2019 IL App (2d) 180045-U
No. 2-18-0045
Order filed February 20, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANTHONE J. CARADINE, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 15-CF-507 Honorable Linda S. Abrahamson, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Birkett and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State proved defendant guilty beyond a reasonable doubt of involuntary sexual servitude of a minor, as he took a substantial step toward fulfilling his agreement to pay for sex with a minor, and of traveling to meet a minor and grooming, as he actively solicited the arrangement; (2) defense counsel was not ineffective for failing to pursue an entrapment defense, as there was no evidence to support it.

¶ 2 Following a bench trial, defendant, Anthone J. Caradine, was found guilty of involuntary sexual servitude of a minor (720 ILCS 5/10-9(c)(2) (West 2014)), traveling to meet a minor (*id.* § 11-26(a)), grooming (*id.* § 11-25(a)), and solicitation of a sexual act (*id.* § 11-14.1(a)). On appeal, defendant contends that (1) the evidence was insufficient to prove him guilty beyond a

reasonable doubt of involuntary sexual servitude of a minor, traveling to meet a minor, and grooming, and (2) he was denied the effective assistance of counsel where trial counsel failed to raise the affirmative defense of entrapment. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The following relevant evidence was presented at defendant's bench trial. Geoffrey Howard, a special agent with the Department of Homeland Security (DHS), testified that, on March 27, 2015, he was working with the Aurora Police Department as part of a sting operation that targeted individuals soliciting sex from minors via an online ad. The sting operation was conducted out of two adjoining rooms in an Aurora hotel. One of the rooms contained the computer system, which allowed multiple officers to correspond via text messages with individuals responding to the online ad and maintained a log of the text conversations. The other room was used as the meeting place for the undercover officer and the individuals who responded to the ad. Surveillance cameras recorded the inside of the meeting room and the hallway directly outside the meeting room. Video monitors in the room adjoining the meeting room allowed officers to see the activities recorded by the cameras in real time.

¶ 5 Howard testified that, on the day in question, an Aurora police officer placed an ad on the "Illinois adult entertainment escorts" section of the website "Backpage.com," entitled: " 'Everything is better with a cherry on top.' " The title was followed by a dash and the number 18, which, according to Howard, implied that the person who posted the ad was 18. In the text of the ad, it stated "150 HH" and "200 FH," which, according to Howard, meant $150 for a half hour and $200 for a full hour, respectively. Howard testified that those were common pricing abbreviations on that website.

¶ 6 Aurora police officer Robert Hillgoth testified that he acted as a "texter," communicating via text with individuals who responded to the ad. Hillgoth testified that, very shortly after the ad was placed, he began receiving texts from interested individuals, including defendant. The following is the text exchange that occurred between Hillgoth and defendant:

"[DEFENDANT]: Are you available

[HILLGOTH]: we r bae!

[DEFENDANT] Can I see pictures so I can decide which one I want or decide if I want both

[HILLGOTH]: thats my 15 yo on BP.cant do more pics bae..2risky

[DEFENDANT]: What are your rates

[DEFENDANT]: What are your rates

[HILLGOTH]: hh 150 roses n fh 200 rsoes..but both my daughters can play today.

[DEFENDANT]: How old

[HILLGOTH]: 14 yr blond n 15 yr brunet...pick your fave!!

[DEFENDANT]: Are any type of law enforcement

[HILLGOTH]: u a cop?!? u fukn with me?

[DEFENDANT]: No I'm not

[DEFENDANT]: I want to set an appointment

[HILLGOTH]: cuz u have to tell me... i kno that... i aint got time for that bae! my girls need a man to teach them right

[DEFENDANT]: What the address

[HILLGOTH]: wut time??

[DEFENDANT]: I need the address too see how far

[HILLGOTH]: off 88 by orchard

[DEFENDANT]: What is the address

[DEFENDANT]: Hello

[DEFENDANT]: Ok I guess u don't want the money

[HILLGOTH]: im talkin to my girlz now sweetie- they want to kno wut you want to get into and when

[DEFENDANT]: I need an address

[HILLGOTH]: 2424 west sullivan-- its nice n discreat bae

[DEFENDANT]: City

[DEFENDANT]: What is the city

[HILLGOTH]: i think its sugar grove or arora

[DEFENDANT]: I can't play a guessing game

[HILLGOTH]: cleanin woman said arora.. holiday inn

[DEFENDANT]: I'll do $100 for a full hour with one

[HILLGOTH]: depends on wut u want in your FH

[DEFENDANT]: What can I have

[HILLGOTH]: str8 sex with condom only

[DEFENDANT]: How much do I gotta pay to bust 1 nut from a blow job and one from sex with or without a condom

[DEFENDANT]: We will talk when I get there I'll let u know when I'm there

[HILLGOTH]: i need to protect my girlz bae... no weird shit.. 150 for bj and sex with condom

[HILLGOTH]: aight! wut time u cumin out?

[DEFENDANT]: I should be there before 4 I need pictures of them nothing nasty I just wanna know what they look like

[HILLGOTH]: u seem smart bae.. u kno i gotta stay safe too.. they are fresh and VERY pretty

[DEFENDANT]: Let me see please

[HILLGOTH]: we are gonna get food and the girlz will get dolled up..u'll see bae!

[DEFENDANT]: So I gotta wait

[HILLGOTH]: all good things cum... ;-)

[DEFENDANT]: What's the room number

[HILLGOTH]: you here bae?

[DEFENDANT]: No just wanna know so when I get there

[HILLGOTH]: text me when u get here bae

[DEFENDANT]: What I come thru the door the should be in only bra and panties or I'm leaving immediately

[HILLGOTH]: ok bae.. they will be ready

[DEFENDANT]: Ok

[DEFENDANT]: Room number

[HILLGOTH]: u here bae? I'm walkin up now

[DEFENDANT]: I'm finna pull up

[HILLGOTH]: text me when you get in the lobby.. chill there cuz they cool

[DEFENDANT]: What's the room number

[DEFENDANT]: I'm not coming in unless I get a room number

[HILLGOTH]: 331-they're ready

[DEFENDANT]: I'm gonna pick which one so we can be alone

[HILLGOTH]: that might be a hard choice

[DEFENDANT]: Ok"

¶ 7 Jennifer Finerty, a DHS special agent, testified that, on March 27, 2015, she was working undercover, playing the role of a mother offering her two minor daughters for sex. She was not involved with texting defendant. Prior to defendant's arrival at the hotel, she read a copy of the text conversation that defendant had with Hillgoth so that she would know what had been discussed. Finery identified People's exhibit No. 10 as a copy of the video recording that had been made of her interaction with defendant. She identified People's exhibit No. 11 as a copy of the transcript of the conversation she had with defendant upon his arrival at the hotel room. According to the transcript, the following conversation took place between Finerty and defendant:

"[FINERTY]: What's up?

[DEFENDANT]: What's up?

[FINERTY]: How you doing?

[DEFENDANT]: Fine. How you doing?

[FINERTY]: Good. Come in, sit down.

[FINERTY]: Come in. Relax. Sit down.

[DEFENDANT]: INAUDIBLE

[FINERTY]: What's up?

[DEFENDANT]: Nothing much.

[FINERTY]: So, you ready?

[DEFENDANT]: Yeah.

[FINERTY]: Yeah, so I just want to check you out, make sure you know, work out any issues and everything, you know about the condom right?

[DEFENDANT]: Yeah

[FINERTY]: Okay, so the INAUDIBLE.

[DEFENDANT]: Okay.

[FINERTY]: So, you got my money?

[DEFENDANT]: Yeah.

[FINERTY]: Ok. The $150?

[DEFENDANT]: Yeah

[FINERTY]: So you know what you want?

[DEFENDANT]: I want it all.

[FINERTY]: You want it all?

[DEFENDANT]: Yeah.

[FINERTY]: Okay, no anal right?

[DEFENDANT]: No, no anal.

[FINERTY]: Okay, I'm going to call them. Did you see them going downstairs? Going to grab a pop?

[DEFENDANT]: No.

[FINERTY]: Okay, just one second. You want the 14 year old or both?

[DEFENDANT]: You know what, I've changed my mind. I kind of feel like the police are coming.

[FINERTY]: You feel like the police are coming?

[DEFENDANT]: Yeah, so.

[FINERTY]: What are you a cop?

[DEFENDANT]: No, definitely not.

[FINERTY]: Are you going to call the cops on me?

[DEFENDANT]: Hell to the fuckin' no.

[FINERTY]: You better fuckin' not, I'll tell you that much.

[DEFENDANT]: The only thing I mean INAUDIBLE

[FINERTY]: You leave, you better not say a word to anyone

[DEFENDANT]: First off, this aint none of my business

[FINERTY]: You know that's what I'm worried about, you're a cop.

[DEFENDANT]: Definitely not.

[FINERTY]: You sure?

[DEFENDANT]: I'm sure.

[FINERTY]: Okay.

[DEFENDANT]: So all right

[FINERTY]: So, you don't want nothing? One of the girls?

[DEFENDANT]: No. 'Cause I feel like a cop is about to come in here.

[FINERTY]: Are they coming?

[DEFENDANT]: Hell no!

[FINERTY]: Let me know.

[DEFENDANT]: I swear, I'm That's not what I'm about... I would never do something like that.

[FINERTY]: All right see you.

[DEFENDANT]: Bye.

[FINERTY]: Bye."

¶ 8 Defendant was arrested when he exited the hotel room. The following items were recovered from him: a cell phone, a box of condoms, $150 in cash, and an ATM receipt indicating a $150 withdrawal.

¶ 9 The trial court found defendant guilty of involuntary sexual servitude of a minor (*id.* § 10-9(c)(2)), traveling to meet a minor (*id.* § 11-26(a)), grooming (*id.* § 11-25(a)), and solicitation of a sexual act (*id.* § 11-14.1(a)). Following a sentencing hearing, the trial court sentenced defendant to concurrent terms of six years in prison for involuntary sexual servitude of a minor, two years for traveling to meet a minor, and one year for solicitation. (The grooming conviction merged with the traveling-to-meet-a-minor conviction.)

¶ 10 Defendant timely appealed.

¶ 11 II. ANALYSIS

¶ 12 Defendant first argues that he was not proved guilty beyond a reasonable doubt of involuntary sexual servitude of a minor (*id.* § 10-9(c)(2)). We review a claim of insufficient evidence to determine " 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *Id.* "[I]t is not the function of this court to retry the defendant." *Id.* The trier of fact must assess the credibility of the witnesses and the weight of their testimony, resolve conflicts in the evidence, and draw reasonable inferences from that evidence, and this court will

not substitute its judgment for that of the trier of fact on these matters. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001).

¶ 13 Section 10-9(c)(2) of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/10-9(c)(2) (West 2014)) provides as follows:

> "(c) Involuntary sexual servitude of a minor. A person commits involuntary sexual servitude of a minor when he or she knowingly recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, provide, or obtain by any means, another person under 18 years of age, knowing that the minor will engage in commercial sexual activity, a sexually-explicit performance, or the production of pornography, or causes or attempts to cause a minor to engage in one or more of those activities and:
>
> ***
>
> (2) there is no overt force or threat and the minor is under the age of 17 years[.]"

Section 10-9(c) criminalizes the attempted commission of the offense in the same manner as though the crime were completed. See *People v. Gaciarz*, 2017 IL App (2d) 161102, ¶ 31. Thus, the State must prove that the defendant, with the intent to commit the offense of involuntary sexual servitude of a minor, committed any act that constitutes a substantial step toward the commission of that offense. See 720 ILCS 5/8-4(a) (West 2014) ("A person commits the offense of attempt when, with intent to commit a specific offense, he or she does any act that constitutes a substantial step toward the commission of that offense.").

¶ 14 It is not possible to assemble a definitive list of acts that would constitute a substantial step toward the commission of a given offense. *People v. Terrell*, 99 Ill. 2d 427, 433 (1984).

What constitutes a substantial step depends on the unique facts and circumstances of each case. *People v. Lipscomb-Bey*, 2012 IL App (2d) 110187, ¶ 24. But there must be an act or acts toward the commission of the offense, beyond mere preparation. *Id.* And the act or acts must not be too far removed in time and space from the conduct that constitutes the offense. *Id.* Still, the defendant need not complete the last proximate act to the actual commission of the offense. *Id.* The facts should be placed on a " 'continuum between preparation and perpetration.' " *Id.* (quoting *Terrell*, 99 Ill. 2d at 434). A substantial step occurs when the acts taken in furtherance of the offense place the defendant in a dangerous proximity to success. *Id.*

¶ 15 Defendant argues that the evidence was insufficient to show that he took a substantial step toward the commission of involuntary sexual servitude of a minor where there was no agreement between defendant and the officer as to price and the activities to be performed and where defendant did not show the officer any money. We disagree and find that there was sufficient evidence that defendant took a substantial step toward committing involuntary sexual servitude of a minor. Defendant responded to an online ad and engaged in a text conversation about committing sexual acts. After asking the ages of the girls and being told that they were 14 and 15 years old, he texted: "I want to set an appointment." He first agreed to pay "$100 for a full hour with one" and then inquired about the price of "a blow job and *** sex with or without condom," to which the officer responded "150 for bj and sex with condom." Defendant asked for the address and indicated that he would arrive at around 4 o'clock. He texted: "When I come thru the door the[y] should be in only bra and panties or I'm leaving immediately." Defendant then went to an ATM, obtained the agreed-upon amount of cash, and drove to the hotel, arriving with condoms in his pocket. After obtaining the room number, he entered the hotel, walked to the hotel room, and knocked on the door. When defendant entered the hotel room, the officer

asked if he had her money and defendant replied that he did. When the officer asked defendant if he knew what he wanted, defendant stated: "I want it all." They then clarified that the agreement did not include anal sex. There is no question that defendant's acts far exceeded "mere preparation" and that he was well within a "dangerous proximity to success." *Id.*; see *Gaciarz*, 2017 IL App (2d) 161102, ¶ 46 ("When defendant subsequently traveled to the designated hotel room with $150 and a three-pack of condoms, he committed a substantial step toward the commission of the charged offenses."). Indeed, but for the absence of the two girls standing "in only bra and panties" when he entered the room, the offense would have been committed.

¶ 16 Defendant's reliance on *Lipscomb-Bey*, 2012 IL App (2d) 110187, and *People v. Thoma*, 171 Ill. App. 3d 313 (1988), does not warrant a different conclusion as they are readily distinguishable. In *Lipscomb-Bey*, the defendant was found guilty of being an attempted armed habitual criminal. *Lipscomb-Bey*, 2012 IL App (2d) 110187, ¶ 1. The evidence established that the defendant had agreed by phone to sell a gun to a woman who was working with the police. *Id.* ¶¶ 5-6. The defendant told her that he did not want to talk about it over the phone but agreed to meet her later to discuss the price. *Id.* ¶ 6. He did not describe the gun. *Id.* When the defendant showed up at the designated location, he was arrested prior to meeting with the woman. *Id.* ¶¶ 8-9. He had no gun in his possession. *Id.* ¶ 11. This court found that the evidence was insufficient to establish that the defendant took a substantial step toward committing the offense of being an armed habitual criminal, stating: "Even viewed in the light most favorable to the State, the evidence showed that defendant showed up only to negotiate the terms of a sale, that there was no meeting of the minds, and that a separate encounter would have been necessary to actually transfer the gun." *Id.* ¶ 40. Here, there is no question that an

arrangement had been made to exchange money for sexual acts. Defendant stated that he "want[ed] it all." Taken in context with the text conversation, this clearly meant oral sex and sex with a condom. In any event, an agreement for a sexual encounter in exchange for money was clearly reached. Defendant had the agreed-upon amount of cash and condoms in his possession. Unlike in *Lipscomb-Bey*, here, everything needed to complete the offense was present, with the exception of the underage girls.

¶ 17 In *Thoma*, the trial court dismissed a charge of attempted patronization of a prostitute and the State appealed. *Thoma*, 171 Ill. App. 3d at 314. The factual basis established that the defendant, while in the driver's seat of his vehicle, was approached by an undercover officer posing as a prostitute. *Id.* The defendant asked the officer what she charged. *Id.* When the officer asked the defendant what he wanted, the defendant asked her how much she charged for a blow job. *Id.* The officer asked the defendant how much he usually paid for it and he replied that he had never paid for it before. *Id.* The defendant then said, " 'How about $20.00?' " *Id.* The officer then stated, " 'You want a blow job for $20.00?' " (*id.* at 314), and the defendant replied, " 'Yes' " (*id.* at 315). The officer asked the defendant to show her the money but he did not do so. *Id.* The defendant did not indicate whether he had the money. *Id.* The defendant was then arrested. *Id.* The appellate court upheld the dismissal of the charge, finding that there was no factual basis indicating that the defendant was in dangerous proximity to committing the offense. *Id.* The court emphasized that the defendant refused to show the officer his money when she requested to see it, he did not exit his vehicle, and he did not invite her to enter his vehicle. *Id.* Here, defendant's actions went far beyond those of the defendant in *Thoma*. Defendant agreed via text to exchange money for sexual acts with an underage girl and traveled

to the designated meeting place, entering the hotel room with the agreed-upon cash and a box of condoms in his pocket.

¶ 18 Based on the foregoing, we find that the evidence, when viewed in the light most favorable to the State, was sufficient to prove defendant guilty beyond a reasonable doubt of involuntary sexual servitude of a minor.

¶ 19 Defendant next argues that he was not proved guilty beyond a reasonable doubt of traveling to meet a minor (720 ILCS 5/11-26(a) (West 2014)) or grooming (*id.* § 11-25(a)). Section 11-26(a) of the Criminal Code (*id.* § 11-26(a)) provides in relevant part as follows:

> "(a) A person commits the offense of traveling to meet a minor when he or she travels any distance either within this State, to this State, or from this State *** for the purpose of engaging in *** unlawful sexual conduct with a child or with another person believed by the person to be a child after using a computer on-line service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission *to seduce, solicit, lure, or entice, or to attempt to seduce, solicit, lure, or entice* *** another person believed by the person to be a child or a child's guardian, for such purpose." (Emphasis added.)

Section 11-25(a) of the Criminal Code (*id.* § 11-25(a)) provides in relevant part as follows:

> "(a) A person commits grooming when he or she knowingly uses a computer on-line service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission *to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice,* a child, a child's guardian, or another person believed by the person to be a child or a child's guardian, to *** engage in any unlawful sexual

conduct with a child or with another person believed by the person to be a child." (Emphasis added.)

¶ 20 Defendant argues that the evidence was insufficient to prove him guilty beyond a reasonable doubt of each offense because he "took no affirmative steps to solicit, seduce, lure or entice children to engage in sexual conduct." Instead, according to defendant, he was simply "a passive recipient of advances by another attempting to lure him to have sexual contact with children." We disagree. As noted by defendant, "solicit" means "to command, authorize, urge, incite, request, or advise another to commit an offense." *Id.* § 2-20. Here, defendant contacted the officer to inquire as to availability. Then, after being informed that the girls involved were 14 and 15 years old, defendant texted, "I want to set an appointment." Thus, because defendant requested an appointment to engage in unlawful sexual conduct after learning the ages of the girls, the evidence was sufficient to prove his guilt beyond a reasonable doubt of each offense.

¶ 21 Last, defendant argues that he was deprived of the effective assistance of counsel where trial counsel failed to properly raise an entrapment defense. Claims of ineffective assistance of counsel are resolved under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, a defendant must demonstrate that counsel's performance was deficient and that such deficient performance substantially prejudiced the defendant. *Id.* at 687. To demonstrate performance deficiency, a defendant must establish that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* A defendant meets this burden by establishing that "counsel's representation fell below an objective standard of reasonableness." *Id.* at 688. In ruling on a claim that counsel was ineffective, "[j]udicial scrutiny of counsel's performance must be highly deferential." *Id.* at 689. Accordingly, "a court must indulge a strong presumption that counsel's conduct falls

within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.' " *Id.* (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)). To establish prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

¶ 22 Entrapment is an affirmative defense. See 720 ILCS 5/7-12 (West 2014). A successful entrapment defense requires the defendant to prove (1) that the State improperly "incited or induced" the defendant to commit the offense and (2) that the defendant lacked a predisposition to commit the offense. *Id.*; *People v. Arndt*, 351 Ill. App. 3d 505, 516 (2004). The defendant must present sufficient evidence of both elements before the defense may be asserted. See 720 ILCS 5/3-2 (West 2014) ("[U]nless the State's evidence raises the issue involving the alleged defense, the defendant, to raise the issue, must present some evidence thereon."). "The entrapment defense is unavailable where the State has merely provided the defendant an opportunity to commit the crime." *Arndt*, 351 Ill. App. 3d at 516. "For this reason, the defendant's predisposition is generally the critical inquiry, and the State must show that the defendant was ready and willing to commit the crime in the absence of any persuasion by the State." *Id.* "Where *** the government simply invites the defendant to participate in the crime and does not 'employ[ ] any pressure tactics or use[ ] any other type of coercion' to induce the defendant, a defendant is not entitled to an entrapment defense." *United States v. Orr*, 622 F.3d 864, 869 (7th Cir. 2010) (quoting *United States v. Akinsanya*, 53 F.3d 852, 858 (7th Cir. 1995)).

A defendant who raises entrapment necessarily admits to committing the crime, albeit because of improper governmental inducement. *People v. Bonner*, 385 Ill. App. 3d 141, 145 (2008).

¶ 23 Here, no evidence established that the State improperly "incited or induced" defendant to commit the offense, and thus the defense was not available. To be sure, defendant arguably initiated contact with the officer believing that he was soliciting a person at least 18 years of age. Nevertheless, the second text he received from the officer stated "that's my 15 yo on BP." The third text from the officer indicated that "both my daughters can play today," and the fourth text established the ages of the "daughters" to be 14 and 15 years old. After confirming with the officer that she was not, in fact, an officer, defendant replied: "I want to set an appointment." There was absolutely no evidence of any pressure tactics or coercion on the part of the officer. Instead, defendant was presented with an opportunity to have sexual conduct with a minor and he seized it. See *People v. Ramirez*, 2012 IL App (1st) 093504, ¶ 32 (no inducement to commit bribery where, on being offered opportunity to " 'do business,' " defendant "jumped on that opportunity without hesitation"). In addition, raising the defense would have required defendant to admit to committing the offenses and would have reduced the case to rebutting the defense. This would not have been sound strategy. Thus, we find that counsel's failure to pursue entrapment was not objectively unreasonable. Moreover, defendant cannot establish prejudice because, even if counsel had pursued the defense, the result of the proceeding would not have been different.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the judgment of the circuit court of Kane County. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this

appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 26 Affirmed.