesting to the Court is, [y]our Honor, this is going to be a stipulated bench trial due to the fact we did the previous motion to suppress." On September 18, 2014, defendant's attorney indicated

to the court that the case was "up for stipulated bench trial" and also requested to continue the case for "[s]tipulated bench trial."

¶ 8 On October 14, 2014, the defendant's attorney indicated, "[j]udge the matter comes on this morning for our stipulated bench trial." Defendant's attorney also indicated he had no objection to the State's motion to amend the indictment *instanter*. The trial court indicated, "It's my understanding based on the representations I have just been listening to, this is going to be a stipulated bench trial?" Defendant's attorney confirmed by stating, "That is correct, your Honor, by way of written stipulation which has been signed and read by all parties." The trial court asked defendant if he had seen the form entitled "bench trial stipulations." Defendant indicated that he had seen the written stipulations. The trial court confirmed with defendant that defendant had reviewed the six-count stipulation and understood that the stipulation meant that both sides were agreeing that everything stated in the stipulation was true and accurate. The trial court also confirmed with defendant that defendant understood he was giving up his right to cross-examine and call witnesses to testify. The trial court asked defendant if he was agreeing that everything stated in the stipulation was true and accurate, if defendant read the stipulations, and if defendant signed the stipulation freely and voluntarily, to which defendant answered, "Yes, your Honor." Defendant also confirmed that no one had forced him, threatened him, or promised him anything in order to get him to waive his "right to a normal trial" and instead agree to "this stipulated bench trial."

¶ 9 The prosecutor indicated that the State would only be pursuing the first six counts of the indictment and the remaining counts would be "*nolle prosequied*" pursuant to the stipulated finding of guilt on counts I through VI. The trial court responded, "[a]ssuming I do that." The prosecutor indicated, "correct." The trial judge then confirmed, "[c]ounts 7 through 13 are all

being nolled as part of this?" The prosecutor responded, "[c]orrect, your Honor." Defendant's counsel indicated, "[e]xhibit C, as referenced in the stipulation, is an exhibit of videotapes and other items which we are stipulating would meet the criteria in the indictment."

¶ 10 After presenting the stipulated evidence, the prosecutor argued that the stipulation was sufficient to prove the allegations of counts I through VI beyond a reasonable doubt. Defendant's counsel waived closing arguments.

¶ 11 The trial judge stated, "I will find the defendant guilty of counts 1 through 6 based on the stipulation which I am now ordering to be sealed." The trial judge also admonished defendant that he would be retiring so defendant would be sentenced by a different judge. Defendant's attorney indicated for the record, "the stipulated bench trial was in exchange for an agreed minimum—mandatory minimum of 34 years and an agreed maximum of 165 years." Defendant confirmed that he was aware of the applicable sentencing range, confirmed that he agreed to the stipulated bench trial freely and voluntarily, and confirmed that no one had forced him or promised him anything to get him to go along with having a stipulated bench trial.

¶ 12 At the sentencing hearing, the newly assigned judge (assigned in light of the trial judge's retirement) indicated that he would be reviewing the video of defendant's police interview *in camera* due to sound issues with playing the video in court. The sentencing judge indicated that he assumed defendant had reviewed the video and confirmed that defendant had no issue with not viewing the video when the sentencing judge viewed it. Defendant's counsel indicated, "He knows it. He's seen it. He knows what—we have already stipulated on this. It is a stipulated bench trial, finding of guilty."

¶ 13 An attorney for the State indicated that she had reviewed the transcript from the stipulated bench trial and noticed "the admonition as to sentencing minimum and maximum,

which ties it into the limited agreement in th[e] case as to which counts would be dropped, was not done until after the finding of guilty had already been done." She requested that the issue be reviewed one more time for the record to "make sure that the defendant understands all of that so that we don't have any appellate issues down the road." The following colloquy took place:

> "[Defendant's Counsel]: Judge, I think I was present during the previous plea. It was all done—
>
> THE COURT: When you say plea, [defense counsel]—
>
> [DEFENDANT'S COUNSEL]: The stipulated bench trial. It was all done as a complete package. I don't mean to not cause an admonition. I am just wondering if we are taking a step back on the record because those were all addressed originally when we did the stipulated bench trial. I was there. ***
>
> The fact that something may have happened afterwards, the defendant certainly had a right to raise his voice at that point in time and say, do you know what? I don't want to go through with this.
>
> I mean I am a little concerned about admonishing retroactively at this point in time. It was a stipulated bench trial. It was a finding of guilty. ***
>
> I thought, you know, we were stipulating. We did have an agreement. The stipulated bench trial was based on the agreement: 34 years with a maximum of 165.
>
> I will leave it to your judgment, judge, but I don't know that we would need to do that, but I will leave it to your good judgment.

[ATTORNEY FOR THE STATE]: If nothing else, judge, I would just like to put the minimum and maximums for each charge on the record one more time so we are clear on that before argument takes place.

* * *

[DEFENDANT'S COUNSEL]: We don't want to turn it into a plea; it's not. It's a stipulated bench trial. So I mean they're different, and we are kind of heading towards that territory. I just—I'm a little bit concerned.

[ATTORNEY FOR THE STATE]: And that was not my intent just like I said. The required admonitions for a stipulated bench trial were all covered during the course of that hearing. I just wanted to make clear since minimums and maximums were discussed after the finding of guilty that that wasn't going to be an issue for the defense, and we were also on the same page about to [*sic*] that.

THE COURT: And it sounds to me like—anything else?

[DEFENDANT'S COUNSEL]: The only issue is the stipulation, judge. It is a stipulated bench trial. The only issue is is the defendant willing to stipulate to the evidence that was presented? He did, and he is ready to be sentenced.

THE COURT: Just so we're clear—I guess just to make sure that we're clear, although things were dismissed—there were counts that were *nolle prosequi* as it relates to this—there were no agreements as it relates to sentencing. There was no cap. There was nothing other than—

[DEFENDANT'S COUNSEL]: No, there was, judge. It was a minimum of 34 and a maximum of 165.

THE COURT: What is the potential maximum of the counts that he was found guilty of?

[ATTORNEY FOR THE STATE]: One sixty-five.

THE COURT: So there is no cap? There is no sentencing cap?

[DEFENDANT'S COUNSEL]: Right.

THE COURT: I guess that is what I was asking.

[DEFENDANT'S COUNSEL]: Got you.

THE COURT: There is nothing other than the agreement that you would *nolle* certain counts as it relates to the stipulated bench.

Is there anything, [defense counsel], that you want me to ask [defendant] about on the record?

[DEFENDANT'S COUNSEL]: I don't see any reason to do so, judge. He understood—understands everything in my discussions with him. He's clear and informed that what he did was a voluntary act."

¶ 14 The attorney for the State reiterated the potential sentencing range was 6 to 30 years of imprisonment for each of the five Class X felonies and the sentencing range for the Class 1 felony was 4 to 15 years of imprisonment, for a total sentencing range of 34 to 164 years of imprisonment. She also indicated that all six of the counts were to be sentenced as mandatory consecutive sentences with a mandatory supervised release period of three years to life for each count. Defendant's attorney agreed that the stated sentencing ranges were accurate.

¶ 15 In mitigation, defense counsel argued that defendant had agreed to a stipulated bench trial. He argued, "And the nature of a stipulated bench trial, we talked about it. Legally it's not a plea but practically it is. It is a person throwing themselves on the mercy of the Court."

¶ 16 The sentencing judge sentenced defendant to five consecutive terms of 20 years of imprisonment for the Class X felonies and 8 years of imprisonment for the Class 1 felony—108 years of imprisonment—and also imposed fines, fees, and costs. Defendant appealed.

¶ 17 ANALYSIS

¶ 18 I. Stipulated Bench Trial

¶ 19 On appeal, defendant contends his convictions must be reversed because his bench trial was tantamount to a guilty plea and he was not properly admonished as to his guilty plea in substantial compliance with Illinois Supreme Court Rule 402(a) (eff. July 1, 2012). In order to satisfy due process, a guilty plea must be affirmatively shown to have been made voluntarily and intelligently. *People v. Fuller*, 205 Ill. 2d 308, 322 (2002); *Boykin v. Alabama*, 395 U.S. 238, 242 (1969). Supreme Court Rule 402 was adopted to ensure compliance with due process requirements. *Fuller*, 205 Ill. 2d at 322. Rule 402(a) provides that a court may not accept a guilty plea until a defendant has been admonished as to the nature of the charge, the minimum and maximum sentence prescribed by law, the right to plead not guilty and to persist in that plea, and the right to plead guilty. Rule 402(a) also requires a defendant to be admonished that when pleading guilty or stipulating that the evidence is sufficient to convict, there will be no trial by jury or confrontation of witnesses.

¶ 20 The State argues that defendant has forfeited any argument regarding proper admonitions because defendant failed to preserve the issue for appellate review by failing to object at trial and in a written posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186, (1988) (as a general rule, a defendant's failure to properly preserve an issue with a contemporaneous objection at trial and by raising the issue in a posttrial motion forfeits the issue for review). However, regardless of defendant's alleged forfeiture, the State acknowledges that the plain error doctrine allows a

reviewing court to bypass normal forfeiture principles and consider unpreserved errors when either: (1) the evidence is so closely balanced, such that the error alone threatened to tip the scales of justice against defendant regardless of the seriousness of the error; or (2) the error is so serious that it affected the fairness of the proceedings and challenged the integrity of the judicial process, regardless of the closeness of the evidence. See *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005); *People v. Campbell*, 2015 IL App (3d) 130614, ¶ 14.

¶ 21 In this case, although defendant failed to object to the adequacy of the trial court's admonitions, thereby forfeiting the issue, we may review the issue under the plain error doctrine. See Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967) (plain errors or defects affecting substantial rights may be noticed although not brought to the attention of the trial court); *Campbell*, 2015 IL App (3d) 130614, ¶ 14 (citing *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (whether a defendant's fundamental right to a jury trial was violated may be reviewed under the plain error doctrine); *Fuller*, 205 Ill. 2d at 322 (the failure of a trial court to provide proper Rule 402(a) admonishments may amount to plain error). The first step under a plain error review is to determine whether there was an error. *Campbell*, 2015 IL App (3d) 130614, ¶ 14.

¶ 22 Generally, a stipulated bench trial provides the benefits and convenience of a guilty plea while preserving any pretrial objection, such as a motion to suppress, for appellate review. *People v. Harris*, 2015 IL App (4th) 140696, ¶ 32; *People v. Horton*, 143 Ill. 2d 11, 21-22 (1991) (a guilty plea waives all nonjurisdictional defenses or defects). Where a stipulated bench trial is tantamount to a guilty plea, the trial court must give the defendant guilty plea admonishments pursuant to Rule 402(a) regardless of whether a defense was presented and preserved. *People v. Campbell*, 208 Ill. 2d 203, 218 (2003). A stipulated bench trial is tantamount to a guilty plea in two scenarios: (1) where the State's entire case is presented by stipulation and defendant does

not present or preserve a defense; or (2) where the stipulation includes a statement that the State's evidence is sufficient to convict the defendant. *People v. Clendenin*, 238 Ill. 2d 302, 322 (2010). Whether a stipulated bench trial is tantamount to guilty plea is a question of law, which is reviewed *de novo*. *People v. Foote*, 389 Ill. App. 3d 888, 893 (2009).

¶ 23 Here, the trial court did not err by failing to admonish defendant in accordance with Rule 402(a) because defendant's stipulated bench trial was not tantamount to a guilty plea. Defendant proceeded with the stipulated bench trial to preserve the defense raised in his motion to suppress. Defendant's counsel specifically had indicated that defendant was proceeding with a stipulated bench trial "due to the fact [the defense] did the previous motion to suppress." We take this to mean that defendant intended to preserve the defense presented in the motion to suppress. In the motion to suppress, defendant argued that the remote search of files from his computer was illegal, and he acknowledges in his brief on appeal that there are "no published Illinois cases examining the Fourth Amendment implication of peer-to-peer networks." At the time of the stipulated bench trial, defendant presented and preserved the defense argued in his motion to suppress.

¶ 24 Additionally, defendant and his counsel did not stipulate that the evidence was sufficient to convict defendant of the charges but, rather, the trial judge reviewed the evidence presented by way of stipulation and found defendant guilty of the charges. We acknowledge that defense counsel stipulated that the videos in the exhibit to the stipulation "would meet the criteria in the indictment." In context of the entirety of the proceedings, we do not find this to be a stipulation of defendant's guilt but, rather, a stipulation that the videos and photographs contained in the exhibit depicted a child "engaged in any act of sexual penetration or sexual conduct" as alleged in the indictment.

¶ 25 Therefore, defendant's stipulated bench trial was not tantamount to a guilty plea, and the trial court was not required to provide Rule 402(a) admonishments. See *Horton*, 143 Ill. 2d at 21 (where a stipulated bench trial is not tantamount to guilty plea, the trial court need not admonish defendant pursuant to Rule 402). Because there was no error by the trial court, we need not review this case for plain error.

¶ 26 II. Erroneous Citation in the Indictment

¶ 27 We next address the issue in regard to the State's concession of errors in the indictment and in the resulting sentencing order of citation to the incorrect section of the criminal statute. Specifically, the record shows that defendant was charged, convicted, and sentenced on counts I, II, and III, as Class X felonies, of "child pornography" related to certain videos; defendant was charged, convicted, and sentenced on count VI, as a Class 1 felony, of "aggravated child pornography" related to certain photographs; and the indictment and sentencing order for counts I, II, III, and VI referenced section 11.20.1(a)(1) of the Criminal Code (720 ILCS 5/11-20.1(a)(1) (West 2012)), which pertains to a child "under the age of 18 and at least 13 years of age." Both parties agree that the correct statute under which defendant should have been charged in counts I, II, III, and VI was the Class X felony of "aggravated child pornography" pursuant to section 11-20.1B(a)(1) of the Criminal Code because that section pertains to videos and photographs of a child "under the age of 13 years." 720 ILCS 5/11-20.1B(a)(1) (West 2012) (repealed by P.A. 97-995, § 10, eff. Jan. 1, 2013).

¶ 28 Defendant claims, due to these errors of the incorrect citations, this court should reverse and remand for further proceedings because he was not properly admonished of the nature of the charges in accordance with the Rule 402(a) admonishments required if his stipulated bench trial was tantamount to a guilty plea. Defendant acknowledges that the video "child pornography"

charges in counts I, II, and III, would have been a Class X felony and would have carried the same penalty regardless of whether he was charged with "child pornography" involving videos of a child "under the age of 18 and least 13 years of age" pursuant to section 11-20.1(a)(1), as was done in this case, or if he had been more accurately charged with "aggravated child pornography" involving either video or photographs of a child "under the age of 13," pursuant to section 11-20.1B(a)(1) of the Criminal Code. 720 ILCS 5/11-20.1(a)(1) (West 2012) (providing that a person commits "child pornography" by filming, videotaping, photographing or otherwise depicting *a child under 18 and at least 13 years of age* engaged in any act of sexual penetration or sexual conduct with any person or animal, with a violation not involving moving depictions (i.e., photographs) constituting a Class 1 felony and a violation involving moving depictions (i.e., videos) constituting a Class X felony); 720 ILCS 5/11-20.1B(a)(1) (West 2012) (repealed by P.A. 97-995, § 10, eff. Jan. 1, 2013) (providing that a person commits "aggravated child pornography" by filming, videotaping, photographing or otherwise depicting *a child under the age of 13 years* engaged in any act of sexual penetration or sexual conduct, with a violation constituting a Class X felony). Defendant contends that the errors were "particularly problematic with count VI" in regard to him knowing the nature of the charges against him because the State cited to the "un-aggravated statute" and referred to the charge as a Class 1 felony, as opposed to a Class X felony. The State contends that the errors in the indictment were not prejudicial to defendant. The State requests that this court correct the mittimus to reflect the correct statute under which defendant was convicted and sentenced on counts I, II, III, and VI—the Class X felonies of "aggravated child pornography" under section 11-20.1B(a)(1) of the Criminal Code (720 ILCS 5/11-20.1B(a)(1) (West 2012) (repealed by P.A. 97-995, § 10, eff. Jan. 1, 2013)).

Whether a mittimus should be corrected is a question of law, which we review *de novo*. *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 86.

¶ 29 There is no indication that defendant was prejudiced by the error of the incorrect citations in counts I, II, III, and VI in the indictment. See *People v. Cohn*, 2014 IL App (3d) 120910, ¶ 14 (mere reference in a charging instrument to an incorrect section of a statute is a formal rather than a substantive defect that is grounds for reversal only where the defendant demonstrates prejudice). A charging instrument challenged for the first time on appeal will be considered sufficient so long as it apprised the accused of the precise offense charged with sufficient specificity to prepare his defense and would allow for the pleading of the resulting convictions as a bar to any future prosecution arising out of the same conduct. *Id.* ¶ 15.

¶ 30 Here, defendant's only claim of prejudice from the miscitation in the indictment is that he was improperly admonished of the nature of the charges because the indictment described count VI as a Class 1 felony, instead of a Class X felony, and he had "no way of knowing precisely the offenses he agreed to be convicted of." He also argues he was not admonished of the correct sentencing range, noting the agreed sentencing range was based on the parties' understanding of the statutory sentencing range of 34 to 165 years of imprisonment for five Class X felonies and one Class 1 felony, but the actual sentencing range was 36 to 180 years for six Class X felonies.

¶ 31 As we noted above, defendant's stipulated bench trial was not tantamount to a guilty plea and, therefore, Rule 402 admonishments were not required. Additionally, the record shows that there was no agreed upon sentencing range cap. Defendant acknowledges that his eight-year prison sentence for count VI is within the sentencing range for either a Class 1 or Class X felony. The language of the indictment makes clear that the victim in this case was under the age of 13, which would elevate defendant's acts involving child pornography to "aggravated child

pornography." In fact, count VI described the charge as "aggravated child pornography," which is a violation of section 11-20.1B(a)(1) of the Criminal Code. 720 ILCS 5/11-20.1B(a)(1) (West 2012) (repealed by P.A. 97-995, § 10, eff. Jan. 1, 2013).

¶ 32 Accordingly, we order the mittimus to be corrected to reflect the correct conviction and statute under which defendant was convicted and sentenced in count I, II, III, and VI to read "Aggravated Child Pornography," which is a "Class X" felony, with citation to section "11-20.1B(a)(1)" of the Criminal Code. See Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967) (a reviewing court has the authority to reverse, affirm, or modify the judgment or order from which the appeal is taken); *People v. Harper*, 387 Ill. App. 3d 240, 244 (2009) (this court has the authority to correct the mittimus at any time without remanding the matter to the trial court).

¶ 33 CONCLUSION

¶ 34 We affirm the judgment of the circuit court of Will County and direct the clerk of the circuit court to correct the mittimus in accordance with this order.

¶ 35 Affirm; mittimus corrected.

¶ 36 JUSTICE McDADE, dissenting.

¶ 37 The majority determines that the stipulated bench trial was not tantamount to a guilty plea because the defense attorney presented and preserved a defense. Moreover, the majority finds that, based on the circumstances of the proceeding, the defense attorney's statement that "Exhibit C, as referenced in the stipulation, is an exhibit of videotapes and other items which we are stipulating would meet the criteria in the indictment" cannot be interpreted as a stipulation of defendant's guilt. I disagree that the defense attorney's statement did not constitute an admission that the evidence was sufficient to support a finding of guilty.

¶ 38 A stipulated bench trial is tantamount to a guilty plea if (1) the State presents its entire case by way of stipulation and the defendant fails to preserve a defense, *or* (2) the defendant concedes, by way of stipulation, that the evidence is sufficient to support a guilty verdict. (Emphasis added.) *People v. Weaver*, 2013 IL App (3d) 130054, ¶ 19. I agree with the majority that the defense attorney presented and preserved a defense under the first prong. However, I believe the defense attorney made an admission that the evidence established defendant's guilt under the second prong when he explicitly stipulated that an exhibit of videotapes and other items met the criteria in the indictment. Our supreme court stated that a plea of guilty is equivalent to guilt under the allegations charged in the indictment. See *People v. Pond*, 390 Ill. 237, 239 (1945) ("[a] plea of guilty confesses merely that the accused is guilty in manner and form as charged in the indictment"). Furthermore, there is no case law that instructs this court to consider the totality of the testimony to interpret the meaning of the defense attorney's statement. If the defense attorney intended for his statement to mean that the videotapes and other items had shown sexual penetration or conduct that is also alleged in the indictment then he could have clarified it. Based on the unambiguous language of the defense attorney's statement, I would find that the stipulated bench trial was tantamount to a guilty plea.

¶ 39 The majority also holds that the trial court was not required to admonish defendant under Illinois Supreme Court Rule 402 (eff. July 1, 2012) because it had previously found that defendant's stipulated bench trial was not tantamount to a guilty plea. I disagree and believe the trial court was required to admonish defendant under Rule 402. If a stipulated bench trial is tantamount to a guilty plea, Rule 402 admonishments must be given to the defendant. *People v. Chapman*, 379 Ill. App. 3d 317, 326 (2007). Substantial compliance with Rule 402 is sufficient to satisfy due process. *People v. Fuller*, 205 Ill. 2d 308, 323 (2002). "[W]hether reversal is

required for an imperfect admonishment depends on whether real justice has been denied or whether the defendant has been prejudiced by the inadequate admonishment." *Id.* Whether Rule 402 admonishments are required in connection with a stipulated bench trial is subject to *de novo* review. *Chapman*, 379 Ill. App. 3d at 326.

¶ 40 Although defendant was informed of his waiver of right to confront witnesses, the record shows defendant was not informed of the nature of his charges, the minimum and maximum sentence including any additional penalties, his right to plead guilty or not guilty, and his waiver of a jury trial before the trial court found him guilty. This is further evinced when the state's attorney informed the court about her concern that admonishments were not given. Moreover, defendant claims, and the State concedes, that the amended indictment and sentencing order inaccurately cite the wrong statutory provisions on counts I, II, III, VI—an issue that might have been resolved had defendant been admonished on the nature of his charges. Under the circumstances, I would find that the trial court was required to admonish defendant under Rule 402 and would remand this cause for a new trial.