COURT OF APPEALS
DECISION
DATED AND FILED

August 4, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP1764-CR **Cir. Ct. No. 2013CF679**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RODELL THOMPSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for La Crosse County: RAMONA A. GONZALEZ, Judge. *Affirmed*.

Before Kloppenburg, P.J., Lundsten and Blanchard, JJ.

¶1 LUNDSTEN, J. Rodell Thompson was convicted, following a jury trial, of second-degree sexual assault, false imprisonment, and misdemeanor battery. Thompson argues that the circuit court erroneously admitted other acts evidence. He also argues that his trial counsel provided ineffective assistance

when trial counsel failed to impeach the alleged victim, S.S., about her assertion relating to being forced to urinate on a basement floor and when trial counsel made an inadequate argument in support of a request for an in camera review of S.S.'s mental health records. We reject all of Thompson's arguments, and affirm.

Background

¶2 Trial evidence showed that, on an evening in September, a 44-year-old woman, S.S., was at a tavern in downtown La Crosse with her "off-again, on-again" boyfriend. S.S. had been drinking, and she and her boyfriend got into an argument over her drinking. S.S. was kicked out of the tavern and was alone outside. She asked several people to use their cell phones in an attempt to call her daughter for a ride.

¶3 S.S. and Thompson gave very different accounts about what happened when Thompson walked up to S.S. outside the tavern.

¶4 S.S. testified that Thompson approached, and she asked him if she could use his phone to call her daughter. She said Thompson told her that she could, but that his phone was back at his house, which was "just down the street." S.S. told the jury the two walked several blocks to a house that Thompson said he was remodeling and that they then went down to the basement and sat on a couch.

¶5 S.S. testified that Thompson detained her, even forcing her to urinate on the basement floor, and that he forcibly had sexual intercourse with her. In support of the battery charge, S.S. testified that Thompson struck her on the head, causing neck pain that persisted. According to S.S., Thompson had no phone and she eventually left the residence with Thompson. After Thompson walked away, S.S. located some young men who let her use a phone.

¶6 Thompson testified that he encountered S.S. sitting in front of the tavern, and he engaged her in conversation. According to Thompson, S.S. told him that "[s]he ran off with $265 of her boyfriend's money" and that she "wanted some meth." Thompson said he offered to give her the money to protect her from her boyfriend, and that they walked to a house he was helping to remodel and where he, apparently, planned to sleep that night. Thompson testified that S.S. used a bathroom on the first floor before going down to the basement. Thompson did not directly deny forcing S.S. to urinate on the floor, but effectively did so by indicating that he did not restrain her and that she was free to use the first floor bathroom. Thompson denied wanting to have sex with S.S. Rather, he asserted that S.S. initiated sex by kissing him and rubbing him under his shirt. Thompson contended that, after having consensual sexual intercourse, they talked about the money S.S. owed her boyfriend, and Thompson made a plan with S.S. to meet her the next day and give her the money. Also according to Thompson, they left the house and then hugged before he returned to the house. According to Thompson, he showed up the next day to give S.S. the money, but she never showed up.

¶7 Other pertinent facts will be discussed where necessary below.

Discussion

A. Other Acts Evidence

¶8 Thompson challenges the admission of other acts evidence relating to an alleged prior victim, J.K. The admission of other acts evidence is guided by the ***Sullivan*** three-pronged other acts test. That test and our standard of review were summarized in ***State v. Lock***, 2012 WI App 99, 344 Wis. 2d 166, 823 N.W.2d 378:

> When deciding whether to allow other-acts evidence, Wisconsin courts look to WIS. STAT. § 904.04(2)(a), and apply the three-step analytical framework set forth in ***State v. Sullivan***, 216 Wis. 2d 768, 772-73, 576 N.W.2d 30 (1998). Under ***Sullivan***, courts must consider: (1) whether the evidence is offered for a proper purpose under § 904.04(2); (2) whether the evidence is relevant; and (3) whether the probative value of the evidence is "substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury."
>
> The proponent of the other-acts evidence "bears the burden of establishing that the first two prongs are met by a preponderance of the evidence." Once the first two prongs of the test are satisfied, the burden shifts to the opposing party "to show that the probative value of the [other-acts] evidence is substantially outweighed by the risk or danger of unfair prejudice."
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> ....
>
> The admissibility of evidence rests within the trial court's discretion and the decision to admit other-acts evidence is reviewed for an erroneous exercise of discretion. "A [trial] court properly exercises its discretion when it examines the relevant facts, applies a proper standard of law, and uses a demonstrably rational process to reach a conclusion that a reasonable judge could reach." We generally look for reasons to sustain the trial court's discretionary decisions. "Although the proper exercise of discretion contemplates that the [trial] court explain its reasoning, when the court does not do so, we may search the record to determine if it supports the court's discretionary decision." We are required to independently review the record if the trial court does not provide a detailed ***Sullivan*** analysis. As such, [when a] trial court [does] not perform a ***Sullivan*** analysis ..., our review is *de novo*.

Id., ¶¶40-43 (citations and quoted sources omitted).

¶9 Here, the J.K. other acts evidence, presented in the form of a stipulation read to the jury, was admitted with respect to the false imprisonment charge. The jury was told that, if J.K. had testified, she would have asserted that:

- On July 10, 2012, she was approached by Thompson when she was walking near the same tavern where Thompson encountered S.S.
- Thompson asked J.K. if she wanted to smoke marijuana at his place.
- J.K. agreed, and they walked to a nearby house.
- The house was "abandoned," and they entered a "back room."
- J.K. told Thompson that she was going to leave if they did not smoke marijuana.
- Thompson "got on top of her" and they "struggled on the ground."
- Thompson put his hands over her mouth and told her not to scream.
- They continued to struggle, but J.K. was able to get Thompson "off of her."
- Thompson "blocked the door and would not allow [J.K.] to leave."
- J.K. "was finally able to break free from [Thompson] and took off running out of the house."

Thompson concedes that this J.K. other acts evidence meets the first two ***Sullivan*** prongs. More specifically, he concedes that it was offered for the proper purpose of showing his intent to falsely imprison S.S. And he concedes the evidence was relevant on the issue of intent for purposes of the false imprisonment charge.

¶10 Thompson takes issue with the circuit court's application of the third ***Sullivan*** prong—whether the probative value of the evidence was substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Thompson makes three arguments on this topic. We address and reject each.

1. Whether the J.K. Other Acts Evidence Had Minimal Probative Value Because Of Its Form

¶11 Although not framed just this way, Thompson effectively argues that any prejudice flowing from the J.K. evidence was too much prejudice because the J.K. evidence had minimal probative value. Thompson argues that the evidence was minimally probative because J.K. did not testify, because the jury instead was read a stipulation telling the jury what J.K. would have said, and because this manner of presentation meant that "there was no way the jury could assess [J.K.'s] demeanor or credibility."

¶12 We agree with the State that this is a novel argument. Thompson cites no supporting case law. Rather, he seems to make the curious argument that the jury could not have placed much weight on the stipulation because the jury was unable to assess J.K.'s credibility. If this is what Thompson means to argue, it is self-defeating. If the jury placed not much weight on the stipulation, it follows that the stipulation carried with it a limited risk of prejudice.

¶13 Thompson might be arguing that we should not view the probative value of the stipulation from the perspective of the jury that heard the evidence, but rather consider what would have happened if J.K. had testified. According to Thompson, if J.K. had testified, she could have been impeached with her prior criminal convictions and the fact that she failed to show up for the preliminary hearing in the prosecution against Thompson arising from J.K.'s allegations. We fail to understand the logic of this argument. If J.K. had actually testified, there are reasons why the other acts evidence might have been stronger or weaker. But such arguments are pure speculation. More fundamentally, we are not aware of any authority for the idea that, in assessing whether the other acts evidence, *as*

presented, lacked sufficient probative value, we compare how the other acts evidence was presented with how it might have been presented.

¶14 Finally, on this topic, Thompson points to his own trial testimony which, he says, presented a "sharply different version." This argument misapprehends the issue at hand. The question here is whether the circuit court erred when it admitted the J.K. other acts evidence. The propriety of that decision is unaffected by Thompson's later trial testimony.

2. Whether the J.K. Other Acts Evidence Was Unfairly Prejudicial And Confusing

¶15 In a separate subsection of his brief-in-chief, Thompson argues that the J.K. other acts evidence carried with it an unacceptably high risk of unfair prejudice and confusion of the issues. To be clear, Thompson does not say that he was prejudiced with respect to the false imprisonment charge. Rather, he complains that it would have been "nearly impossible" for the jurors to follow a limiting instruction they received telling them not to consider the J.K. evidence for purposes of the sexual assault charge.

¶16 If we were addressing this as a matter of first impression, there might be more to discuss. However, we have clear guidance from our supreme court. That court has explained that, although limiting instructions do not per se eliminate the possibility of unfair prejudice, Wisconsin courts "presume that juries comply with properly given limiting and cautionary instructions, and thus consider this an effective means to reduce the risk of unfair prejudice to the party opposing admission of other acts evidence." ***State v. Marinez***, 2011 WI 12, ¶41, 331 Wis. 2d 568, 797 N.W.2d 399. More to the point, we are unable to distinguish the risk of prejudice to Thompson from the risk to defendants in several other cases in

which our supreme court has assumed that a limiting instruction reduced the risk of unfair prejudice to an acceptable level. *See, e.g.*, ***id.***, ¶¶7-9, 13, 41, 57-58 (limiting instruction presumption applied to other acts evidence showing that the defendant burned a four-year-old's hands so severely that the child was hospitalized); ***State v. Hurley***, 2015 WI 35, ¶¶2, 89-92, 361 Wis. 2d 529, 861 N.W.2d 174 (limiting instruction presumption applied to other acts evidence showing that the defendant repeatedly sexually assaulted a different child 25 years prior to trial).

3. Harmless Error

¶17 Thompson argues that the decision to admit the J.K. other acts evidence was not harmless error. Because we have rejected Thompson's other acts argument, we need not address whether admission of the J.K. other acts evidence was harmless error.

B. Ineffective Assistance

¶18 Thompson contends that his trial counsel rendered ineffective assistance in two respects. We address each below, but first set forth the standards applicable to such claims.

¶19 To obtain relief based on ineffective assistance of counsel, Thompson must show both deficient performance and resulting prejudice. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984).

¶20 With respect to deficient performance, Thompson must point to specific acts or omissions by his counsel that are "outside the wide range of professionally competent assistance." ***Id.*** at 690. "Deficient performance is judged by an objective test, not a subjective one." ***State v. Jackson***, 2011 WI App

63, ¶9, 333 Wis. 2d 665, 799 N.W.2d 461. The focus is not on trial counsel's subjective thinking, but rather on whether counsel's conduct was objectively reasonable. *See* ***id.***

¶21 As to prejudice, Thompson "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding[s] would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Strickland***, 466 U.S. at 694.

¶22 The ineffective assistance analysis has both factual and legal components. The circuit court's findings of what counsel did and the basis for the challenged conduct are factual and will be upheld unless clearly erroneous. *See* ***State v. Thiel***, 2003 WI 111, ¶21, 264 Wis. 2d 571, 665 N.W.2d 305. However, whether counsel's conduct amounted to ineffective assistance is a question of law that we review de novo. ***Id.***

¶23 If Thompson's argument falls short with respect to either deficient performance or prejudice, we need not address the other prong. *See* ***State v. Smith***, 2003 WI App 234, ¶15, 268 Wis. 2d 138, 671 N.W.2d 854 ("A court need not address both components of this inquiry if the defendant does not make a sufficient showing on one.").

1. Ineffective Assistance: Failure To Pursue Urine Issue

¶24 Thompson faults his trial counsel for failing to impeach S.S.'s testimony that Thompson refused S.S.'s request to use an upstairs bathroom and instead effectively compelled her to relieve herself on the floor of the basement, in a laundry room adjacent to where Thompson allegedly assaulted S.S. Thompson argues that it was important to undermine S.S.'s forced-to-urinate-on-the-floor

assertion because that assertion, if believed, strongly supported S.S.'s broader assertion that she was held against her will. According to Thompson, it would have been relatively easy to cast doubt on the urination assertion. We disagree, and conclude below that Thompson has failed to demonstrate prejudice.

¶25 Thompson contends that it is common knowledge that urine is "immediately discernible by the stench, and by sight ... [and that] until the urine is cleaned up, the odor and the residue persist for a considerable length of time." Thompson argues that there are two ways his trial counsel could have cast doubt on S.S.'s urination assertion. First, counsel could have pointed out the State's failure at trial to present evidence supporting S.S.'s urination claim. Second, counsel could have cross-examined a police detective who entered the residence as a part of her investigation and had the detective repeat what she said at the preliminary hearing, namely, that the landlord present at the time did not mention anything about urine and the detective did not either notice the smell of urine or observe urine residue.

¶26 Thompson's urine argument is built on a thin reed. Neither the landlord nor the detective testified at the postconviction hearing. All that Thompson relies on is exceedingly limited preliminary hearing testimony from the detective who went to the scene about nine days after the alleged assault. The detective was asked whether S.S. told the detective about having to urinate on the basement floor, and the detective responded affirmatively. The detective was then asked just a few questions about the urine. She was asked if the landlord, who was present with the detective, mentioned anything about finding or smelling urine, and the detective said no. She was asked if she saw or smelled urine, and the detective answered: "I didn't see any urine. There [were] distinct odors in this house, so it was very difficult to discern if the odors I was smelling was urine or

numerous other things in this house." This short exchange during the preliminary hearing provides all that is known about the alleged absence of urination evidence. As we now further discuss, this information does not support Thompson's argument that his trial counsel could have used the urine information, or the absence thereof, to significantly impeach S.S.

¶27 We start with the observation that even if, about nine days later, there was no urine smell or residue for the landlord or detective to detect, that fact could easily be explained by the possibility that Thompson, who remained at the house the evening of the alleged assault, cleaned up after S.S. left.

¶28 Additionally, there is no reason to suspect that the landlord knew the significance of urine on the floor. There is no indication that the detective asked the landlord about urine. Thus, the landlord, or some other person, might have cleaned up the urine at some point. And, of course, if the landlord did not know the significance of urine on the floor, there was no reason for the landlord to spontaneously bring up the topic with the detective. Thus, it is not significant that the landlord did not mention a urine smell.

¶29 Furthermore, the detective did *not* testify at the preliminary hearing that she smelled no urine. Rather, she testified that, when she was there more than a week after the alleged assault, she could not tell if there was a urine odor because of other "distinct odors" in the house.

¶30 Finally, Thompson exaggerates how certain it is and, if so, how commonly known it is that urine, not cleaned up, will leave visible residue and discernible stench more than a week later. Thompson contends that this knowledge is based on the near universal and "unfortunate experience of walking through a stairwell or parking lot where someone has urinated." This is faulty

reasoning. When people encounter this unpleasant situation, they have no way of knowing whether the odor was caused by a single instance of urination, much less whether it was a single instance more than a week earlier. Thus, even assuming this is a common experience, it does not say anything about whether S.S.'s urine would leave a significant odor, especially given competing odors, about nine days later.

¶31 Our point is that the record before us reveals very little about this urine situation. Postconviction counsel did not try to fill in any blanks at the postconviction hearing, and it is entirely possible that any such effort would have led nowhere. At best, from Thompson's point of view, what we do have suggests that police did not think to pursue evidence supporting S.S.'s urination assertion or that, if they did, they did not uncover any significant evidence. Either way, for the reasons we have discussed, the failure of Thompson's counsel to pursue the avenues now suggested by Thompson does not undermine our confidence in the verdicts. That is, even assuming, without deciding, deficient performance, Thompson fails to demonstrate prejudice.

2. Ineffective Assistance: Failure To Pursue Mental Health Records

¶32 After Thompson was charged, he brought a pretrial motion for an in camera review of S.S.'s mental health records under ***State v. Shiffra***, 175 Wis. 2d 600, 499 N.W.2d 719 (Ct. App. 1993). The circuit court concluded that Thompson failed to make the required showing for an in camera review. Thompson argues that his trial counsel's ***Shiffra*** motion was deficient because it omitted reasons why an in camera review was needed.

¶33 The parties spend significant time discussing what effect these additional reasons would or should have had on Judge Gonzalez's decision. We

do not, however, direct our attention to what this particular judge would or should have done. Rather, the principles and standard of review applicable to ***Shiffra*** motions dictates that we decide de novo whether the additional reasons should have made a difference in whether an in camera review of S.S.'s mental health records was required. This analysis, in turn, will dictate whether Thompson has demonstrated ineffective assistance of counsel.

¶34 The supreme court's decision in ***State v. Green***, 2002 WI 68, 253 Wis. 2d 356, 646 N.W.2d 298, summarizes the standards that apply when a criminal defendant seeks an in camera review of a victim's mental health records. In short, the defendant has the burden of making a fact-specific showing of a "reasonable likelihood" that the records will contain probative, noncumulative evidence necessary to the determination of the defendant's guilt or innocence:

> The mere contention that the victim has been involved in counseling related to prior sexual assaults or the current sexual assault is insufficient. Further, a defendant must undertake a reasonable investigation into the victim's background and counseling through other means first before the records will be made available. From this investigation, the defendant, when seeking an in camera review, must then make a sufficient evidentiary showing that is not based on mere speculation or conjecture as to what information is in the records. In addition, the evidence sought from the records must not be merely cumulative to evidence already available to the defendant. A defendant must show more than a mere possibility that the records will contain evidence that may be helpful or useful to the defense.
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> … [T]he preliminary showing for an in camera review requires a defendant to set forth, in good faith, a specific factual basis demonstrating a reasonable likelihood that the records contain relevant information necessary to a determination of guilt or innocence and is not merely cumulative to other evidence available to the defendant. We conclude that the information will be "necessary to a determination of guilt or innocence" if it "tends to create a reasonable doubt that might not otherwise exist." This test

> essentially requires the court to look at the existing evidence in light of the request and determine, as the ***Shiffra*** court did, whether the records will likely contain evidence that is independently probative to the defense.

Id., ¶¶33-34 (citations and quoted source omitted).

¶35 Our standard of review is mixed. "Factual findings made by the court in its determination are reviewed under the clearly erroneous standard." ***Id.***, ¶20. However, the ultimate question of "[w]hether the defendant submitted a preliminary evidentiary showing sufficient for an in camera review implicates a defendant's constitutional right to a fair trial and raises a question of law that we review de novo." ***Id.***[1]

¶36 Viewing Thompson's ineffective assistance claim relating to the ***Shiffra*** motion in light of these standards, we conclude that Thompson has not demonstrated prejudice within the meaning of ***Strickland***. That is, even assuming that Thompson's trial counsel's performance was deficient, we conclude that Thompson is not entitled to relief because he has not demonstrated that he would have been entitled to an in camera review of S.S.'s mental health records if his counsel had submitted more information.

¶37 Before trial, Thompson's counsel submitted a ***Shiffra*** motion stating that S.S. admitted in an August 2012 court appearance that she was being treated for depression and that she has "borderline personality disorder." An attachment to that motion asserted that, according to the National Institute of Mental Health,

[1] This recitation of the law comes from ***State v. Lynch***, 2015 WI App 2, ¶9, 359 Wis. 2d 482, 859 N.W.2d 125 (WI App 2014). The supreme court accepted review in ***Lynch***, but did not reach majority agreement on a "rationale or result" and, "[c]onsequently, the law remains as the court of appeals has articulated it [in ***Lynch***]." ***State v. Lynch***, 2016 WI 66, n.1, __ Wis. 2d __, __ N.W.2d __.

possible symptoms of borderline personality disorder include "unstable moods, behavior, and relationships" and that "[m]ost people who have [borderline personality disorder] suffer from: ... Impulsive and reckless behavior [and] Unstable relationships with other people."

¶38 Thompson asserts that his trial counsel's ***Shiffra*** motion and supporting argument failed to additionally inform the circuit court that, according to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V), "some individuals [with borderline personality disorder] develop psychotic-like symptoms (e.g., hallucinations, body-image distortions, ideas of reference, hypnagogic phenomena) during times of stress." DSM-V also states that the "essential feature of borderline personality disorder is a pervasive pattern of instability of interpersonal relationships, self-image, and affects, and marked impulsivity that begins by early adulthood and is present in a variety of contexts." Finally, Thompson quotes the DSM-V information as stating that persons with borderline personality disorder have a "tendency to spontaneously idealize potential caregivers or lovers, and special sensitivity to interpersonal stresses, real or imagined fears of abandonment, which can lead to anger and enduring bitterness."[2]

¶39 Thompson argues that his trial counsel performed deficiently by not pointing to this additional diagnostic information and that he was prejudiced because, when this information is added to the mix, an in camera review under ***Shiffra*** and ***Green*** was required.

[2] This quote from Thompson's brief-in-chief is not found in the DSM-V he cites. However, the quote is a reasonable summary of information that is in the DSM-V, and we will treat it as his summary of the information he wants to draw our attention to.

¶40 Thompson's main theory seems to be that the additional information shows a reasonable likelihood that S.S.'s mental health records include information concerning whether S.S. hallucinates and does so in ways that might explain why she would falsely accuse Thompson. Thompson argues that, if S.S. hallucinates, it necessarily means that she sometimes inaccurately perceives events that she experiences. Thompson further points out that the trial evidence indicates that, on the evening of the alleged assault, S.S. was, in Thompson's words, "under a great deal of stress," a condition that, according to the DSM-V, triggers hallucinations in some individuals with borderline personality disorder.

¶41 We conclude that the hallucination information that Thompson asserts should have been included as part of the ***Shiffra*** motion has limited value. First, the DSM-V indicates only that "some" persons with borderline personality disorder will hallucinate during "times of stress." There is no information regarding how common such hallucinating is or what type or degree of stress might bring on such hallucinations.[3]

¶42 Second, Thompson does not direct our attention to information supporting the proposition that the hallucinating referred to in the DSM-V means that a person suffering from borderline personality disorder is likely to interpret or remember consensual sex as forcible rape. Moreover, as the State points out, if it was true that, during a consensual sexual encounter with Thompson, S.S. hallucinated that she was being raped, she presumably would have acted toward

[3] We question Thompson's characterization of S.S. as being under a "great deal of stress" leading up to the alleged assault. There were no significant statements from S.S. supporting the view. And, Thompson gave very limited support for that view and, then, only during the trial. However, in light of the discussion in the text, we need not discuss this topic further.

Thompson as if she was being raped. That is, if S.S. hallucinated that Thompson was forcing himself on her sexually, her response would have been very different than what Thompson described, which was that S.S. initiated sex by rubbing and kissing him and then had consensual sexual intercourse with him.

¶43 As noted, the other additional information that Thompson says should have been included in the ***Shiffra*** motion is the DSM-V information indicating that persons with borderline personality disorder have a "tendency to spontaneously idealize potential caregivers or lovers, and special sensitivity to interpersonal stresses, real or imagined fears of abandonment, which can lead to anger and enduring bitterness." From this, Thompson speculates that S.S.'s mental health records might support Thompson's testimony that he attempted to help S.S. on the night in question by offering to give her money—money she owed her boyfriend—and that this caused S.S. to "idealize" Thompson, perceive him as a lover, and initiate sex with him. She might, so Thompson's theory goes, have become "bitter" toward Thompson after perceiving his "impending abandonment" of her. We are not persuaded. The scenario is not only highly speculative, it also does not fit Thompson's version of the events at trial.

¶44 Thompson did not testify that S.S. became angry after the consensual sex. To the contrary, Thompson told the jury that he and S.S. hugged when they parted and that they had a plan to meet up the next day, at which time Thompson would give S.S. the money she needed. Thompson testified that he showed up for the planned meeting, but S.S. did not. Nothing Thompson testified about provides support for the "perceived impending abandonment" part of his theory. For that matter, under Thompson's version of the events, there was no reason for S.S. to be angry with Thompson about money, sex, or anything else.

¶45 In sum, Thompson's speculation about what might be contained in S.S.'s mental health records is based on either vague information in the DSM-V or on theories unsupported by the testimony. In the words of ***Green***, Thompson's argument is "mere speculation or conjecture as to what information is in the records." ***Green***, 253 Wis. 2d 356, ¶33. Even assuming, without deciding, that Thompson's trial counsel performed deficiently by not presenting the additional DSM-V information, Thompson has failed to demonstrate prejudice because, even with that information added, an in camera review of S.S.'s mental health records was not required.

Conclusion

¶46 For the reasons above, we affirm the circuit court.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.