COURT OF APPEALS
DECISION
DATED AND FILED

October 16, 2002

Cornelia G. Clark
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 No. 01-2749-CR **Cir. Ct. No. 98-CF-217**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GARY L. STIBB,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Waukesha County: PATRICK C. HAUGHNEY, Judge. *Affirmed*.

Before Nettesheim, P.J., Brown and Snyder, JJ.

¶1 PER CURIAM. Gary L. Stibb appeals from a judgment of conviction of child enticement and from an order denying his motion for postconviction relief. He argues that a juror should have been struck for cause, that he was denied the effective assistance of counsel, that other acts evidence should have been excluded, that a new trial should be granted because of newly

discovered evidence, and that the trial court should have ordered an in camera inspection of the victim's records. We reject his claims and affirm the judgment and order.

¶2 On June 9, 1997, ten-year-old Brittany reported that at approximately 9:45 p.m. she had been approached by a man trying to entice her into his vehicle. Brittany was riding her bike toward home when the man spoke to her from inside his vehicle. He asked her if she needed a ride home. A moment later, the man asked if she would like some candy. Finally, the man asked if she wanted to go somewhere to have fun. Brittany described the vehicle as a "black or dark blue Blazer type vehicle with some lighter color, possibly silver" and with license plates that started with an "A" or "4" with blue lettering. A composite drawing of the suspect was made and circulated.

¶3 On February 11, 1998, Stibb became a suspect when a citizen reported that Stibb looked like the man in the composite drawing. Stibb was on parole in Waukesha county during the relevant period. Stibb's vehicle was a dark blue Ford pickup with a cap on the rear cargo area with the license plate number of "AK60-218." The lettering on Stibb's license plate was red. Stibb's photo was in an array of six photographs shown to Brittany. She picked Stibb's photograph as the man who had approached her. Stibb was arrested and charged with child enticement for the purpose of sexual contact.

¶4 During jury voir dire, female juror Anderson indicated that she might be more inclined to find Stibb guilty if there was evidence that he had been convicted of sexual assault in the past. Juror Anderson was questioned individually on whether she could view the evidence fairly if Stibb's prior

conviction was for sexual assault of a person under the age of eighteen. She responded:

> I would think I would probably feel a little stronger that if it was done once before with a child that perhaps it might be done again. But I still, you know, I consider myself a fair person, and I would certainly try—and probably be able to view the case without any bias. But I do think, because if it were the same type of crime before that your client was found guilty of, I think I might feel that perhaps it would be a better than not chance that it would happen again.

Anderson further indicated that she thought she would be able to limit consideration of other crimes evidence to the designated purposes of intent and identity. She concluded that she had strong feelings about crimes against women and children by men but that she would "certainly do my best" to put those feelings aside.

¶5 Defense counsel asked that juror Anderson be excused from the panel for cause. The trial court denied the request and Anderson became a member of the jury.

¶6 Stibb argues that he was denied his right to an impartial jury because juror Anderson was not excused for subjective bias. Subjective bias is "revealed through the words and the demeanor of the prospective juror" and "refers to the prospective juror's state of mind." ***State v. Faucher***, 227 Wis. 2d 700, 717, 596 N.W.2d 770 (1999).

> This category of bias inquires whether the record reflects that the juror is a reasonable person who is sincerely willing to set aside any opinion or prior knowledge that the juror might have. Discerning whether a juror exhibits this type of bias depends upon that juror's verbal responses to questions at voir dire, as well as that juror's demeanor in giving those responses. These observations are best within the province of the circuit court. On review, we will uphold the circuit court's factual findings regarding a

> prospective juror's subjective bias unless they are clearly erroneous.

State v. Kiernan, 227 Wis. 2d 736, 745, 596 N.W.2d 760 (1999) (citations omitted). "[A] prospective juror need not respond to voir dire questions with unequivocal declarations of impartiality. Indeed, we expect a circuit court to use voir dire to explore a prospective juror's fears, biases, and predilections and fully expect a juror's honest answers at times to be less than unequivocal." ***State v. Erickson***, 227 Wis. 2d 758, 776, 596 N.W.2d 749 (1999).

¶7 The trial court determined that juror Anderson "ultimately indicated that she thought she could be fair. She viewed herself as a fair person, and indicated she would view it in its entirety." The trial court was satisfied that Anderson would be fair and impartial. While at times expressing concern about the effect other acts evidence might have on her, Anderson consistently expressed her willingness and ability to set those effects aside and judge the facts as a fair person. We have no hesitation in deferring, as we must, to the trial court's assessment of Anderson's sincerity. As ***Erickson*** teaches, it is not the expression of natural biases that is fatal to a juror's service. When a juror assures the court that he or she will listen to the evidence and act fairly, the trial court may accept the juror's affirmation and deny the request to excuse the juror. *See* ***State v. Oswald***, 2000 WI App 2, ¶24, 232 Wis. 2d 62, 606 N.W.2d 207. The trial court's finding that Anderson was not subjectively biased is not clearly erroneous. Stibb was not denied his right to an impartial jury by Anderson's service as a juror.

¶8 Stibb argues he was denied the effective assistance of trial counsel. "There are two components to a claim of ineffective assistance of counsel: a demonstration that counsel's performance was deficient, and a demonstration that such deficient performance prejudiced the defendant. The defendant has the

burden of proof on both components." ***State v. Smith***, 207 Wis. 2d 258, 273, 558 N.W.2d 379 (1997) (citation omitted). We will not upset the trial court's findings about what counsel did or did not do unless they are clearly erroneous. ***Id.*** at 266. The ultimate conclusion of whether the attorney's conduct resulted in a violation of the defendant's right to effective assistance presents a legal question which we review de novo. ***Id.***

¶9 The first complaint regarding trial counsel's performance is that counsel failed to object to pretrial, in-court identifications made by Brittany at the preliminary hearing and the hearing on Stibb's motion to suppress the identification from the photo array. Stibb argues that the "show-up" identifications at these hearings were impermissibly suggestive because he was the only one in the courtroom in jail garb and shackles.[1] The State's initial response is that the record does not adequately demonstrate that Stibb was in jail garb and shackles at these hearings or that he was the only one in the courtroom so attired and restrained. We disagree with the State as to the preliminary hearing.[2] Trial counsel testified that Stibb was in jail garb and shackled at the preliminary hearing. The only testimony regarding Stibb's appearance at the suppression hearing was that he was "in custody." The record is inadequate to demonstrate the predicate fact with respect to a suggestive identification at the suppression hearing.

[1] Stibb also makes a separate due process claim that the suggestive procedure at the preliminary hearing tainted Brittany's identification at trial. This claim is waived by trial counsel's failure to object. The issue may only be reviewed within the context of ineffective assistance of counsel. *See* ***State v. Erickson***, 227 Wis. 2d 758, 766, 596 N.W.2d 749 (1999).

[2] The trial court did not make factual findings about Stibb's appearance at these hearings because it resolved the claim of ineffective counsel on the prejudice prong of the test. When a defendant fails to prove either prong of the test, the court need not consider the remaining prong. *See* ***State v. Hubanks***, 173 Wis. 2d 1, 25, 496 N.W.2d 96 (Ct. App. 1992).

¶10 We turn to consider whether Stibb's appearance at the preliminary hearing in jail garb and shackles was prejudicial on the issue of identification.[3] We recognize that Stibb's defense was one of misidentification. That alone does not mean that the suggestive identification procedure at the preliminary hearing was prejudicial. When a defendant shows that the procedure was impermissibly suggestive, the State may prove that the identification was otherwise reliable under the totality of the circumstances. ***State v. Benton***, 2001 WI App 81, ¶5, 243 Wis. 2d 54, 625 N.W.2d 923, *review denied*, 2001 WI 117, 247 Wis. 2d 1033, 635 N.W.2d 782 (Wis. Sept. 19, 2001) (No. 00-1096-CR). The factors we consider when determining reliability include Brittany's opportunity to observe the perpetrator at the time of the crime, her degree of attention, the accuracy of her descriptions, the level of certainty that she demonstrated when making the identification, and the length of time between the crime and the identification. *See* ***Powell v. State***, 86 Wis. 2d 51, 65, 271 N.W.2d 610 (1978).

¶11 Brittany had adequate time to view Stibb at the time of the crime. She indicated she was only two to three feet from Stibb as she viewed him through the open passenger window each of the three times he spoke to her. Although it was dark, the interior light of the truck was on. There was sufficient light for Brittany to note that Stibb had a mole or something similar next to his nose and possibly a scar or lighter skin on his cheek. Brittany's testimony also reflects that she devoted a high degree of attention to looking at the man who was speaking to

[3] On the strength of ***Moore v. Illinois***, 434 U.S. 220, 229-30 (1977), which condemns the display of a defendant at the preliminary hearing in a suggestive fashion, we assume without deciding that counsel's failure to object to the identification was deficient conduct. While we confine the remainder of our analysis of the issue to the identification at the preliminary hearing, it applies equally to the suppression hearing if in fact Stibb was in jail garb and shackles at that hearing.

her because she first thought it was her neighbor in the truck. Brittany was able to explain what differences she found to dispel that notion. Brittany's detailed description resulted in a composite drawing which the trial court found to be a stunning likeness of Stibb. Brittany's identification of Stibb in the photo array came eight months after the crime. The soundness of her initial description outweighs the intervening time. Moreover, the trial court found that Brittany took her time in looking over the photographs and there was no suggestiveness in the manner in which the array was presented to her. While the preliminary hearing was the first face-to-face identification made, Brittany's identification from the photo array was reliable and supports the reliability of her identification at trial. We conclude that under the totality of the circumstances her identification was reliable and, therefore, Stibb was not prejudiced by trial counsel's failure to object to the identification made at the preliminary hearing.

¶12 Stibb argues that trial counsel was deficient for not introducing evidence that the letters on the license plate on Stibb's vehicle were red, not blue as Brittany reported. Stibb explains that the photograph of his vehicle offered at trial was blurred and the color of the lettering on the license plate actually appears to be blue or black. He believes it was very important for trial counsel to establish at trial that his license plate had red lettering by introducing the plates as evidence. This would demonstrate that Stibb's vehicle did not fit the description given by Brittany.

¶13 Trial counsel advanced two strategy reasons for not offering the plates into evidence. Counsel did not want the jury to look at the actual plates during deliberations because they would see that Brittany correctly identified the first letter on the plate as an "A." Counsel also explained his concern that evidence about the color of the lettering on the plates would permit the

prosecution to call Timothy Treadway, a jail informant who would testify that Stibb admitted committing the offense using his father's truck and that Stibb had backed into a pole cracking the taillight on his truck.

¶14 We are not to second-guess trial counsel's selection of trial tactics or the exercise of professional judgment after weighing the alternatives. ***State v. Felton***, 110 Wis. 2d 485, 502, 329 N.W.2d 161 (1983). However, we will examine counsel's conduct to be sure it is more than just acting upon a whim; there must be deliberateness, caution, and circumspection. *See* ***id.***

¶15 Here counsel's decision to not introduce the red-lettered license plates was professionally reasonable. Introduction of the plates was really a double-edged sword. Counsel considered the potential impact sending the plates to the jury would have. Trial testimony revealed that most trucks in a certain weight class have plates beginning with the letter "A" and that most truck plates have red, not blue, letters. Counsel deemed this sufficient impeachment of Brittany's observation of blue letters. Further exploration of the issue may have highlighted to the jury that a ten-year-old child would not know that all truck plates begin with the letter "A" and would emphasize that Brittany got the first letter of the license plate correct by observation alone. It was reasonable to try to minimize the jury's focus on the lettering on the license plates. Additionally, attention to the color of the letters could have backfired since some of the lettering on the plates was in blue.

¶16 The potential rebuttal testimony from Treadway could have damaged the theory of defense. Stibb demonstrated that the defense could have called Stibb's father to testify that Stibb never drove his truck. Yet impeachment on that point would not necessarily have been sufficient. In addition to the

suggestion that Stibb admitted the offense to him, Treadway could have provided an explanation for the broken taillight on the truck. Brittany told police that one of the taillights on the vehicle was not working and may have had a crack in the lens. It was professionally reasonable for counsel to steer clear of any potential evidence confirming one more of Brittany's identifying features of the vehicle. Stibb was not denied the effective assistance of counsel.

¶17 The first four witnesses at trial presented other acts evidence admitted under WIS. STAT. § 904.04(2) (1999-2000).[4] Other acts evidence must be subjected to a three-step analysis before being admitted. First, the evidence must be relevant to one of the exceptions listed in § 904.04(2); second, the evidence must be relevant considering the two facets of relevance set forth in WIS. STAT. § 904.01; third, the evidence must be shown to be more probative than prejudicial. ***State v. Sullivan***, 216 Wis. 2d 768, 772-73, 576 N.W.2d 30 (1998). We review the trial court's determination under a discretionary standard. *See* ***State v. Veach***, 2002 WI 110, ¶55, ___ Wis. 2d ___, 648 N.W.2d 447.

¶18 One witness testified that she met Stibb at their high school class reunion in 1989. She was twenty-eight years old at the time. She talked, danced and had a few drinks with him. She accepted his offer to drive her home. On the drive home Stibb kissed and fondled her, and after she refused further advances, Stibb raped her. Another female testified that in 1990, when she was thirty-four years old, Stibb called her by name over to his car. The two had gone to middle school together. The woman got in Stibb's car where they talked for a while.

[4] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

Eventually Stibb drove her into the country and raped her. A police officer testified about an incident he investigated in 1989 when Stibb approached three juveniles, two girls and a boy, and asked if they wanted to go for a ride. During that investigation Stibb admitted to the officer that he "picks up younger females to give them a ride because he knows what it's like to have to walk." A third female testified that in 1989, when she was fifteen years old, she was waved over to Stibb's van outside her high school. Thinking the person waving to her was her girlfriend's boyfriend and because it was raining, she jumped into the van without hesitation. Stibb and the girl drove around and ended up at a marshy area after buying soda and beer at a gas station. Stibb tried to kiss her and pushed himself against her. He touched her breast and vaginal area. Eventually she escaped from the van. Later in the trial one of the officers investigating Brittany's allegations described his interview with Stibb. In the interview Stibb talked about how he might have been "putting on the pitch" to a woman who reported an incident in Hartford, Wisconsin. Stibb explained that the "pitch" was a dialog he would use to gain the confidence of a woman, to make her feel at ease with him, to get the woman to go with him in his vehicle, and to then attempt to or have sex with the woman. He said he would take the woman to someplace remote.

¶19 The trial court admitted this evidence as relevant to the issue of identity and intent.[5] Stibb argues that the other acts evidence is not probative of identity because there was no common feature to the prior incidents to constitute

[5] Stibb complains that the trial court's ruling did not demonstrate use of the three-step analysis and that the court never addressed whether probative value was outweighed by unfair prejudice. Even if this is true, we independently review the record to determine whether it provides a basis for the trial court's determination. ***State v. Sullivan***, 216 Wis. 2d 768, 781, 576 N.W.2d 30 (1998).

"the imprint of Stibb." We disagree, particularly as it relates to the issue of intent. The probative value of the other acts evidence depends on the nearness in time, place and circumstances to the alleged crime or to the fact or proposition sought to be proved. ***Sullivan***, 216 Wis. 2d at 786. The prior incidents demonstrate how Stibb attempts to gain the trust of females and get females into his car to drive them to another location for sex. While the prior incidents are different with respect to the age of the victims, the required degree of similarity between the other acts and the charged offense "cannot be formulated as a general rule." ***Id.*** at 787. It is sufficient that Stibb's mode of operation in each of the prior incidents and here were the same. He sought to use his vehicle to isolate the women. His attempt to lure Brittany with a ride home, candy or fun was like the "pitch" used in the prior incidents. There was a concurrence of common features between the prior incidents and the crime charged as to constitute the "imprint of the defendant." ***State v. Kuntz***, 160 Wis. 2d 722, 746, 467 N.W.2d 531 (1991). In addition to being highly probative of intent, the other acts evidence was relevant and probative of scheme or plan.

¶20 We agree with Stibb that the other acts evidence was prejudicial. By its very nature, nearly all evidence operates to the prejudice of the party against whom it is offered. ***State v. Johnson***, 184 Wis. 2d 324, 340, 516 N.W.2d 463 (Ct. App. 1994). The test is whether it is unfairly prejudicial. ***State v. Gray***, 225 Wis. 2d 39, 64, 590 N.W.2d 918 (1999). In the other acts context, the probative value of evidence must not be outweighed by unfair prejudice, which is the potential harm in a jury concluding that because the defendant committed one bad act, the defendant necessarily committed the crime charged. ***State v. Hammer***, 2000 WI 92, ¶35, 236 Wis. 2d 686, 613 N.W.2d 629. Here, the evidence was presented in a manner that would not tend to appeal to the "jury's sympathies,

arouse[] its sense of horror, provoke[] its instinct to punish or otherwise cause[] [the] jury to base its decision on something other than the established propositions in the case." ***Sullivan***, 216 Wis. 2d at 790. Moreover, the jury was instructed to consider the other acts evidence only on the issues of intent and identity. "Cautionary instructions eliminate or minimize the potential for unfair prejudice." ***Hammer***, 2000 WI 92 at ¶36. We conclude that the trial court properly exercised its discretion in determining that the probative value of the other acts evidence outweighed the resulting prejudice and in admitting the evidence.

¶21 Stibb moved for a new trial on the ground of newly discovered evidence. The five criteria for granting a new trial due to newly discovered evidence are: (1) the new evidence was not discovered until after trial; (2) the party moving for a new trial must not have been negligent in seeking to discover such new evidence; (3) the new evidence must be material to the issue; (4) the new evidence must not be merely cumulative to testimony introduced at the trial; and (5) the new evidence must be such that it will be reasonably probable that a different result would be reached on a new trial. ***State v. Boyce***, 75 Wis. 2d 452, 457, 249 N.W.2d 758 (1977). A motion for a new trial is addressed to the trial court's sound discretion and we will affirm the determination if it has a reasonable basis and was made in accordance with accepted legal standards and facts of record. ***State v. Carnemolla***, 229 Wis. 2d 648, 656, 600 N.W.2d 236 (Ct. App. 1999).

¶22 We first address Stibb's claim that a newly discovered videotape of a Stibb family reunion held one day before the offense justified a new trial. Stibb wanted to use the video and still pictures generated from the video to show that the length of his hair was just over his shirt collar in the back. Brittany testified at trial that Stibb had long hair and on cross-examination defense counsel tried to

establish that at one point Brittany had said the man's hair was down to his elbow. The trial court found that the images generated from the videotape did not really serve to contradict Brittany's testimony that Stibb's hair was long. We agree that difference is not significant enough to make it reasonably probable that a different result would be reached at a new trial. Further, Stibb was negligent in not obtaining this evidence before trial. Stibb possessed personal knowledge of his attendance at the family reunion. Even if he was unaware that a videotape had been taken, he could have produced a witness to testify about the length of his hair. It was evidence that could have been pursued before trial. The trial court properly exercised its discretion in denying a new trial based on the videotape.

¶23 Stibb also sought a new trial based on evidence regarding Brittany's credibility that came into existence in December 2000 when police investigated Brittany's claim that she was sexually assaulted by a neighbor six or seven years earlier.[6] The police report of the investigation reflects a statement from Brittany's mother that Brittany was "great at lying." Statements from the accused neighbor, his ex-wife, and another neighbor reflect their opinions that the incident with Stibb never happened and that Brittany had made it up to cover up the fact that she was late getting home that night. One neighbor reported that Brittany was always looking for attention and making up stories. A social worker also indicated that Brittany liked to embellish stories and it was difficult to say what was true and what was made-up. The State characterizes the report as evidence of a prior false allegation of sexual assault. Nothing in the record demonstrates that the allegation was false and Stibb is not relying on the falsity of the sexual assault allegation as

[6] Stibb's trial was conducted November 3-5, 1999.

new evidence.[7] Stibb's focus is on the statements in the investigative report suggesting that Brittany had fabricated the whole enticement incident. He argues that until he received the police report in May 2001, he had no reason to doubt that incident had occurred and that is why misidentification was the only theory of defense.[8] Stibb argues that the police report suggests that Brittany fabricated the enticement incident either to deflect attention from being away from home on her bike at a late hour, to get the attention she craved, or as a way of seeking help for sexual abuse she may have been experiencing in relationships with neighbors. He also points to the statement in the report from a neighbor that she was outside on the night of the enticement incident, observed Brittany return home on her bike, and did not see any vehicle in the area. At the postconviction motion hearing the neighbors testified about how Brittany and her brother lacked parental supervision, their own doubts that the enticement incident had occurred, and that no one had seen a vehicle in the area.

¶24 While it is true that the police report was not generated until after his trial, Stibb has not demonstrated that the neighbors' impressions of whether Brittany had fabricated the enticement incident and their potential observations as

[7] In his reply brief, and in response to the State's characterization, Stibb argues that evidence of a prior false allegation of sexual assault is substantive evidence tending to prove that the charged offense did not occur. He cites several cases from other jurisdictions to support the claim. Even if Stibb relies on and can demonstrate the falsity of the sexual assault allegation against the neighbor, the allegation itself was not made until well after the enticement incident and Stibb's trial. Thus, the allegation does not constitute a "prior" false allegation.

[8] The police report was forwarded to Stibb's counsel by the district attorney after the notice of appeal was filed. On Stibb's motion for remand and for leave to file a supplemental postconviction motion, the appeal was dismissed and the time for filing a postconviction motion extended. The trial court's order denying the supplemental postconviction motion states that the motion was denied orally at the hearing held on September 20, 2001. The trial court did not rule at that hearing and the record does not include any findings or rationale stated by the trial court in denying the supplemental postconviction motion.

eyewitnesses were not readily discoverable before trial. A new trial is not warranted simply because the defense may have misjudged Brittany's credibility as unshakable and did not undertake investigative efforts on possible motives to falsify. Stibb's claim is based on nothing more than hindsight—that a new theory of defense looks more promising. *See* ***Vara v. State***, 56 Wis. 2d 390, 393, 202 N.W.2d 10 (1972). Moreover, new evidence which merely impeaches the credibility of a witness does not alone warrant a new trial. ***Simos v. State***, 53 Wis. 2d 493, 499, 192 N.W.2d 877 (1972); ***Greer v. State***, 40 Wis. 2d 72, 78, 161 N.W.2d 255 (1968).

¶25 The final issue pertains to Stibb's request for postconviction review of Brittany's treatment and counseling records generated by social services under WIS. STAT. § 48.981. The trial court ruled that the request for an in camera review must first be made to the juvenile court with the juvenile court deciding if the criminal court is entitled to review the records. Section 48.981(7)(a) designates reports under that section as confidential. While WIS. STAT. ch. 48 allows the court to release juvenile records, by definition only the juvenile court may do so. *See* WIS. STAT. § 48.02(2m) ("'Court,' when used without further qualification, means the court assigned to exercise jurisdiction under this chapter"). There has long been a case law requirement that application for release of juvenile records for use in a criminal case be made to the juvenile court. *See* ***State ex rel. Herget v. Circuit Court***, 84 Wis. 2d 435, 447 n.10, 267 N.W.2d 309 (1978). ***Rock County Department of Social Services v. DeLeu***, 143 Wis. 2d 508, 509, 422 N.W.2d 142 (Ct. App. 1988), holds that WIS. STAT. § 48.78(2)(a) requires that the juvenile court, not the criminal court, exercise its discretion to determine whether the confidential records of the department shall be disclosed or made available for inspection. While Stibb reads ***DeLeu*** as permitting a criminal defendant to bypass the juvenile court by

making application to the criminal court under ***Pennsylvania v. Ritchie***, 480 U.S. 39 (1987), we do not.[9] ***DeLeu*** envisions a release of the records by the juvenile court to the criminal court. ***State v. Bellows***, 218 Wis. 2d 614, 628, 582 N.W.2d 53 (Ct. App. 1998), affirms the importance of adhering to the statutory provisions which circumscribe the release of information from juvenile files and the need to apply to the juvenile court for such release. "The interests of the child must be weighed against the need of the party seeking the release of the information." ***Id.*** at 631. The juvenile court is in the best position to address the issue. Therefore, we affirm the trial court's refusal to conduct the in camera inspection.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[9] Stibb cites ***State v. Walther***, 2001 WI App 23, 240 Wis. 2d 619, 623 N.W.2d 205, ***Jessica J.L. v. State***, 223 Wis. 2d 622, 589 N.W.2d 660 (Ct. App. 1998), and ***State v. Munoz***, 200 Wis. 2d 391, 546 N.W.2d 570 (Ct. App. 1996), as consistent with the notion that application for release of juvenile records can be made directly to the criminal court. Those cases did not involve juvenile records generated and maintained under WIS. STAT. ch 48.