COURT OF APPEALS
DECISION
DATED AND FILED

October 5, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal Nos. 2015AP2119
2015AP2120

Cir. Ct. Nos. 2012JV90
2012JV91

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

NO. 2015AP2119

IN THE INTEREST OF A.S.W.:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

A.S.W.,

RESPONDENT,

DOUGLAS M. YANKO,

INTERVENOR-APPELLANT.

NO. 2015AP2120

IN THE INTEREST OF J.P.W.:

STATE OF WISCONSIN,

PETITIONER,

V.

J.P.W.,

RESPONDENT,

DOUGLAS M. YANKO,

INTERVENOR-APPELLANT.

APPEALS from an order of the circuit court for Ozaukee County: PAUL MALLOY, Judge. *Affirmed*.

¶1 HAGEDORN, J.[1] Douglas M. Yanko—the intervenor-appellant—appeals from an order of the circuit court denying him access to the juvenile court records of A.S.W. and J.P.W. Yanko was convicted of repeated sexual assault of a child and seeks to examine court and law enforcement records in these separate cases—both of which involved the same victim—for possible exculpatory evidence to use in his postconviction proceedings. He claims that the court should have granted his request to inspect the records under WIS. STAT. § 938.396(2) and (2g)(dm), or at least reviewed them in camera, before denying his request. He additionally claims that denying him access to the records violated his due process right to present a defense. We conclude that: (1) Yanko has no statutory right to inspect the juvenile records for possible exculpatory evidence, (2) the court did not otherwise erroneously exercise its discretion in denying his request without an in

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

camera review, and (3) denying Yanko access to the records did not violate due process. Accordingly, we affirm the circuit court's order.

Background

¶2 On November 14, 2012, Yanko was charged with repeated sexual assault of a child. Though we do not have the trial record, Yanko's motion claims[2] that the thirteen-year-old victim said she was in a relationship with the then-seventeen-year-old Yanko in August 2012. During that time, she claimed that Yanko laid her on a couch, straddled her, and touched her breasts. Yanko asked if he could have sex with her and, when she declined, rubbed his penis on her vaginal area. The victim further alleged that Yanko touched her in a similar manner later that day. Yanko maintained his innocence, and the case went to a one-day trial by jury where he was convicted solely on the victim's testimony. The court sentenced Yanko to sixteen years in prison—nine years' initial confinement and seven years' extended supervision.

¶3 Yanko filed a post conviction motion alleging ineffective assistance of counsel. The motion was, at least in part, grounded on the failure of Yanko's defense counsel to follow up on evidence that the victim may have falsely accused two juveniles of sexual assault in October 2012. The victim accused her brothers, A.S.W. and J.P.W.—the respondents in these delinquency cases—of repeatedly sexually assaulting her beginning in July 2010 through August 2012. She claimed that A.S.W. had touched her inappropriately, including in her private area "between twenty and thirty times." She made allegations against J.P.W. of similar

[2] Except for the CCAP records, the record of Yanko's criminal trial is not part of the record before us.

conduct that occurred "not more than forty different times." Other witnesses averred that the victim told them she had been abused by A.S.W. and J.P.W. The State filed delinquency petitions against both juveniles for repeated sexual assault of a child. However, the petitions were later amended from sexual assault to misdemeanor battery. A.S.W. and J.P.W. entered admissions to misdemeanor battery and the court ordered in-home placement. The record does not provide any context or reason for the amendments to the petitions.

¶4 Yanko proffers a theory: the petitions may have been amended due to credibility issues with the victim. If such evidence of untruthfulness existed, then it would have been critically important in Yanko's trial, which was essentially a credibility contest between Yanko and the victim. Before Yanko could prevail on his ineffective assistance claim, however, he faced the hurdle of showing evidence to this effect existed, was admissible, and should have been discovered and presented.[3]

¶5 Wisconsin's rape shield law protects alleged sexual assault victims by prohibiting the defense from introducing evidence of the victim's prior sexual conduct "regardless of the purpose." WIS. STAT. § 972.11(2)(c); ***State v. Ringer***, 2010 WI 69, ¶25, 326 Wis. 2d 351, 785 N.W.2d 448. The law, however, provides an exception for "[e]vidence of prior untruthful allegations of sexual assault made by the complaining witness." Sec. 972.11(2)(b)3. The legislature has determined

[3] In order to prevail on an ineffective assistance of counsel claim, the defendant must show that counsel's performance was deficient and prejudiced his or her defense. ***State v. Carter***, 2010 WI 40, ¶37, 324 Wis. 2d 640, 782 N.W.2d 695. Failure of counsel to present evidence that would have been inadmissible is not prejudicial. ***Id.***, ¶38 (holding that failure of trial counsel to present evidence of prior sexual conduct was not prejudicial because the evidence would not have been admissible).

that such evidence is sufficiently probative to overcome its inherently prejudicial nature. ***Id.***; ***Ringer***, 326 Wis. 2d 351, ¶25. But before a defendant may introduce such evidence, he or she must produce evidence "that a jury could reasonably find that the complainant made prior untruthful allegations." ***Ringer***, 326 Wis. 2d 351, ¶31.

¶6 On July 15, 2015, in an effort to show his counsel could have satisfied this burden of production, Yanko petitioned the juvenile court for access to the records in A.S.W.'s and J.P.W.'s cases. The law, however, generally keeps court and law enforcement records in such cases confidential; they may not be disclosed except as provided by statute or "by order of the court." WIS. STAT. § 938.396(1)-(2). Yanko claimed he was entitled to the records under § 938.396(2g)(dm)—allowing for disclosure in criminal cases where the records "relat[e] to that client." The court initially granted Yanko access. However, on August 13, 2015, the court ordered Yanko to return the records, explaining it had released them by mistake. Yanko then filed a motion on August 14, 2015, again requesting the records. He specifically asked for the dispositional transcripts and an in camera inspection of any psychological reports[4] completed in conjunction with these cases.

¶7 The court held a hearing on August 27, 2015, during which Yanko reasserted his belief that he was entitled to the records under WIS. STAT. § 938.396 and additionally argued that due process required disclosure. The court declined

[4] Psychological evaluation reports for A.S.W. and J.P.W. were made in conjunction with the delinquency cases. The Department of Health Services made other reports in both delinquency cases referring to a third psychological evaluation of the alleged victim. As the circuit court noted, the alleged victim's report is not part of the record.

to make a ruling during the hearing and allowed the State an opportunity to respond. On September 18, 2015, before the State responded, Yanko wrote a letter to the court requesting clarification regarding when the court would render a decision. The letter also reiterated Yanko's arguments for disclosure and expanded the request to include any police reports drafted in connection with the cases. To support this expansion, Yanko cited § 938.396(1j), which prescribes the procedure for releasing juvenile law enforcement records. The State's response made no mention of this new request for law enforcement records. On September 30, 2015, the court issued a written decision denying Yanko's request for juvenile court records and the psychological reports. The decision did not mention the request for law enforcement records or the statute governing their release. Yanko appeals this decision.

Discussion

¶8 We address three issues. First, was Yanko entitled to court records under WIS. STAT. § 938.396(2g)(dm)? Second, did the court have a legal duty to conduct an in camera review of the records before denying his request, or did the court otherwise erroneously exercise its discretion? And finally, did the court's denial of Yanko's request violate his due process right to present a defense?[5]

[5] We decline to address two additional arguments raised by Yanko. First, Yanko's brief-in-chief asks this court to order an in camera inspection of medical records. He abandons the claim in his reply brief, and we accordingly do not address it here.

(continued)

¶9 We conclude that WIS. STAT. § 938.396(2g)(dm) does not require disclosure because the records here do not relate to Yanko. We further conclude that § 938.396(2) does not require a court to conduct an in camera review of juvenile records before denying a request for inspection, and the court did not erroneously exercise its discretion in denying his request without an in camera review. Finally, Yanko has no due process right to peruse confidential juvenile records, and he has not made the requisite preliminary showing—that it is reasonably likely that the records will be necessary to a determination of guilt or innocence—to compel the court to conduct an in camera inspection. Accordingly, we affirm.

A. Mandatory Release Under WIS. STAT. § 938.396(2g)(dm)

¶10 Yanko first argues that he is entitled to the records under WIS. STAT. § 938.396(2g)(dm). This is a question of statutory interpretation we review de novo. ***State v. Bodoh***, 226 Wis. 2d 718, 724, 595 N.W.2d 330 (1999).

¶11 WISCONSIN STAT. § 938.396(2) provides that juvenile court records are confidential and generally not subject to disclosure. It states that juvenile court "records shall not be open to inspection or their contents disclosed except by order of the [juvenile] court … or as required or permitted under sub. (2g), (2m) (b) or

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Second, Yanko asks us to grant his request for law enforcement records under WIS. STAT. § 938.396(1) and (1j). This request, however, was not raised in Yanko's motion in the circuit court seeking records; it was included in a letter asking for clarification following the hearing on his motion. Even assuming such an expansion of Yanko's request was procedurally proper, the circuit court did not—as Yanko acknowledges—address the request. The law enforcement records disclosure statute includes various procedural requirements, including notifications and hearings, as well as exercises in judgment (*see*, e.g., the balancing of interests in (1j)(c)). Appellate review of a nonexistent circuit court decision in this circumstance would, in this court's view, be premature.

(c), or (10)." Sec. 938.396(2). Yanko believes that the exception to the general rule of nondisclosure in § 938.396(2g)(dm) entitles him to the court records he seeks. It provides:

> Upon request of a defense counsel to review court records for the purpose of preparing his or her client's defense to an allegation of delinquent or criminal activity, the court shall open for inspection by authorized representatives of the requester the records of the court *relating to that client*.

Id. (emphasis added).

¶12 The question here is whether the records in A.S.W.'s and J.P.W.'s juvenile cases "relate" to the defense counsel's "client," i.e., Yanko. Yanko insists that records relate to him if they relate to his case.[6] In effect, he seeks to transform the statute into a broad entitlement to any records a criminal defense attorney may wish to inspect in the defense of his or her client. But that is not what the statute says; the records must relate to the client, not the client's case. The plain reading of this language is that in order for records to "relate" to Yanko, they must at a minimum have something to do with *him*. This reading is not only correct on its face, but also its limited nature furthers the main aim of the statute—protecting the confidentiality of the records.

[6] Yanko also points to WIS. STAT. § 938.396(2g)(d) which allows a district attorney to review juvenile court records for the purpose of performing his or her official duties. He claims that "[i]t is only equal protection and due process of law" that the same broad latitude be afforded a criminal defendant. His brief invocation of equal protection is not sufficiently developed to warrant consideration. *See* ***Cemetery Servs., Inc. v. Wisconsin Dep't of Regulation & Licensing***, 221 Wis. 2d 817, 831, 586 N.W.2d 191 (Ct. App. 1998) ("A one or two paragraph statement that raises the specter of [constitutional] claims is insufficient to constitute a valid appeal .... We cannot serve as both advocate and court."). Inasmuch as Yanko properly develops a due process argument, we address it below.

¶13 Yanko is not seeking records about him. He is not the subject of either petition, nor do the records have anything to do with him because he was not involved in these juvenile proceedings. The only commonality between Yanko's case and these cases is the victim. The juvenile records here may relate to his victim, and—assuming they contain some form of exculpatory evidence—could plausibly relate to his case. But they do not relate to *him*. Thus, the court properly denied his request on this ground.

B. In Camera Review & the Exercise of Discretion

¶14 In addition to statutorily required disclosure under WIS. STAT. § 938.396(2g)(dm), § 938.396(2) separately vests the juvenile court with discretion to release juvenile court records "by order of the court." Under subsec. (2), the juvenile court acts as the gatekeeper to protect sensitive juvenile court records, and we review its decision whether to release them for an erroneous exercise of discretion. ***Courtney F. v. Ramiro M.C.***, 2004 WI App 36, ¶11, 269 Wis. 2d 709, 676 N.W.2d 545. Yanko insists that a proper exercise of this discretion at least requires the juvenile court to conduct an in camera review before denying a records request—a review that did not occur here. We conclude that the court did not erroneously exercise its discretion.

¶15 Neither WIS. STAT. § 938.396(2) nor case law requires an in camera inspection of requested records every time a request is made. To begin, and most significantly, the plain terms of the statute do not so require; it simply gives the court discretionary authority to order release. Nothing in the statute suggests the required procedure Yanko proposes.

¶16 Yanko is correct, however, that case law mandates an in camera inspection under WIS. STAT. § 938.396(2) if the court chooses to disclose records.

In ***Herget***, the supreme court construed language similar to § 938.396(2) and explained that before a court may release juvenile law enforcement records, the court must review the records in camera to determine whether the requester's need outweighs the interest in confidentiality. ***State ex rel. Herget v. Circuit Court for Waukesha County***, 84 Wis. 2d 435, 452-53, 267 N.W.2d 309 (1978). The court held that such procedures were necessary to comply with the mandate of WIS. STAT. § 48.01(2) that the interests of the juvenile be given "paramount" consideration. ***Herget***, 84 Wis. 2d at 449. In ***Bellows***, we applied ***Herget*** to disclosure of juvenile court records. ***State v. Bellows***, 218 Wis. 2d 614, 629-30, 582 N.W.2d 53 (Ct. App. 1998). Finally, in ***Courtney F.***, 269 Wis. 2d 709, ¶¶20-21, we held under § 938.396(2) (and other related juvenile record statutes), "the juvenile court must make a threshold relevancy determination by an in camera review" before releasing records.

¶17 An in camera review was mandated in these prior cases to ensure that the court properly exercised its discretion by ensuring only relevant records were released, and even then, only when the confidentiality interests of the children and families involved in the juvenile proceedings were appropriately considered. In other words, the cases seek to preserve and protect the statutory presumption against disclosure, and to circumscribe the authority of circuit courts to *release* records by requiring a careful review of each record and the interests implicated before doing so. The fact scenario here, in contrast, involves the procedural requirements before *denying* a request, and accordingly, implicates different interests. The very reason for requiring in camera review is wholly inapplicable to the denial of juvenile record requests. The parties cite no cases on point, nor is the court aware of any cases holding that a court must conduct an in camera inspection before denying a request under WIS. STAT. § 938.396(2).

¶18 Reading a mandatory in camera inspection into the statute also seems to distort the court's role. As discussed further below, Yanko's theory is based on speculation and conjecture—not knowledge—that these records contain a smoking gun. In effect, he would like to require the circuit court to do the legwork and confirm if his hunch is correct. This would turn circuit courts into special discovery masters no matter how far-fetched or voluminous the request.

¶19 The statute is, Yanko acknowledges, a grant of discretion to the circuit court. While case law does require an in camera review before disclosure, it otherwise affords great latitude for circuit courts to determine, in the exercise of their discretion, that a petition for records on its face does not warrant release. We decline to find that in camera review is required before denying a request for inspection.

¶20 Given this backdrop, Yanko has not shown that the court erroneously exercised its discretion under WIS. STAT. § 938.396(2). The court considered Yanko's request, held a hearing, solicited a written response from the State, and then denied the request because it did not fall under any exception. The court rested its decision on the legislature's determination that such records should generally be kept confidential. This was entirely appropriate. Yanko complains, maybe properly so, that the court did not address the cases he cited. But on review before this court, even when the circuit court does not sufficiently explain its reasoning, "we may search the record to determine if it supports the court's discretionary decision." ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. "We generally look for reasons to sustain the trial court's discretionary decisions." ***State v. Lock***, 2012 WI App 99, ¶43, 344 Wis. 2d 166, 823 N.W.2d 378.

¶21 The circuit court's decision reflects several conclusions that support its discretionary determination. First, it notes that Yanko's request was submitted "in the hope of identifying exculpatory information"—suggesting that it viewed Yanko's request as speculative in nature. Second, the court pointed to the "highly personal" nature of the information sought, reflecting the strong interest in maintaining confidentiality. Finally, the court rested on the legislature's narrow statutory exemptions and strong preference for keeping juvenile records closed to the public. All of these reflect a conclusion that Yanko's request rests on a weak foundation, implicates important confidentiality interests, and does not warrant a departure from the limited statutory exemptions. We see no reason to overturn this discretionary determination.

C. Due Process

¶22 Finally, Yanko claims that he has a due process right to inspect the records for possible exculpatory evidence. Yanko argues that ***State v. Shiffra***, 175 Wis. 2d 600, 499 N.W.2d 719 (Ct. App. 1993), and ***State v. Green***, 2002 WI 68, 253 Wis. 2d 356, 646 N.W.2d 298—both grounded in due process—compelled the juvenile court to conduct an in camera review of any psychological reports connected to A.S.W. and J.P.W. He claims that there is a reasonable likelihood that the psychological reports concerning A.S.W. and J.P.W. contain evidence that the victim was not credible or suffered from "psychological issues which could impact truth-telling." Yanko opines that the allegations in the original delinquency petitions "were more extensive and more egregious than in [his] case," and surmises that the likely reason the petitions were amended was a lack of credibility on the part of the victim. Separately, he contends that he has a due process right to any exculpatory evidence contained in the juvenile court records

under ***Brady v. Maryland***, 373 U.S. 83, 87 (1963), and that he was unfairly denied access to the records.

¶23 The Fourteenth Amendment of the United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, §1. As part of due process, "criminal defendants must be given a meaningful opportunity to present a complete defense." ***Shiffra***, 175 Wis. 2d at 605, *clarified by* ***Green***, 253 Wis. 2d 356, ¶¶28, 32-33;[7] *see* ***California v. Trombetta***, 467 U.S. 479, 485 (1984). Due process also requires the government to turn over evidence favorable to the accused and material to guilt or punishment. ***Pennsylvania v. Ritchie***, 480 U.S. 39, 57 (1987); ***Brady***, 373 U.S. at 87. If the government fails to do so, and the failure prejudices the defendant, then he or she is entitled to a new trial. ***State v. Harris***, 2008 WI 15, ¶¶61-62, 307 Wis. 2d 555, 745 N.W.2d 397.

[7] ***State v. Green***, 2002 WI 68, 253 Wis. 2d 356, 646 N.W.2d 298, affirmed the reasoning in ***State v. Shiffra***, 175 Wis. 2d 600, 499 N.W.2d 719 (Ct. App. 1993), but noted internal inconsistencies in the opinion as to the proper showing a defendant must make to be entitled to in camera review. ***State v. Kletzien***, 2008 WI App 182, ¶9, 314 Wis. 2d 750, 762 N.W.2d 788. ***Green*** then clarified the proper standard. ***Green***, 253 Wis. 2d 356, ¶¶28, 32-33.

¶24 However, when a defendant claims that records "protected by statute"[8] contain material exculpatory information, the ***Shiffra/Green*** framework requires that the public interest in confidentiality must be balanced against the defendant's due process rights. ***Shiffra***, 175 Wis. 2d at 605-07; *see also* ***Ritchie***, 480 U.S. at 57-60 (balancing a defendant's right to a fair trial against the public interest in maintaining the confidentiality of statutorily protected child abuse records). Due process does not require the defendant be allowed unrestricted access to the State's files in a search for information "material" to his or her defense. ***Ritchie***, 480 U.S. at 57-60.

¶25 The Supreme Court held in ***Ritchie*** that an in camera review by the court to determine whether confidential government records contain information "material" to the defense strikes the proper balance between the State's statutory interest in confidentiality and the defendant's right to a fair trial. ***Id.*** at 60. Our courts have extended this reasoning "to cases in which the information sought by the defense is protected by statute and is not in the possession of the state." ***Shiffra***, 175 Wis. 2d at 606-07.[9] However, a defendant is not entitled to an in

[8] ***Shiffra/Green*** appears to be the controlling framework to analyze Yanko's due process claim. His request for juvenile records seems to fall directly under the Supreme Court's rationale in ***Pennsylvania v. Ritchie***, 480 U.S. 39, 57 (1987), because the records are statutorily confidential and in possession of the State. Furthermore, ***Shiffra*** specifically mentioned its application to records "protected by statute" as is the case here. ***Shiffra***, 175 Wis. 2d at 605-07. Finally, although ***Shiffra*** and ***Green*** involved confidential psychological records, we have held that their reasoning applies with equal force to other confidential or privileged records—similar to the juvenile court records here. *See* ***State v. Navarro***, 2001 WI App 225, ¶9, 248 Wis. 2d 396, 636 N.W.2d 481 (applying the ***Shiffra*** analysis to confidential prison records and explaining that the reasoning in ***Shiffra*** was not limited to psychological records); *see also* ***State v. Kletzien***, 2008 WI App 182, ¶13, 314 Wis. 2d 750, 762 N.W.2d 788 (applying the ***Shiffra/Green*** analysis to a request for confidential medical records).

[9] Recently, our supreme court took up the issue of whether the ***Shiffra/Green*** framework should be overturned. *See* ***State v. Lynch***, 2016 WI 66, ¶2, ___ Wis. 2d ___, ___ N.W.2d ___. But the decision did not feature any majority opinion, so the ***Shiffra/Green*** framework remains the law. ***Lynch***, ___ Wis. 2d ___, ¶73.

camera inspection unless he or she makes a preliminary showing that it is reasonably likely the records contain evidence material to the defense. ***Green***, 253 Wis. 2d 356, ¶32; ***Shiffra***, 175 Wis. 2d at 605. This requires the 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" of other available evidence. ***Green***, 253 Wis. 2d 356, ¶34. Evidence is "necessary to a determination of guilt or innocence if it tends to create reasonable doubt that might not otherwise exist." ***Id.*** (citation omitted).

¶26 Even though the court failed to explicitly address Yanko's due process argument in its decision,[10] whether a defendant has made the necessary showing to compel the court to conduct an in camera review is a constitutional question we review de novo.[11] ***Id.***, ¶20. In our view, Yanko has not made the requisite showing.

¶27 Essentially, Yanko's theory rests on the hunch—and it seems to be nothing more than a hunch—that the reason the charges in A.S.W.'s and J.P.W.'s juvenile cases were amended to misdemeanor battery was that the victim was untruthful. Although this is plausible, it is hardly the only possibility. Prosecutors generally have discretion on whether to charge a defendant and what charges to bring. ***Sears v. State***, 94 Wis. 2d 128, 133, 287 N.W.2d 785 (1980). Furthermore, the juvenile justice system works on a somewhat different model than the criminal

[10] The court did not discuss due process in its decision. It did mention the ***Shiffra/Green*** standard but appeared to reject it as inapplicable.

[11] Even if we concluded that Yanko made the requisite showing, he would still need to demonstrate that the error was not harmless. ***Green***, 253 Wis. 2d 356, ¶20.

justice system, implicating different interests including rehabilitation and treatment. *See* WIS. STAT. § 938.01(2)(c), (f).[12] The familial nature of the allegations against A.S.W. and J.P.W. may also have played a part in the decision to amend the charges. Despite his attempt to make hay out of the supposed "more extensive and more egregious" nature of the charges and inexplicable amendment of the petitions, Yanko does not identify any facts to support his theory beyond circumstantial inference.

¶28 The preliminary showing required to entitle a petitioner to in camera review, however, is a "reasonable likelihood." ***Green***, 253 Wis. 2d 356, ¶32. A

[12] In addition to the typical aims of protecting the public and punishing crime, the juvenile justice code considers the following interests of the juvenile offender "equally important purposes" of the code.

> (c) To provide an individualized assessment of each alleged and adjudicated delinquent juvenile, in order to prevent further delinquent behavior through the development of competency in the juvenile offender, so that he or she is more capable of living productively and responsibly in the community.
>
> (d) To provide due process through which each juvenile offender and all other interested parties are assured fair hearings, during which constitutional and other legal rights are recognized and enforced.
>
> (e) To divert juveniles from the juvenile justice system through early intervention as warranted, when consistent with the protection of the public.
>
> (f) To respond to a juvenile offender's needs for care and treatment, consistent with the prevention of delinquency, each juvenile's best interest and protection of the public, by allowing the court to utilize the most effective dispositional option.

WIS. STAT. § 938.01(2)(c)-(f). Additionally, prior to the juvenile justice code, the supreme court explained that a major purpose of a separate juvenile justice system is rehabilitation and "[i]n theory" its role "is not to determine guilt or to assign fault, but to diagnose the cause of the child's problems and help resolve those problems." ***State ex rel. Herget v. Circuit Court for Waukesha County***, 84 Wis. 2d 435, 451, 267 N.W.2d 309 (1978).

"mere possibility" that the records contain useful information is not enough. ***Id.***, ¶33. The showing cannot be based "on mere speculation or conjecture as to what information is in the records." ***Id.*** Yanko's motion is precisely that—mere speculation—and hence, not sufficient to make the necessary showing.

¶29 Yanko correctly notes that he has both a constitutional and statutory right to exculpatory evidence. *See* ***Brady***, 373 U.S. at 87; WIS. STAT. § 971.23(1)(h). He is correct that the State had and has an obligation to turn over false allegations of sexual assault or evidence of unreliability on the part of Yanko's victim. But Yanko's right to exculpatory evidence is adequately protected by having the court conduct an in camera review after he makes the requisite preliminary showing. ***Ritchie***, 480 U.S. at 57-60; ***Green***, 253 Wis. 2d 356, ¶32. He has failed to meet that burden. Furthermore, we have no reason to think—and Yanko presents none—that the State failed to comply with its disclosure obligations.[13] The fact that the smoking gun in A.S.W.'s and J.P.W.'s cases has not been turned over leaves only two possibilities: either the State is engaging in ongoing and deliberate misconduct, or no smoking gun exists. Yanko's whole theory depends upon the former being true. But he has presented no facts, other than pure speculation, to suggest that it is. Yanko is functionally asserting that he has a constitutional right—without any preliminary showing—to require the circuit court to double check and make sure the state has turned over exculpatory evidence. The constitution grants him no such power.

[13] *See* ***United States v. Armstrong***, 517 U.S. 456, 464 (1996) (explaining in the context of a selective prosecution claim that courts presume that prosecutors properly discharge their official duties).

Conclusion

¶30 Yanko is not entitled to court records in A.S.W.'s and J.P.W.'s cases under WIS. STAT. § 938.396(2g)(dm), nor did the court erroneously exercise its discretion by denying his request and failing to conduct an in camera review before doing so. Finally, the court's denial of Yanko's request for records without conducting an in camera review did not violate due process.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.