

IN THE MATTER OF COMPLAINT
AGAINST THE MADISON
POLICE DEPARTMENT AND
THE DANE COUNTY DISTRICT
ATTORNEYS OFFICE,

Case No. 21-310

Respondents.

PROBABLE CAUSE DETERMINATION

1. The Crime Victims Rights Board (the “Board”) reviewed a complaint filed by FC¹ against the Madison Police Department (“MPD”) and the Dane County District Attorney’s Office (the “DA’s Office”). The Board evaluated the complaint to determine whether it stated probable cause that the Respondents violated FC’s rights as a crime victim. *See Wis. Stat. § 950.04(1v)*. The Board finds no probable cause.

BOARD PROCEDURE

2. FC, through counsel, filed a complaint with the Board on October 6, 2021.

3. Upon receipt of the complaint, the Board contacted the Department of Justice (DOJ) Office of Crime Victim Services, which verified

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

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).* The DA's Office filed a response on April 15, 2022. MPD did not file a response.

5. The Board made this probable cause determination at a meeting on May 17, 2022. *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 response. *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. FC's complaint.

8. FC's brother, GH, died of a drug overdose on December 20, 2017. Two defendants were charged in connection with GH's overdose: Keyawn Davis-Cobbins, who allegedly sold drugs to GH, and Iman Rowe, who allegedly left GH to die without notifying the authorities.

9. FC alleges that during the investigation into GH's death, MPD "acted rudely and dismissively towards F.C. and other members of her family" and refused to "collect security camera footage from the hotel the night her brother died" and as a result the footage was deleted. (Compl. 4.)

10. The DA's Office filed a criminal complaint against both defendants in October 2018. Davis-Cobbins was charged with First Degree Reckless Homicide and Delivery of Drugs contrary to Wis. Stat. § 940.02(2)(a). Rowe was initially charged with Manufacture/Delivery of Narcotics, but on May 12, 2021, the charge was amended to First Degree Reckless Homicide and Delivery of Drugs.

11. FC alleges that the DA's Office was more focused on prosecuting Davis-Cobbins, than Rowe, contrary to the family's wishes.

12. FC met with the prosecutor and his supervisor on November 6, 2020. FC raised concerns about the slow progress of the case against Rowe, and the prosecutor's failure to communicate with the family. FC says the DA's Office did not take her concerns seriously and that the supervisor "laughed and said he might take even longer to respond." (Compl. 5.)

13. At the time FC filed her complaint in October 2021, the case against Rowe had not yet gone to trial.

II. The DA's Office's answer.

14. On behalf of the DA's Office, District Attorney Ismael R. Ozanne submitted a letter response and numerous exhibits, including a timeline of the case; a summary of Dane County's First Degree Reckless Homicide cases from mid-2015 to the present, showing the time between the death, referral, complaint, and case closure; the electronic court records for *State v. Davis-Cobbins*, Case No. 18-CF-2127, and *State v. Rowe*, Case No. 18-CF-2128; a letter summarizing the case from the prosecutor; and 183 pages of a log of contacts and compilation of emails between the DA's Office and FC.

15. The DA's Office first addressed FC's claim regarding the timeliness of the prosecution.

16. The DA's Office states that the investigation was referred to the DA's Office on April 21, 2018, and the DA's Office filed a criminal complaint against the defendants on October 17, 2018.

17. According to the electronic court records, the case against Davis-Cobbins's was dismissed on May 12, 2021, and the case against Rowe is scheduled for trial the week of June 27, 2022.

18. The DA's Office explains that the amount of time between the referral and the filing of the criminal complaint was not unusual compared to

similar cases, nor was it “unreasonable given the volume and complexity of the [MPD] investigation.” (Resp. 2.)

19. The DA’s Office says that “[o]nce the criminal complaint was filed, there were a number of delays in the court process” but that “none of the delays were unusual or unreasonable” or attributable to the DA’s Office. (Resp. 3.)

20. Pointing to the electronic court records, the DA’s Office explains that “the delays were primarily caused by the actions of each defendant and the court’s limited functioning for over a year due to the global COVID-19 pandemic.” (Resp. 3.) “At no time did the DA’s Office request a postponement of the proceedings.” (Resp. 3.) And the assigned prosecutor—Assistant District Attorney Valarian Powell (“ADA Powell”) “objected more than once to defense motions to postpone trial dates,” at the request of FC and her family. (Resp. 3.)

21. The DA’s Office next addressed FC’s claim that the office failed to communicate with her in a respectful matter.

22. According to ADA Powell, FC and the family did not agree with his decision to initially charge Rowe with a lesser offense. Powell says he explained his charging decision to the family, but they were not satisfied with his explanation. Powell explained: “I prefer that victims be satisfied with my strategic decisions for charging and handling cases, but I believe it is imperative that I be consistent and that I aggressively pursue those who are most blameworthy and harmful to society—professional drug dealers—even

when this requires me to work with lower level offenders such as Rowe.”
(Resp. 3, 42.)

23. ADA Powell met with FC several times, including on November 6, 2020, via videoconference with Deputy District Attorney Matthew Moeser and Victim Witness Case Manager Rachelle Hocking. They discussed FC’s concerns. Moeser confirmed laughing and saying that if he were on the case, it would take him longer to get back to FC than it had taken Powell. Moeser explained that statement was made “in a joking manner appropriate with the context and well into the conversation.” (Resp. 4.)

24. The DA’s Office further states that the DA’s Office had extensive contact with FC and her family, as shown by the log of contacts and compilation of emails between Hocking and FC. The DA’s Office contends that the “volume and content” of these documents speak for themselves and show that FC and her family were “consistently treated with fairness, dignity, and respect” by the DA’s Office. (Resp. 4.)

ALLEGATIONS OF VICTIM RIGHTS VIOLATIONS

25. FC raises three victim rights violations.

26. **Right to a speedy disposition of the case.** A crime victim has a 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); *see also* Wis. Const. art. I, § 9m(2)(c), (d).

27. **Right to consult with the prosecution.** A crime victim has a right to “have, at his or her request, the opportunity to consult with the prosecution in a case brought in a court of criminal jurisdiction, as provided under s. 971.095(2).” Wis. Stat. § 950.04(1v)(j); *see also* Wis. Const. art. I, § 9m(2)(h) (a crime victim is entitled “[u]pon request, to confer with the attorney for the government.”).

28. **Right to be treated with fairness, dignity, and respect for privacy.** A crime victim has a right to “be treated with fairness, dignity, and respect for his or her privacy by public officials, employees, or agencies.” Wis. Stat. § 950.04(1v)(ag); *see also* Wis. Const. art. I, § 9m(2)(a) (right to “be treated with dignity, respect, courtesy, sensitivity, and fairness”). This right “does not impair the right or duty of a public official or employee to conduct his or her official duties reasonably and in good faith.” Wis. Stat. § 950.04(1v)(ag).

DETERMINATIONS OF FACT

29. The Board finds no dispute of material fact between the parties.

INTERPRETATIONS OF LAW

30. The Board employs a multi-step methodology to analyze the complaint: (1) whether the complainant was a crime victim; (2) whether the

respondent is subject to the authority of the Board; (3) whether the allegations are time-barred; (4) whether the allegations implicate any constitutional or statutory victim rights; and (5) whether the respondent failed to comply with any duty imposed by a constitutional or statutory provision.

31. 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” or, if that person is deceased, a family member of that person. Wis. Stat. § 950.02(4)(a)1. and 4.

32. Whether a respondent is subject to the Board’s authority is also determined by statute. The Board has authority to review complaints about “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).

33. Whether the allegations are time-barred is determined by the filing requirements in the administrative code. The Board may not consider allegations relating to “conduct that occurred prior to December 1, 1998 or more than 3 years before a complaint was filed with the board or the board was otherwise notified of the conduct,” except that the Board may consider issuing

a report and recommendation concerning such conduct. Wis. Admin. Code CVRB § 1.04(5).

34. 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).

35. At the probable cause stage, 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

36. The Board finds no probable cause that FC’s rights as a crime victim were violated.

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

38. The threshold question is whether FC is a crime victim. FC was a crime victim because her brother died of a drug overdose where those involved have been charged with First Degree Reckless Homicide and Delivery of Drugs contrary to Wis. Stat. § 940.02(2)(a).

39. The next question is whether the respondents are subject to the authority of the Board. MPD and the DA's Office are public agencies subject to the authority of the Board. *See* Wis. Stat. § 950.09(2)(a).

40. The next question is whether any of the allegations in the complaint are time-barred. FC's allegations about MPD relate to conduct that occurred before October 2018, which is more than three years before FC filed her complaint. The Board, therefore, finds that the allegations against MPD are time-barred, and the Board declines to exercise its discretion to issue a report and recommendation as to MPD's alleged conduct. *See* Wis. Admin. Code CVRB § 1.04(5).

41. The final question is whether the allegations in the complaint implicate a constitutional or statutory victim right. FC alleges that the DA's Office violated her victim rights by failing to timely prosecute the case and

failing to communicate with her in a respectful manner. The Board addresses each allegation in turn.

42. The Board interprets FC's allegation that the DA's Office failed to timely prosecute the case as alleging a violation of the right to a speedy disposition. In analyzing such a claim, the Board (1) identifies each delay, (2) determines the cause of the delay, (3) determines whether the delay was reasonable, and (4) if the delay was unreasonable, determines whether the delay was attributable to the respondent.

43. Here, the case was referred to the DA's Office on April 21, 2018, and the case was charged on October 17, 2018. The case against one of the defendants was dismissed in May 2021, and the case against the other defendant is scheduled for trial at the end of June 2022. The DA's Office explained that the six-month delay between referral and charging was reasonable due to the volume and complexity of the investigation. The Board agrees. And while there were numerous delays after the criminal complaint was filed, the Board finds that none were attributable to the DA's Office. Court records show that the delays were primarily caused by the actions of defendants and the court's limiting functioning during the pandemic. The DA's Office did not request any postponements and appropriately objected to the defense motions to postpone the trial dates. Viewing these facts in the light most favorable to the complainant, the Board finds no probable cause that the

DA's Office violated FC's right to a speedy disposition of the case. *See* Wis. Stat. § 950.04(1v)(k); Wis. Const. art. I, § 9m(2)(d).

44. FC next alleges that the DA's Office failed to communicate with her in a respectful manner in violation of her right to consult with the prosecution and her right to be treated with fairness, dignity, and respect. FC disagreed with ADA Powell's strategic decision to initially charge Rowe with a lesser offense. It is not for the Board to second guess ADA Powell's discretionary charging decisions or case strategy, even if FC and her family were unhappy with those decisions. It is undisputed that FC met with the prosecutor—and others in the DA's Office—on at least one occasion. The undisputed facts show that the DA's Office appropriately communicated and explained the charging decision to FC. Further, the record contains voluminous evidence—183 pages worth—of extensive communication between FC and the DA's Office. Based on these undisputed facts, the Board finds no probable cause that the DA's Office violated FC's right to consult with the prosecution and to be treated with fairness, dignity, and respect. *See* Wis. Stat. § 950.04(1v)(ag), (j); *see also* Wis. Const. art. I, § 9m(2)(a), (h).

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 will 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 25th day of July, 2022.



Chairperson Jennifer Dunn
Crime Victims Rights Board

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