

IN THE MATTER OF COMPLAINT
AGAINST THE TOWN OF NORWAY
POLICE DEPARTMENT AND
THE RACINE COUNTY
DISTRICT ATTORNEY'S OFFICE,

Case No. 21-304

Respondents.

PROBABLE CAUSE DETERMINATION AND FINAL DECISION

1. The Crime Victims Rights Board (the "Board") reviewed a complaint filed by JG¹ against the respondents, the Town of Norway Police Department (the "Norway PD") and the Racine County District Attorney's Office (the "DA's Office"). The Board evaluated the complaint to determine whether there is probable cause that the respondents violated JG's rights as a crime victim. *See Wis. Stat. § 950.04(1v)*. The Norway PD admits it failed to provide notice of victim rights to JG. The Board, therefore, finds probable cause and a victim rights violation as to that undisputed claim. The Board finds no probable cause as to the remaining claims.

¹ This probable cause determination uses the victim's and suspect's initials to protect the victim's privacy.

BOARD PROCEDURE

2. On February 2, 2021, JG filed a complaint with the Board.
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 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 respondents and invited them to answer the complaint. *See Wis. Admin. Code CVRB § 1.05(5).*
5. On March 15, 2021, the Norway PD filed a letter response, and on March 23, 2021, the DA's Office filed a letter response.
6. On April 28, 2021, the Board evaluated the complaint and made this probable cause determination at a meeting. *See Wis. Admin. Code CVRB § 1.05(6).*
7. 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).*
8. 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. JG's complaint.

9. In his complaint, JG alleges that on September 5, 2020, his estranged business partner, KD, used her truck to damage the business property and stabbed JG with the tip of a shears, causing minor injuries.

10. Norway PD officers responded to the scene and arrested KD for battery, disorderly conduct, and criminal damage to property.

11. The DA's Office determined that KD was appropriate for participation in a criminal court diversion program, where she would not be charged unless she refused or failed to comply with the conditions of the program. KD successfully completed the diversion program, and no charges were issued.

12. JG raises two claims for review.

13. First, JG alleges that his right to restitution was violated. He claims that the DA's Office did not pursue restitution, contrary to JG's expectations. He says the DA's Office told him to provide restitution information to the Norway PD, which JG did, and that the Norway PD did not forward the information to the DA's Office. JG also says the DA's Office did not properly explain the deferred prosecution agreement and that he thought KD would still be charged and ordered to pay restitution as part of the agreement.

14. Second, JG alleges that the Norway PD did not provide him with written notice of his victim rights and that the DA's Office did not provide him with written notice of his victim rights until after KD agreed to enter the diversion program.

II. The Norway PD's answer to the complaint.

15. The Norway PD submitted a letter response, with several exhibits, addressing the restitution and notice claims in the complaint.

16. First, the Norway PD says it sent the restitution information JG provided to the DA's Office and uploaded the documents to the records management system shared with the DA's Office.

17. Second, the Norway PD admits it failed to provide written notice of victim rights to JG. It explains that the responding officer did not know he was required to provide written notice because he incorrectly assumed the DA's Office would be coordinating all victim services, including notice. After learning of JG's complaint, the police chief "immediately issued a department policy reminding each of the officers what their responsibilities are in this regard." (Norway PD Answer 2.)

III. The DA's Office's answer to the complaint.

18. The DA's Office submitted a letter response, with several exhibits, addressing the restitution and notice claims in the complaint.

19. First, the DA's Office "stand[s] behind the decision to divert [KD's] case away from the criminal justice system and provide an alternative resolution." (DA's Office Answer 2.) The DA's Office says it explained to JG that KD would not be charged as part of the deferred prosecution agreement and made no promises about restitution. The DA's Office says it told JG that restitution could sometimes be made part of the agreement, but the DA's Office ultimately decided not to do so because of the large amount of restitution requested and the difficulty in determining the accuracy of the amount.

20. Second, while not part of the answer, the DA's Office told DOJ during the informal complaint process that, consistent with common practice, it did not provide written notice of victim rights to JG until after it reached an agreement with KD on deferred prosecution.

ALLEGATIONS OF VICTIM RIGHTS VIOLATIONS

21. JG alleges violations of two victim rights: the right to restitution and the right to receive written notice of victim rights.

22. **Restitution.** Crime victims have a right to "full restitution from any person who has been ordered to pay restitution to the victim and to be provided with assistance collecting restitution." Wis. Const. art. I, § 9m(2)(m). Crime victims also have a right "[t]o restitution, as provided under ss. . . . 973.30." Wis. Stat. § 950.04(1v)(q).

23. **Written notice of victim rights.** “No later than 24 hours after a law enforcement agency has initial contact with a victim of a crime that the law enforcement agency is responsible for investigating, the law enforcement agency shall make a reasonable attempt to provide to the victim written information on” victim rights. Wis. Stat. § 950.08(2g). The district attorney must also “make a reasonable attempt to provide to each victim of the crime written information on” victim rights “[a]s soon as practicable, but in no event later than 10 days after the initial appearance under s. 970.01 or 24 hours before a preliminary examination under s. 970.03, whichever is earlier, of a person charged with a crime in a court of criminal jurisdiction.” Wis. Stat. § 950.08(2r).

DETERMINATIONS OF FACT

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

INTERPRETATIONS OF LAW

25. 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.

26. 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.

27. 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 Board*, 2017 WI 67, 376 Wis. 2d 147, 897 N.W.2d 384 (statute unconstitutional as applied to judges).

28. 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).

29. 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

30. The Board finds probable cause and a victim rights violation as to the undisputed claim that the Norway PD failed to provide written notice of victim rights to JG. The Board finds no probable cause as to the remaining claims.

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

32. The threshold question is whether JG is a crime victim. JG was a crime victim because he reported that he was the victim of battery and damage to property, conduct prohibited by state law.

33. The next question is whether the respondent is subject to the authority of the Board. The Norway PD and the DA's Office are subject to the authority of the Board because they are public agencies within the meaning of Wis. Stat. § 950.09(2)(a).

34. 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 respondents violated Wis. Const. art. I, § 9m(2)(m) and Wis. Stat. § 950.04(1v)(q) (right to restitution), or Wis. Stat. §§ 950.08(2g), (2r) (written notice of victim rights).

35. First, JG claims that the Norway PD violated his right to restitution by not forwarding to the DA's Office the restitution information he provided, and that the DA's Office then decided not to pursue restitution, contrary to JG's expectations. While JG appears to have had an expectation of restitution based on the respondents' words and actions, JG had no right to restitution under the circumstances presented here.

36. A victim's constitutional and statutory right to restitution is tied to crimes considered at sentencing. *See* Wis. Const. art. I, § 9m(2)(m); Wis. Stat. § 950.04(1v)(q). Here, the DA's Office decided to divert KD's case away from the criminal justice system and pursue an alternative resolution. Because KD was not charged, the right to restitution does not apply. The DA's Office's decision to pursue a charging alternative was discretionary and is beyond the purview of the Board. And while the Norway PD claims it provided the restitution information to the DA's Office, even if it did not, its failure would have made no difference because JG had no right to restitution. The

Board, therefore, finds no probable cause that the respondents violated JG's right to restitution.

37. Second, JG alleges that the Norway PD did not provide him with written notice of his victim rights and that the DA's Office did not provide him with written notice of his victim rights until after KD agreed to enter the diversion program.

38. The Board finds no probable cause that the DA's Office violated JG's right to written notice of victim rights because that right applies only after the suspect is charged, which never occurred in this case.

39. The Board, however, finds probable cause that the Norway PD violated JG's right to written notice of victim rights because the Norway PD admits this violation.

40. When the Board finds probable cause, the parties have the right to request a hearing to present evidence of any erroneous or disputed fact preliminarily found by the Board. Here, no hearing is appropriate or necessary because the Norway PD admits the violation, and there are no erroneous or disputed facts to resolve before issuing a final decision.

41. Based on the undisputed facts, including the admission of the Norway PD, the Board concludes that the Norway PD violated JG's right to written notice of victim rights under Wis. Stat. § 950.08(2g).

ORDER

Based on the foregoing, it is hereby ORDERED:

1. That, as to the undisputed claim that the Norway PD failed to provide written notice of victim rights, the Board finds probable cause and a violation of a victim right. This is a final appealable decision of the Board under Wis. Admin. Code CVRB § 1.08.

2. That as a remedy for the violation, the Board will issue a report and recommendation regarding the best practices for providing written notice of victim rights and keeping up-to-date with victim rights requirements. *See* Wis. Stat. § 950.09(3).

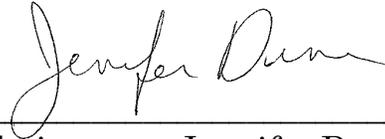
3. That, as to all other claims alleged in the complaint, there is no probable cause that a victim rights violation occurred, and those claims are dismissed. This is a final appealable decision of the Board under Wis. Admin. Code CVRB § 1.05(8).

4. 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.

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

6. That a copy of this decision 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 26th day of July, 2021.

A handwritten signature in cursive script that reads "Jennifer Dunn". The signature is written in black ink and is positioned above a horizontal line.

Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

J.G.

[street address withheld]

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