

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

Case No. 21-317

Respondent.

FINAL DECISION

1. The Crime Victims Rights Board (the "Board") finds that the complainant, KC,¹ has not shown by clear and convincing evidence that the respondent, the Columbia County District Attorney's Office (the "DA's Office"), violated her rights as a crime victim. *See Wis. Stat. § 950.04(1v).*

BOARD PROCEDURE

2. KC filed a complaint with the Board on February 8, 2021.

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).*

¹ This decision uses the victim's and perpetrator's initials to protect the victim's privacy.

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 March 17, 2021, the DA's Office filed a letter response.

5. At a meeting on April 28, 2021, the Board found probable cause and directed the Board's operations director to seek additional information about the material issues of fact identified by the Board. *See Wis. Admin. Code CVRB § 1.05(6)*.

6. The Board notified the parties and DOJ's victim rights specialist of its conclusions by issuing a written probable cause determination on June 3, 2021. *See Wis. Admin. Code CVRB § 1.05(8)*.

STATEMENT OF THE CASE

I. KC's complaint.

7. In her complaint, KC alleges that in June and August of 2020, GS was wrongfully charged with domestic violence against her based on statements she had given to the police at the time of the alleged incidents. KC subsequently recanted those statements.

8. KC alleges that she was given forms to fill out when GS was arrested and that she indicated on the forms that she wanted to speak with the prosecutor and be informed of all court proceedings.

9. KC says she was informed of all court proceedings but was not given an opportunity to confer with the district attorney until after a plea agreement had been offered to the defendant.

10. Specifically, she alleges that GS was offered a plea agreement in early November 2020. She also says Columbia County Circuit Court records summarizing hearings held on November 9 and 11, 2020, referenced a plea agreement, but the agreement did not move forward on those dates.

11. KC conferred with the district attorney, Brenda Yaskal, on November 17, 2020. KC asked Yaskal to request that the defendant's jail time run concurrent to his extended supervision sanction.

12. On November 30, 2020, the court accepted the final plea agreement and sentenced the defendant.

II. The respondent's answer to the complaint.

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

14. The DA's Office says that KC was the victim in three Columbia County cases involving domestic violence.

15. The victim-witness coordinator for the DA's Office, Linda Shawback, had frequent—at least weekly—contact with KC throughout the three cases, starting shortly after the defendant's June 2020 arrest.

16. On September 25, 2020, Shawback sent KC an email responding to concerns KC had raised in a previous email and notifying her of several upcoming hearing dates. Shawback stated in closing: “As always, I am happy to answer your questions and I have shared your position with the prosecutor. If you would like to set up a time to speak with her directly, I am happy to schedule that for you.”

17. Yaskal had a telephone call with KC on November 17, 2020. According to the DA’s Office, this call was scheduled after Shawback had offered to set it up multiple times. During the call, Yaskal and KC discussed “what [KC] wanted to see happen with the case” and Yaskal “explained to her what was going to be happening next.” Yaskal also explained that she intended to ask for “consecutive time” and that the defense attorney was asking for “concurrent time” but that it would ultimately be up to the judge.

18. Yaskal says she “listened to everything [KC] told [her] directly and told Ms. Shawback” and “structured [the] plea offer based on that information.” For example, Yaskal did not include pleas to domestic violence because KC said the information she provided about the incidents was inaccurate.

19. Yaskal states: “[KC] was given the same opportunities to confer that every other victim is afforded and, in fact, that offer was made multiple times to her and she chose not to confer with me until later on in the cases.”

PROBABLE CAUSE DETERMINATION

20. The Board found probable cause that KC was denied an opportunity to consult with the district attorney in a timely manner. *See* Wis. Const. art. I, § 9m(2)(h); Wis. Stat. § 950.04(1v)(j).

INVESTIGATION SUMMARY

21. The Board's operations director conducted an investigation to seek additional information about the material issues of fact identified by the Board.

22. During the investigation, the following documents were obtained from the DA's Office: detailed notes on victim contacts for each of the three cases; an overview of victim services and events for each of the three cases; case settlement reports, including the plea offer made on November 5, 2020; returned victim rights request forms for two of the three cases; and Yaskal's timeline of events.

FINDINGS OF FACT

23. The Board's evidentiary standard for resolving disputed factual questions is the "[c]lear and convincing evidence" standard. "Clear and convincing evidence' means evidence which satisfies and convinces the Board, because of its greater weight, that a violation occurred." Wis. Admin. Code § CVRB 1.07(7).

24. The burden of proof is on the complainant. This burden of proof is very important and can be the deciding factor in the Board's resolution of factual disputes. Where the evidence presented by the parties on a particular factual question is equally believable or plausible, the effect of the burden of proof is that the Board must find that the complainant failed to prove the point by clear and convincing evidence.

25. The Board finds no dispute of material fact.

26. KC was the victim in three Columbia County cases involving domestic violence, although KC disputes that GS committed these crimes against her. This fact is undisputed.

27. KC was given forms to fill out when GS was arrested and she checked a box on the forms indicating: "Yes, I wish to confer with the prosecutor and will contact Victim Witness." This fact is undisputed.

28. KC had frequent—at least weekly—contact with the victim-witness coordinator for the DA's Office, Linda Shawback, throughout the three cases, starting shortly after the defendant's June 2020 arrest. This fact is undisputed.

29. During that time, Shawback made several offers to schedule a meeting between KC and the prosecutor. This fact is undisputed.

30. The DA's office offered a plea to GS on November 5, 2020. This fact is undisputed.

31. KC made a specific request to confer with the prosecutor on November 11, 2020. This fact is undisputed.

32. Yaskal had a telephone call with KC on November 17, 2020. This fact is undisputed.

33. The court accepted the final plea agreement and sentenced the defendant on November 30, 2020. This fact is undisputed.

CONCLUSIONS OF LAW

34. 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.

35. 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.

36. KC was a crime victim because she reported she was a victim of domestic violence, conduct prohibited by state law.

37. 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).

38. 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).

39. The Board considered whether the undisputed facts demonstrate that the DA's office denied KC an opportunity to consult with the district attorney in a timely manner as required by Wis. Const. art. I, § 9m(2)(h) and Wis. Stat. § 950.04(1v)(j).

40. Pursuant to Wis. Const. art. I, § 9m(2)(h), a crime victim is entitled "[u]pon request, to confer with the attorney for the government."

41. Pursuant to Wis. Stat. § 950.04(1v)(j), 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)."

42. Wisconsin Stat. § 971.095(2) reads:

In any case in which a defendant has been charged with a crime, the district attorney shall, as soon as practicable, offer all of the victims

in the case who have requested the opportunity an opportunity to confer with the district attorney concerning the prosecution of the case and the possible outcomes of the prosecution, including potential plea agreements and sentencing recommendations. The duty to confer under this subsection does not limit the obligation of the district attorney to exercise his or her discretion concerning the handling of any criminal charge against the defendant.

43. “District attorney” means any of the following:

(a) The district attorney or other person authorized to prosecute a criminal case or a delinquency proceeding under ch. 938.

(b) A person designated by a person specified in par. (a) to perform the district attorney’s duties under this chapter.

Wis. Stat. § 950.02(2m)(a), (b).

44. The Board finds that KC has not shown by clear and convincing evidence that the DA’s Office violated her rights as a crime victim by denying her an opportunity to consult with the district attorney in a timely manner.

45. The undisputed facts show that KC had frequent contact with the DA’s Office through Shawback, who made several offers to schedule a meeting with Yaskal, but that KC did not make a specific request to consult with the prosecutor until November 11, 2020, shortly after the plea was offered on November 5, 2020. A telephone conference between KC and Yaskal was scheduled and occurred less than a week later, on November 17, 2020. That conference afforded KC an opportunity to consult with Yaskal in a timely manner and provide meaningful input on the case because it occurred *before* the plea was accepted on November 30, 2020. Until that time, the plea was not

yet final and still could have been withdrawn. These undisputed facts demonstrate that the DA's Office did not deny KC an opportunity to consult with the district attorney as required by Wis. Const. art. I, § 9m(2)(h) and Wis. Stat. § 950.04(1v)(j).

ORDER

Based on the foregoing, it is hereby ORDERED:

1. That the complainant has not shown by clear and convincing evidence that the respondent violated her rights as a crime victim.
2. That this is a final, appealable order of the Board, and as such makes final and appealable any previous non-final orders of the Board.
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 final 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 19th day of October, 2021.



Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

K.C.
[Via Email]

District Attorney Brenda Yaskal
Columbia County District Attorney's Office
400 DeWitt Street
Portage, WI 53901
Via Email: Brenda.Yaskal@da.wi.gov

CVRB Operations Director Julie Braun
Wisconsin Department of Justice
17 West Main Street – 8th Floor
Madison, WI 53703
Via Email: braunja@doj.state.wi.us