

In the Matter of Complaint Against

Case No. 12-123

SHEBOYGAN COUNTY SHERIFF'S DEPARTMENT,

Respondent.

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DETERMINATION OF NO PROBABLE CAUSE

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**FINDINGS OF FACT**

1. Complainant [REDACTED] is an adult resident of Sheboygan County, Wisconsin.

2. The Sheboygan County Sheriff's Department ("Sheriff's Department") is a law enforcement agency as defined by Wis. Stat. § 165.83(1)(b), over which the Crime Victims Rights Board ("Board") has jurisdiction.

3. The complaint alleges that on or about December 14, 2008, [REDACTED] discovered that several pieces of his personal property, including a hand-built motorcycle and another motorcycle, had been stolen. [REDACTED] reported the theft to the Sheriff's Department approximately two days later.

4. The complaint alleges that the Sheriff's Department received a tip from a confidential informant in October 2011 that a stolen truck was being stored in a shop located on property that [REDACTED] owned and had leased to another person. The Sheriff's Department went to the shop and located the stolen truck. On a tip from a confidential informant, the Sheriff's Department raided [REDACTED] office and storage buildings, allegedly looking for drugs, but found none. [REDACTED] was arrested because the truck was found on property he owned, and later released. [REDACTED] was advised by his attorney to change the locks and stay away from the property.

5. The complaint alleges that ■■■ changed the locks. The lessee, whom ■■■ suspects of being the confidential informant, had keys to all of the buildings. ■■■ went to the property approximately two weeks after changing the locks to make sure everything was secured. As ■■■ was looking around, he discovered one of the motorcycles that had been stolen in 2008, and pieces of the second stolen motorcycle.

6. The complaint alleges that ■■■ contacted the Sheriff's Department to report his discovery. ■■■ told the Sheriff's Department that the building lessee—the person he suspected of being the confidential informant—was the only person who had keys to the building prior to the locks being changed. The Sheriff's Department sent a detective, Mark Mancl ("Detective Mancl"), to respond. Detective Mancl asked ■■■ if the Sheriff's Department could take the motorcycle for DNA and fingerprints, and swabbed ■■■ mouth for DNA for comparison. The Sheriff's Department took the motorcycle with ■■■ consent, and with the understanding that it would be returned to him.

7. The complaint alleges that ■■■ contacted the Sheriff's Department several times between the discovery of the motorcycle in the Fall of 2011 and February 6, 2012, to find out when his motorcycle would be returned, but has not been given a reason for why the bike continued to be held.

8. ■■■ first contacted the Department of Justice Office of Crime Victim Services on February 6, 2012, to obtain assistance in getting the motorcycle returned. In March 2011, Detective Mancl, through Sheboygan County Assistant District Attorney James Haasch, informed Department of Justice mediator Jennifer Rhodes ("Rhodes") that the motorcycle would not be returned to ■■■ yet because the motorcycle was part of an ongoing investigation.

Mediator Rhodes notified [REDACTED] on April 9, 2012, that her mediation activities pursuant to Wis. Stat. § 950.08(3) were complete.

9. [REDACTED] initially filed his complaint with the Board on or about July 11, 2012. With additional assistance from mediator Rhodes, [REDACTED] subsequently filed a narrative description of his concerns. The narrative described the events highlighted in the preceding paragraphs.

10. Crime Victims Rights Board Operations Director Julie Braun provided a copy of [REDACTED] complaint to the Sheriff's Department. On November 5, 2012, the Sheriff's Department filed its answer to [REDACTED] complaint. The response stated, in relevant part:

The motorcycle in question is evidence of a crime. It is currently in the possession of the [Sheboygan County Sheriff's Department] as evidence. The [Sheboygan County Sheriff's Department] intends to turn the motorcycle over to the rightful owner at the conclusion of the investigation. It is not the intent of the [Sheboygan County Sheriff's Department] to deprive [REDACTED] [REDACTED] of the motorcycle if he is found to be the rightful owner at the conclusion of this investigation.

11. The determination whether there is probable cause to believe that the Sheriff's Department violated any of [REDACTED] rights as a victim of crime is based on the information provided by [REDACTED], mediator Rhodes, and the Sheriff's Department.

### **CONCLUSIONS OF LAW**

1. Wisconsin Stat. § 950.02(1m) defines "crime" as "an act committed in this state which, if committed by a competent adult, would constitute a crime, as defined in s. 939.12." Wisconsin Stat. § 939.12 defines a "crime" as "conduct which is prohibited by state law and punishable by fine or imprisonment or both."

2. Wisconsin Stat. § 943.20(1)(a) defines the crime of theft and makes that act a misdemeanor or felony, depending upon the value of the property taken. Wis. Stat. § 943.20(3).

Misdemeanors and felonies are punishable by fines or forfeitures. Wis. Stat. §§ 939.50(3) and 939.51(3).

3. The alleged conduct reported to the Sheriff's Department in December 2008 fits the statutory definition of the crime of theft of [REDACTED] property.

4. Wisconsin Stat. § 950.02(4)(a)1. defines "victim" as "[a] person against whom a crime has been committed."

5. [REDACTED] reported to the Sheriff's Department that he was a crime victim as defined by Wis. Stat. § 950.02(4)(a)1., as a result of the reported theft.

6. "Probable cause" means a reasonable basis for belief, supported by facts, circumstances, and reasonable inferences strong enough to warrant a prudent person to believe that a violation probably has been or is being committed as alleged in the complaint. Wis. Admin. Code § CVRB 1.02(9). In determining whether there is probable cause, the Board considers the information made available to it in a manner favorable to the complainant, draws reasonable inferences from that information in a manner favorable to the complainant, and determines whether the information and reasonable inferences, if believed, would support the complainant's allegation that one or more of the complainant's crime victim rights was violated by a respondent.

7. There is probable cause to believe that [REDACTED] was the victim of the crime of theft of his property, including the motorcycle found in the leased shed in October 2011.

8. [REDACTED] complainant against the Sheriff's Department was presented to the Department of Justice before filing a complaint with the Board, as required by Wis. Stat. § 950.09(2).

9. Wisconsin Stat. § 950.04(1v)(s) provides that victims of crime have the right:

To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence, subject to s. 968.205. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, property subject to preservation under s. 968.205, and property the ownership of which is disputed, shall be returned to the person within 10 days of being taken.

10. Wisconsin Stat. § 968.205 relates to the preservation of biological material, not at issue in this case.

11. Wisconsin Stat. § 968.20(1) provides:

Any person claiming the right to possession of property seized pursuant to a search warrant or seized without a search warrant may apply for its return to the circuit court for the county in which the property was seized or where the search warrant was returned. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property, other than contraband or property covered under sub. (1m) or (1r) or s. 173.12, 173.21(4), or 968.205, returned if:

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) All proceedings in which it might be required have been completed.

12. Wisconsin Stat. § 968.20(1m) and (1r) relate to property that fits the categories of dangerous weapons, ammunition, or firearms, not at issue in this case. Wisconsin Stat. §§ 173.12 and 173.21(4) relates to property that is an animal, not an issue in this case.

13. There is a material issue of disputed fact as to whether the motorcycle taken by the Sheriff's Department with █████ consent is needed as evidence in an investigation. The Sheriff's Department takes the position that the motorcycle is needed as evidence in an ongoing investigation. █████ takes the position that the motorcycle is not so needed and therefore must be returned to him.

14. Whether the Sheriff's Department's refusal to return the motorcycle that ■■■ claims to own violated ■■■ crime victim right under Wis. Stat. § 950.04(1v)(s) depends on whether ■■■ is the owner of the motorcycle and whether the Sheriff's Department continues to need the motorcycle as evidence. Until the time that the Sheriff's Department no longer needs the motorcycle as evidence, ■■■ has no right under Wis. Stat. § 950.04(1v)(s) to its return.

15. The Legislature has given the Sheboygan County Circuit Court the authority to determine the ownership of the motorcycle and the authority to determine the validity of the Sheriff's Department's claim that the motorcycle continues to be needed as evidence. Wis. Stat. § 968.20(1). The Legislature has not given the Board the authority to resolve those disputed questions.

16. If ■■■ were to apply to the Sheboygan County Circuit Court for the return of property in the possession of the Sheriff's Department, and if the court were to determine that ■■■ is the rightful owner of the motorcycle and that the Sheriff's Department no longer needs the motorcycle as evidence, and if the Sheriff's Department then refused to expeditiously return the motorcycle to ■■■, there would be probable cause to believe that ■■■ crime victim right under Wis. Stat. § 950.04(1v)(s) has been violated.

17. Based on the information available to the Board in this probable cause determination, there is no probable cause to believe that ■■■ has applied to the Sheboygan County Circuit Court for the return of the motorcycle. There is no probable cause to believe that the court has determined ownership of the motorcycle, has determined that the motorcycle is no longer needed by the Sheriff's Department as evidence, or has directed the Sheriff's Department to return the motorcycle to ■■■. There is, therefore, no probable cause to believe at this time that ■■■ crime victim right under Wis. Stat. § 950.04(1v)(s) has been violated.

18. [REDACTED] complaint is dismissed, without prejudice. If [REDACTED] obtains a court order directing the Sheriff's Department to return the motorcycle to him, provides information to the Department of Justice mediator that the Sheriff's Department has refused to expeditiously return the motorcycle, and unable to obtain an acceptable resolution of his complaint under the informal mediation process required by Wis. Stat. § 950.08(3), [REDACTED] may file a new complaint with the Board.

### ORDER

Based on the foregoing, it is hereby ORDERED:

1. That the complaint of [REDACTED] [REDACTED] against the Sheboygan County Sheriff's Department be, and the same hereby is, DISMISSED without prejudice.
2. That this is a final, appealable order of the Crime Victims Rights Board, and as such makes final and appealable any previous non-final orders of the Board.
3. That notice of the parties' appeal rights is attached to this Decision and Order.
4. That a copy of this decision shall be provided to all parties in this proceeding identified in the "Service List" below.

Dated this 29th day of January, 2013.



TRISHA ANDERSON  
Chairperson, Crime Victims Rights Board

c: Service List

[REDACTED]

**SERVICE LIST**

[REDACTED]  
[REDACTED]  
[REDACTED]

Todd W. Priebe  
Sheriff  
Sheboygan County Sheriff's Department  
525 North 6th Street  
Sheboygan, WI 53081

Julie Braun  
Wisconsin Department of Justice  
819 North 6th Street, Suite 180  
Milwaukee, WI 53203

[REDACTED]