

IN THE MATTER OF COMPLAINT
AGAINST THE WAUKESHA COUNTY
DISTRICT ATTORNEY'S OFFICE,

Case No. 20-274

Respondent.

PROBABLE CAUSE DETERMINATION

1. On March 23, 2021, the Crime Victims Rights Board (“the Board”) reviewed a complaint filed by K.T.¹ against respondent Waukesha County District Attorney’s Office (“the DA’s Office”). The Board evaluated the complaint to determine whether it stated probable cause that the DA’s Office violated K.T.’s rights as a crime victim. *See* Wis. Stat. § 950.04(1v). The Board found no probable cause.

BOARD PROCEDURE

2. K.T. filed a complaint with the Board on August 28, 2020.

3. Upon receipt of the complaint, the Board contacted the Department of Justice (DOJ) Office of Crime Victim Services, which verified that the substance of the complaint had been presented to DOJ and that DOJ

¹ This probable cause determination uses the victim’s initials to protect her privacy.

had completed the informal complaint process as to the issues raised in the complaint. *See Wis. Admin. Code CVRB § 1.05(1), (4).*

4. The Board gave a copy of the complaint to the DA's Office and invited it to answer the complaint. *See Wis. Admin. Code CVRB § 1.05(5).* On October 20, 2020, the DA's Office filed a letter response.

5. On March 23, 2021, the Board made this probable cause determination at a meeting. *See Wis. Admin. Code CVRB § 1.05(6).*

6. In making the probable cause determination, the Board considered all relevant information, including the complaint and answer. *See Wis. Admin. Code CVRB § 1.05(7)(a)–(c).*

7. The Board notifies the parties and DOJ of its conclusions through the issuance of this probable cause determination. *See Wis. Admin. Code CVRB § 1.05(8).*

STATEMENT OF THE CASE

I. K.T.'s complaint.

8. In her complaint, K.T. alleges that she was a domestic abuse victim in a Waukesha County case. She raises three main issues for review.

9. First, K.T. alleges that the Waukesha County District Attorney and Director of Victim Services disclosed confidential information relating to K.T.'s and another victim's participation in a support group.

10. Second, K.T. alleges that the prosecutor did not sufficiently object to the defendant's motion to submit a surveillance video showing "an incident that occurred at [the defendant's] home many months before prior to the October 25, 2018 date in which [K.T.] was assaulted by defendant." K.T. claims that the prosecutor should have argued that the video was irrelevant and improperly authenticated.

11. K.T. also alleges that she "was never allowed to view the tape," but notes that the prosecutor eventually sent copies of the defendant's motion and the video to K.T.'s attorney.

12. Finally, K.T. complains about the length of time it took to resolve the criminal cases and that she objected to continuances.

II. The respondent's answer to the complaint.

13. The DA's Office submitted a letter response addressing each issue raised in the complaint.

14. First, the DA's Office "emphatically den[ies]" disclosing confidential information. It states that K.T. inaccurately assumes that the DA's Office disclosed confidential information but "offers no proof whatsoever to support her claim." The DA's Office notes that "KT was witnessed to be speaking about her counseling in the courthouse in the presence of others."

15. Second, the DA's Office denies that the prosecutor failed to sufficiently object to the defendant's motion to submit the surveillance video.

At a plea hearing on February 5, 2020, the prosecutor objected to the motion, arguing that the video was irrelevant because it depicted events that occurred eight months before the crime and that the charge under consideration—misuse of a GPS device—had even less relevance to the video. The court rejected these arguments and decided the motion in favor of the defendant.

16. The DA's Office notes that prior to the February 5, 2020, hearing, staff had numerous telephone calls and email exchanges with K.T. to discuss the implications of the defendant's motion to submit the video. The Director of Victim Services also attended the hearing with K.T.

17. The DA's Office further states that K.T.'s claim that she was denied copies of the motion and video is not accurate. After the plea hearing on February 5, 2020, K.T. sent the Director of Victim Services an email stating that K.T. wanted the video sent to her newly-retained attorney. As requested, the prosecutor sent K.T.'s attorney a copy of the defendant's motion on February 7 and a copy of the video on February 17.

18. Finally, the DA's Office asserts that the length of time it took to resolve the two relevant cases was not the result of any negligence or deficient performance on the part of the DA's Office.

19. According to the DA's Office, the record shows that Waukesha County Case No. 18-CV-2619 commenced with an initial appearance on

January 14, 2019, and was completed on February 5, 2020. Waukesha County Case No. 19-CM-0828 commenced on May 13, 2019, and was completed on October 12, 2020. The DA's Office explains that the prosecutor objected to an adjournment on December 18, 2019, and the cases were resolved with a plea at the next hearing on February 5, 2020. Sentencing was scheduled for April 2020, but did not occur until October 2020, due to the COVID-19 pandemic and court congestion.

20. The DA's Office states that "[a] review of the record shows the delays were not frivolous nor excessive and were caused by legitimate factors such as the filing of a new charge, the defendant retaining an attorney, pre-trial negotiations, and exchange of discovery."

ALLEGATIONS OF VICTIM RIGHTS VIOLATIONS

21. K.T. does not articulate a specific victim rights violation in her complaint. For the purposes of this probable cause determination, the Board identifies two victim rights that may be implicated by the facts alleged in the complaint.

22. First, the facts alleged in the complaint may support a claim that K.T. was not "treated with . . . respect for . . . her privacy by public officials, employees, or agencies." Wis. Stat. § 950.04(1v)(ag).

23. Second, the facts alleged in the complaint may also support a claim that K.T. was denied the right to "a speedy disposition of the case in which they

are involved as a victim in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.”

Wis. Stat. § 950.04(1v)(k).

24. The Board finds that K.T.’s allegations that the prosecutor did not sufficiently object to the defendant’s motion to submit the surveillance video and that K.T. was denied copies of the motion and video do not implicate a victim right.

DETERMINATIONS OF FACT

25. The Board finds no disagreements of material fact between the parties.

INTERPRETATIONS OF LAW

26. The Board employs a three-step methodology to analyze the complaint: (1) whether the complainant was a crime victim; (2) whether the allegations implicate any constitutional or statutory victim rights; and (3) whether the respondent failed to comply with any duty imposed by a constitutional or statutory provision.

27. Whether a person is a crime victim is determined by statute. “A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both.” Wis. Stat. § 939.12. A crime victim is “[a] person against whom a crime has been committed.” Wis. Stat. § 950.02(4)(a)1. If the

crime victim is deceased, his or her family member is a victim. Wis. Stat. § 950.02(4)(a)4.a.

28. Whether a respondent is subject to the Board's authority is also determined by statute. The Board has authority to conduct reviews and issue reprimands of "public officials, employees or agencies that violate the rights of crime victims." Wis. Stat. § 950.09(2)(a); *but see Gabler v. Crime Victims Rights Bd.*, 2017 WI 67, 376 Wis. 2d 147, 897 N.W.2d 384 (statute unconstitutional as applied to judges).

29. Probable cause is "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). Probable cause is satisfied by a believable or plausible account that the respondent probably has violated or is violating the victim's rights. *See State v. Sorenson*, 143 Wis. 2d 226, 251, 421 N.W.2d 77 (1988).

30. The Board evaluates the limited information available to it in the light most favorable to the complainant. The probable cause determination is not the proper time to debate and resolve credibility issues if essential facts, circumstances, and reasonable inferences are strong enough to warrant a prudent person to believe a violation probably has occurred or is

occurring. *See State ex rel. Huser v. Rasmussen*, 84 Wis. 2d 600, 614, 267 N.W.2d 285 (1978).

PROBABLE CAUSE DETERMINATION

31. The Board finds no probable cause that K.T.'s rights as a crime victim were violated.

32. The Board reaches this conclusion after applying its interpretations of law to the determinations of fact.

33. The threshold question is whether K.T. is a crime victim. K.T. was a crime victim because she reported she was a victim of domestic violence, conduct prohibited by state law.

34. The next question is whether the respondent is subject to the authority of the Board. The DA's Office is subject to the authority of the board because it is a public agency within the meaning of Wis. Stat. § 950.09(2)(a).

35. The final question is whether the allegations in the complaint implicate a constitutional or statutory victim right. As noted above, the Board considers whether the DA's Office violated K.T.'s rights under Wis. Stat. §§ 950.04(1v)(ag) (respect for privacy), and 950.04(1v)(k) (speedy disposition).

36. First, K.T. alleges that the DA's Office disclosed confidential information relating to K.T.'s and another victim's participation in a support group. K.T. provides no facts to support this allegation, and the respondent

categorically denies it, noting that K.T. may have inadvertently disclosed the information herself. Based on the undisputed facts and reasonable inferences drawn therefrom, there is no reasonable basis to believe that the DA's Office disclosed K.T.'s confidential information. Therefore, the Board finds no probable cause that the DA's Office violated K.T.'s right to respect for her privacy.

37. Second, K.T. complains about the length of time it took to resolve the criminal cases. The Board has reviewed the undisputed timeline for the two cases and finds no unreasonable delay, taking into account unavoidable delays caused by the COVID-19 pandemic and associated court closures and backlog. Therefore, the Board finds no probable cause that the DA's Office violated K.T.'s right to a speedy disposition of the case.

ORDER

Based on the foregoing, it is hereby ORDERED:

1. That there is no probable cause that a victim rights violation occurred, so the complaint is dismissed. A finding of no probable cause is a final decision of the Board under Wis. Admin. Code CVRB § 1.05(8).

2. That the Board hereby provides notice to the parties of the right to seek judicial review of this final decision pursuant to Wis. Stat. § 227.52. Attached to this decision is a summary of appeal rights.

3. That judicial review of this final decision is governed by Wis. Stat. §§ 227.52–227.59. *See* Wis. Admin. Code CVRB § 1.10.

4. That a copy of this probable cause determination shall be provided to all parties in this proceeding and in accordance with Wis. Admin. Code CVRB § 1.05(8), as identified in the Service List below.

Dated this 10th day of May, 2021.



Vice-Chairperson Paul Susienka²
Crime Victims Rights Board

² Chairperson Jennifer Dunn has recused herself from this matter.

SERVICE LIST

K.T.

[street address withheld]

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