THIRD DIVISION
March 6, 2019

Nos. 1-18-1742 &18-1743 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the Circuit Court
Plaintiff-Appellant,	)	of Cook County, Illinois,
	)	Criminal Division.
v.	)	
	)	No. 17 CR 12087
ODEY SUHEIL and MAHMOUD FARHEN,	)	
	)	The Honorable
Defendants-Appellees.	)	Carol M. Howard,
	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The dismissal of the defendants' charges was proper where the trial court determined that the defendants were not properly apprised of the type of immunity they were being granted in exchange for their testimony, and where the State later used that testimony to prosecute them, in violation of the use immunity order.

¶ 2 The State appeals from the order of the circuit court of Cook County granting the motion of the defendants, Odey Suheil and Mahmoud Farhen, to dismiss the indictments against them. The State contends that dismissal was improper because the defendants were never granted absolute immunity, but rather testified pursuant to a use immunity order (725 ILCS 5/106-2.5

(West 2016)), under which the State was permitted to prosecute them in the future so long as none of their grand jury testimony was used in that prosecution. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 This appeal stems from a Chicago Police Department (CPD) investigation into Chicago-area businesses selling cigarette packages which do not bear the necessary State of Illinois, Cook County, or City of Chicago tax stamps and have not been taxed as required by state law and local ordinances (hereinafter contraband cigarettes). It is undisputed that in February 2016, both defendants were employed by J&W Dollar Store (hereinafter the convenience store), located at 1645 West 79th Street in Chicago. Neither defendant had any ownership interest in the store. On February 19, 2016, an undercover police officer purchased contraband cigarettes from the defendant Farhen at the convenience store. On that same date, police officers executed a search warrant of the convenience store. Upon entering, the officers observed the defendant Farhen behind the cash register, and the defendant Suheil holding five cartons of cigarettes. The search of the store revealed a total of 1,087 packages of contraband cigarettes, which were located in two unopened safes, and a hidden wall compartment secured by high-powered magnets. After the warrant was executed neither defendant was charged with any crime.

¶ 5 Instead, on April 7, 2016, the defendants testified before the grand jury pursuant to a subpoena. The record before us does not contain a transcript of that hearing. About a year and a half after their testimony, in July 2017, the defendants were charged with one count of possession of contraband cigarettes (35 ILCS 130/24 (d) (West 2016)) and two counts of perjury (720 ILCS 5/32-2(a) (2016)). Only the possession of contraband cigarettes is at issue in this

appeal. That count of the indictment alleged that the defendants knowingly possessed more than 1,000 packages of contraband cigarettes.

¶ 6 On December 5, 2017, the defendants filed motions to dismiss the indictments, arguing that they had been granted immunity from prosecution in exchange for their testimony before the grand jury. On December 20, 2017, the State filed an answer contending that the defendants had never been granted absolute immunity, but only use immunity pursuant to section 5/106-2.5 of the Code of Criminal Procedure of 1963 (Code of Criminal Procedure) (725 ILCS 5/106-2.5 (West 2016)), which permitted the State to proceed with the charges, so long as it did not use any information learned during the course of the defendants' grand jury testimony in its prosecution. The State argued that it could proceed with the indictment because the contraband cigarettes were discovered on February 19, 2016, well before the defendants testified before the grand jury.

¶ 7 After hearing counsels' arguments, on January 30, 2018, the trial court granted the defendants' motion to dismiss. In doing so, the court stated that it could "not believe the State's position on this matter, in terms of giving these gentlemen use immunity and then turning around and charging them for possession." The court explained that the record before it, including the transcripts of the grand jury testimony, which the court had read, revealed that on the day of the raid, the defendant Suheil had merely been observed by the police with five packages of contraband cigarettes, and the defendant Fahren had sold one packet of contraband cigarettes to an undercover police officer, but that the defendants were now being charged with possession of all the cigarettes found at the store. The court held that because such a charge would not have been possible without the defendants' grand jury testimony, the State had violated the use immunity order, requiring dismissal of the indictments.

¶ 8 The State filed a motion to reconsider, arguing that the evidence used to indict the defendants

was derived from legitimate sources wholly independent of the defendants' immunized grand jury testimony. In support, the State attached the search warrant and the complaint seeking a search warrant for the convenience store, including, *inter alia*, police reports regarding surveillance of the store and five prior purchases of contraband cigarettes by undercover officers from "Middle Eastern men" inside that store. The State also attached a Vice Crime Unit investigation report dated February 20, 2016, which confirms the number of cigarettes found at the convenience store upon the execution of the search warrant.

¶ 9 On March 16, 2018, the defendants filed a response arguing that the immunity granted to them was not use, but rather absolute (transactional) immunity. The defendants asserted that on March 16, 2016, they were served with a subpoena requiring their testimony before the grand jury on April 7, 2016. When the defendants informed the assistant attorney general that they intended to exercise their Fifth Amendment right to remain silent, they were advised that they were not targets of a criminal investigation and that the Attorney General's Office (AG's Office) was only seeking to obtain information about the owner of the convenience store. When defense counsel requested a continuance of the matter, the assistant attorney general insisted that the defendants testify that day because he was granting them immunity from prosecution.

¶ 10 The response further alleged that the assistant attorney general hastily went to another court room and *ex parte* retrieved an order granting the defendants immunity. Neither the defendants nor the defendants' attorney was given an opportunity to appear before the judge granting that immunity; nor were they admonished of the nature of the rights they were waiving or the extent of the immunity being granted to them. The response further contended that the defendants testified before the grand jury with the understanding that they were receiving absolute (transactional) immunity from prosecution and that they had no choice but to testify. Defense

counsel also understood the immunity to be transactional based on the representations of the assistant attorney general on the date of the hearing, and the fact that use immunity was never explained to him.

¶ 11 On June 13, 2018, the trial court held an evidentiary hearing on the State's motion to reconsider to determine whether there was any ambiguity as to the type of immunity granted to the defendants. The following relevant evidence was adduced at that hearing.

¶ 12 Assistant Attorney General (AAG) Victor Turla first testified that on April 7, 2016, he was in the grand jury room of the Leighton Criminal Court Building, conducting a grand jury investigation involving the possession of contraband cigarettes at the convenience store. Present with him were his partner, AAG Claire Nicholson, both of the defendants, and the defendants' two attorneys (father and son Roy and Jawad Shalabi). AAG Turla averred that he never spoke to the defendants' attorney prior to the grand jury hearing, and therefore did not know that the defendants planned to invoke their Fifth Amendment privilege against self-incrimination. AAG Turla testified, however, that when he drafted the subpoenas requesting the defendants' appearance before the grand jury, he had intended to give them use immunity as part for their testimony. To that effect, prior to the hearing he had drafted a motion seeking use immunity and had filed it with the chief judge of the criminal court. He explained that such immunity motions were routinely prepared in anticipation of witnesses choosing to invoke their right against self-incrimination.

¶ 13 The State offered the motion into evidence, and it was admitted over defense counsels' objection that it was neither file-stamped, nor contained a case number. The title of the motion is: "Motion to Grand Use Immunity pursuant to 725 ILCS 5/106-2.5B."[1] AAG Turla explained

[1] This motion is not part of the record on appeal.

that "generally speaking" with this type of motion, the State grants use immunity [to] compel[] testimony in the grand jury when [witnesses]'re going to assert their Fifth Amendment rights."

¶ 14 According to AAG Turla on the date in question, the chief judge had not yet signed the order granting use immunity, so he sent his partner AAG Nicholson to grab the order from the chief judge's courtroom. Once AAG Nicholson returned with the signed order, she gave a copy of the order to each defendant and to their counsel, Roy Shalabi. After about five or ten minutes, the defendants proceeded to the grand jury room where they gave their testimony. The order granting use immunity was entered into evidence.[2]

¶ 15 AAG Turla testified that in the four-and-a-half years that he has worked for the AG's Office he has never granted any witness absolute immunity because he does not have the authority to do so.

¶ 16 On cross-examination, AAG Turla admitted that on the date of the grand jury hearing, the defendants had not been charged with any crime.

¶ 17 On cross-examination, he further admitted that when he filed his motion seeking use immunity for the defendants, he never sent a notice of that motion to either the defendants or their counsel. Accordingly, neither the defendants nor their counsel were present when the judge granted the motion; nor were they admonished as to the substance of that motion. AAG Turla also acknowledged that apart from the citation to the Code of Criminal Procedure referring to use immunity and the word "use immunity," the order granting use immunity nowhere defines or explains what use immunity means. AAG Turla also never explained use immunity to either the defendants or defense counsel, and was not present when defense counsel spoke with his clients about the immunity being granted to them. In addition, AAG Turla admitted that the only copy

[2] This order is also not part of the record on appeal.

of the motion seeking use immunity that he filed with the chief judge was the one admitted into evidence, and that therefore a file-stamped original of that motion does not exist.

¶ 18 On cross-examination, AAG Turla stated that he could not recall whether defense counsel asked him for a continuance of the grand jury hearing, so that he could review the use immunity order.

¶ 19 AAG Claire Nicholson next testified consistently with AAG Turla. She stated that on April 7, 2016, she was assigned to assist AAG Turla with a grand jury investigation that involved "bringing in two witnesses and locking in their testimony." Because AAG Nicholson was aware that the defendants were going to be granted use immunity, when she arrived in the grand jury room she asked AAG Turla about the immunity orders. When she learned that the orders had not been obtained from the chief judge yet, she ran down to the first floor of the criminal courthouse to retrieve them, and subsequently handed the orders to the defendants and their counsel.

¶ 20 AAG Nicholson explained that a motion for use immunity is not adversarial and therefore does not need to be briefed or argued. Rather, according to AAG Nicholson, such motions are ordinarily left in the chief judge's inbox and the AG's Office is notified when the motions are granted and can be picked up from the chief judge's outbox. Just like AAG Turla, AAG Nicholson averred that in the four-and-a-half years she has worked for the AG's Office she has never granted anyone absolute immunity and does not have the authority to do so without her supervisor's permission.

¶ 21 On cross-examination, AAG Nicholson admitted that she never explained use immunity to either defendant, and that, apart from the statutory cite, the immunity order itself nowhere defines or explains such immunity.

¶ 22 After the testimony of the two assistant attorney generals, the State sought the admission of

the grand jury transcripts into evidence. Those transcripts were admitted without objection. However, they are not part of the record on appeal.

¶ 23 After the State rested, the defense called attorney Roy Shalabi. Shalabi stated that he has practiced law for 37 years, and that in April 2016, he was retained by the defendants after they received a subpoena to appear before the grand jury in the instant matter. Shalabi testified that after reviewing the subpoena with his clients he contacted AAG Turla and informed him that his clients intended to plead the Fifth Amendment at the hearing.

¶ 24 According to Shalabi, when he appeared in the grand jury room with his clients on April 7, 2016, AAG Turla gave him a copy of an order he had just received giving the defendants immunity. Prior to this date, Shalabi did not know that AAG Turla had intended to file, much less that he had filed any such motions. Shalabi was never sent a notice of the motion or a copy of the motion itself. Accordingly, Shalabi was never given an opportunity to appear before the judge granting the order of immunity, before that order was entered.

¶ 25 Shalabi identified the order for use immunity at the hearing and testified that once he was given this order, AAG Turla instructed him that the defendants "needed to testify because they were being granted immunity." Shalabi explained that he and AAG Turla never discussed the type of immunity being offered to the defendants, and stated that it was his understanding that the defendants were being given absolute (transactional) immunity. According to Shalabi, the order he was given nowhere explained the type of immunity being offered but merely cited to a section of the Code of Criminal Procedure. Shalabi averred that he was never given an opportunity to look up that code section because when he asked AAG Turla for a continuance of the grand jury hearing, Turla refused, stating you have "immunity, we're ready to go, we need to go, and we want to proceed with this grand jury [now]."

¶ 26 Shalabi acknowledged that at the time of the grand jury hearing the only type of immunity he was aware of was absolute immunity. Accordingly, after receiving the immunity order from AAG Turla he spoke to his clients and instructed them that they were receiving immunity and that they must testify in order to avoid charges. Accordingly, the defendants testified under the belief that they were being given absolute immunity. Shalabi acknowledged that he was present for the grand jury testimony, and explained that during that testimony the defendants were never advised about the limitations of use immunity, or the difference between use and absolute (transactional) immunity.

¶ 27 The defendant, Odey Suheil, next testified that after retaining Shalabi, he asked Shalabi to inform the AG's Office that he intended to invoke his Fifth Amendment right against self-incrimination at the grand jury hearing. Suheil stated that at the hearing, he was handed a one-page order, and was advised by Shalabi that he should testify because he was being given immunity. Suheil understood this to mean that if he "told the truth" he "would not be charged with anything." He testified that no one ever informed him that there were different levels of immunity and that he would not receive full immunity in exchange for his testimony. He unequivocally stated that if he had known he was only being granted partial immunity he would never have testified before the grand jury.

¶ 28 On cross-examination, Suheil acknowledged that neither assistant attorney general spoke to him directly before the grand jury hearing.

¶ 29 The defendant, Mahmoud Farhen, next testified consistently with Suheil.[3] He acknowledged that immediately upon retaining Shalabi, he advised counsel that he did not want to testify. Farhen explained that when he appeared in court on April 7, 2016, Shalabi told him that he

[3] He testified with the help of an Arabic translator.

would receive immunity and that if he testified before the grand jury he could not be charged. Farhen stated that he does not know what "725 ILCS 5/160-2.5B" means.

¶ 30 On cross-examination, he admitted that he never spoke directly to either assistant attorney general prior to his grand jury testimony.

¶ 31 After hearing all the evidence, the trial court denied the State's motion to reconsider, explaining:

> "Neither the grand jury transcript nor the immunity order set forth the difference between use and transactional immunity. It is not clear from the record[,] which includes the grand jury proceedings[,] the testimony of the defense counsel[,] and the testimony of the defendants today that they knowingly gave up their right to testify. And before this court finds that the defendants knowingly did so, I think it should have been set forth in the grand jury proceedings exactly what use immunity is."

¶ 32 The court further reiterated its concern with the amount of cigarette packages the defendants were observed with on the day the search warrant of the convenience store was executed and the number of packages they were now being charged with possessing. The court stated that it did not believe that the charges regarding possession of all of the cigarettes would have been possible without the defendants' testimony at the grand jury hearing, and that therefore the order of use immunity had been violated, requiring dismissal of the possession charges. The State now appeals.

¶ 33 II. ANALYSIS

¶ 34 On appeal, the State contends that the trial court erred in granting the defendants' motion to

dismiss the charges because under the use immunity order the State was permitted to prosecute the defendants. The State argues that the trial court misapplied the law when it held that: (1) the use immunity statute (725 ILCS 5/106-2.5(b) (West 2016)) barred prosecution of the defendants regardless of whether the State would rely on the defendants' immunized grand jury testimony; and (2) that the State had to prove that the defendants "knowingly gave up their right [not] to testify." For the reasons that follow, we disagree.

¶ 35 A trial court has the inherent authority to dismiss an indictment in a criminal case: (1) for any of the reasons articulated in section 114–1 of the Code of Criminal Procedure (725 ILCS 5/114–1 (West 2016)); (2) where the defendant has been deprived of due process (*People v. Stapinski*, 2015 IL 118278, ¶ 33 (citing *People v. Lawson*, 67 Ill. 2d 449, 455 (1977)); or (3) where failure to dismiss the charges would "result in a miscarriage of justice." (Internal quotation marks omitted) (*People v. Newberry*, 166 Ill. 2d 310, 314 (1995) (quoting *People v. Fassler*, 153 Ill. 2d 49, 58 (1992)). Section 114–1(a)(3) allows for the trial court to dismiss an indictment when, *inter alia*, "[t]he defendant has received immunity from prosecution for the offense charged." 725 ILCS 5/114–1(a)(3) (West 2016). In considering a trial court's ultimate ruling on a motion to dismiss charges, a reviewing court generally proceeds under an abuse-of-discretion standard. *People v. Stapinski*, 2015 IL 118278, ¶ 35. However, where the issues present purely legal questions, the standard of review is *de novo*. *Id.*

¶ 36 "Whether a defendant was denied due process, and whether that denial was sufficiently prejudicial to require the dismissal of the case, are questions of law, which are reviewed *de novo*." *Stapinski*, 2015 IL 118278, ¶ 35. Nonetheless, once it is determined that the defendant has suffered a prejudicial violation of his due process rights, the trial court's decision as to the

appropriate remedy--whether it be dismissal of the indictment or not--must be reviewed for an abuse of discretion. *Id*.

¶ 37 On appeal, the State attempts to argue that once the order of use immunity was entered, the trial court had no authority to question the type of immunity granted to the defendants, much less consider whether the defendants knowingly gave up their right not to testify. For the reasons that follow, we disagree.

¶ 38 Section 106-2.5(b) of the Code of Criminal Procedure authorizes a court upon motion of the State, to order "a witness be granted immunity from prosecution in a criminal case as to any information directly or indirectly derived from the production of evidence from the witness if the witness has refused or is likely to refuse to produce the evidence on the basis of his or her privilege against self-incrimination." 725 ILCS 5/106-2.5(b) (West 2016). Use immunity granted under section 106-2.5 is different from a grant of transactional immunity found in sections 106-1 and 106-2 of the Code. "Transactional immunity affords broader protection from future prosecution than use immunity and acts to completely bar the State from prosecuting an immunized witness for any offenses to which the immunity relates." *People v. Adams*, 308 Ill. App. 3d 995, 1004 (1999). On the other hand, a grant of use immunity does not act as an absolute bar from prosecution; rather, it prohibits the State from using any evidence obtained under the grant of immunity, or leads derived from that evidence, against the immunized witness in a later criminal proceeding. *Id*.

¶ 39 Accordingly, there is no doubt, as the State argues, that under the use immunity statute, "the State has the exclusive authority to grant use immunity," (*People v. Ousely*, 235 Ill. 2d 299, 315 (2009)) and that such immunity merely prevents the State from using a defendant's testimony to prosecute him in the future. 725 ILCS 5/106-2.5(b) (West 2016). Nonetheless, nothing in the

immunity statute (725 ILCS 5/106 *et seq*. (West 2016)), section 114–1 of the Code of Criminal Procedure (725 ILCS 5/114–1 (West 2016)) or our case law prohibits a trial court from considering what type of immunity has been granted under the particular facts of a case. Nor does the State cite to any such authority.

¶ 40 In fact, our courts have repeatedly held that the trial court has the inherent authority to dismiss charges where it finds that a defendant has been denied due process, and that "a defendant's right to due process is clearly implicated when the government makes promises of immunity from prosecution." *People v. Weilmuenster*, 283 Ill. App. 3d 613, 625 (citing *People v. Smith*, 233 Ill. App. 3d 342, 350-51 (1992)); see also *Stapinski*, 2015 IL 118278, ¶ 35.

¶ 41 In *Weilmuenster*, our appellate court explicitly considered the "problem of possible confusion between transactional [absolute] and use immunity" and found that it was "not remote." *Weilmuenster*, 283 Ill. app. 3d at 625. Accordingly, the court held that "[w]here the evidentiary record discloses ambiguity in the scope of the government's agreement to confer immunity, basic considerations of fairness dictate that any ambiguity *** should be resolved in favor of the defendant." *Id*. The court further held that "fundamental fairness requires that a defendant *** who is called upon to surrender his privilege against self-incrimination in return for a grant of immunity, must be *fully and fairly informed by the State of the scope of the protection being afforded*; and oblique or perfunctory reference to the type of immunity offered is insufficient." *Id*. The court then required that "[a] court entering an order of immunity must admonish such a defendant carefully of the nature of the rights being waived and of the consequences of defendant's decision to ensure that his decision is made knowingly and voluntarily." *Id*.

¶ 42 Applying *Weilmuenster* to the facts of this case, we find no error in the trial court's attempt

to resolve the ambiguity regarding the type of immunity granted to the defendants in order to determine whether they were denied their right to due process. In addition, we find nothing erroneous in the trial court's determination, after an evidentiary hearing, that the defendants were not fully and fairly informed of the scope of the immunity they were granted, and that they therefore did not knowingly waive their right not to testify.

¶ 43 In that respect, we find unavailing the State's argument that because the defendants never alleged an agreement with the State there could be no ambiguity. Contrary to the State's position, the record reveals that in their response to the State's motion to reconsider the dismissal of their charges, the defendants explicitly alleged that prior to the grand jury hearing they informed the State that they wished to exercise their Fifth Amendment right to remain silent, and that the State assured them that they were not targets of a criminal investigation but that it merely sought to obtain information about the owner of the convenience store. Once at the hearing, the defendants were given a use immunity order, and hastily ushered into the grand jury room, without ever being informed of the type of immunity they were being granted. In addition, when defense counsel requested a continuance to look up the citation to the use immunity statute his request was denied, with the AG's assurance that the defendants have "immunity, we're ready to go, we need to go, and we want to proceed with this grand jury [now]." Moreover, the defendants unequivocally testified that had they known they were not being granted transactional (absolute) immunity they never would have taken the stand. Under this record, we are compelled to conclude that the State's actions, in the very least, created an implied agreement with the defendants.

¶ 44 In coming to this decision, we acknowledge that the State is at liberty to seek and obtain use

immunity orders against witnesses, who intend to invoke their right against self-incrimination, so as to force them to testify under the threat of contempt. 725 ILCS 5/106-3 (West 2016) ("Any witness who having been granted immunity refuses to testify *** shall be in contempt of court"). Nonetheless, the State cannot utilize the ministerial nature of a use immunity order to deceive defendants (either directly or implicitly) into thinking they are being granted transactional immunity and a promise of no prosecution in exchange for their testimony, when in fact, that is not the case. The State could have easily avoided the problems presented in this case by informing either defense counsel or the defendants themselves of the definition and scope of use immunity. As our appellate court has aptly stated:

> "Society reposes in its prosecutors an awesome and sacred trust. They alone possess the authority to institute the sole state-sanctioned process through which a citizens' liberty *** may legally be ended. Not surprisingly, the grant of such staggering power carries with it commensurate responsibilities. Prosecutors have as their preeminent goal not victory, but justice. [Citations] Without a doubt, prosecutors must discharge their duties with vigor and zealousness. [Citations] However, prosecutors who—blinded by this zealousness—lose sight of their ultimate goal breach both their ethical code and public trust. They do so at their peril." *Weilmuenster*, 283 Ill. App. 3d at 626.

¶ 45 Furthermore, regardless of whether the defendants knowingly waived their right not to testify, we further affirm the dismissal of the charges on the separate basis articulated by the trial court, namely that the State violated the use immunity order by prosecuting the defendants on information obtained from their grand jury testimony. In coming to this determination, the trial court stated that it had reviewed the record in the case, including the transcripts from the grand jury hearing. The court expressed its concern that on the day of the raid the defendant Suheil had

been observed by the police with five packages of contraband cigarettes, and the defendant Fahren had sold only one packet of cigarettes to an undercover police officer, but that the defendants were now being charged with possession of all the cigarettes found at the store. The court found that such a charge would not have been possible without the defendants' grand jury testimony, and therefore held that the State had violated the use immunity order, requiring dismissal of the indictments.

¶ 46 Since the State has inexplicably failed to provide us with the transcripts from that grand jury hearing, we are unable to review the defendants' testimony to evaluate whether or not the subsequent charges of possession were premised upon that testimony. Our supreme court has repeatedly held that the burden is on the appellant to present a sufficiently complete record of the trial proceedings to support a claim of error on appeal. *Corral v. Mervis Industries, Inc.,* 217 Ill. 2d 144, 156 (2005); *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984); see also *Dargis v. Paradise Park, Inc.*, 354 Ill. App. 3d 171, 176 (2004). "From the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant." *Foutch*, 99 Ill. 2d at 391. Without an adequate record preserving the claimed error, the court of review must presume the trial court's order had a sufficient factual basis and that it conforms with the law. *Corral*, 217 Ill. 2d at 157; *Webster*, 195 Ill. 2d at 432; *Foutch*, 99 Ill. 2d at 392. Accordingly, in the absence of a complete record supporting the State's claim, we must resolve "[a]ny doubts which may arise from the incompleteness of the record *** against the appellant." *Foutch*, 99 Ill. 2d at 392.

¶ 47 III. CONCLUSION

¶ 48 For the aforementioned reasons, we affirm the judgment of the circuit court.

¶ 49 Affirmed.