

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

Case No. 21-325

Respondent.

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### **FINAL DECISION**

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1. The Crime Victims Rights Board (the "Board") finds that complainant JF<sup>1</sup> has shown by clear and convincing evidence that respondent Grant County District Attorney's Office (the "DA's Office") violated JF's rights as a crime victim. *See* Wis. Stat. § 950.04(1v).

### **BOARD PROCEDURE**

2. JF filed a complaint with the Board on May 5, 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).

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<sup>1</sup> This probable cause determination uses the victim'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 June 25, 2021, a response was filed on behalf of the DA's Office and Victim Witness Coordinator Darla Adams.

5. At a meeting on September 14, 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 of its conclusions by issuing a written probable cause determination on October 19, 2021. *See Wis. Admin. Code CVRB § 1.05(8)*.

### **PROBABLE CAUSE DETERMINATION**

7. The Board found probable cause that the DA's Office violated JF's right to attend a court proceeding in the case pursuant to Wis. Const. art. I, § 9m(2)(e) and Wis. Stat. § 950.04(1v)(b).

### **INVESTIGATION SUMMARY**

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

9. The Board's operations director obtained a transcript of the January 12, 2021, hearing at issue in this case and a sworn statement from JF's coworker who says he overheard JF offer to drive to the hearing.

### **FINDINGS OF FACT**

10. 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).

11. 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.

12. JF was the victim of a battery by an inmate in August 2019 while employed at a Wisconsin correctional institution. This fact is undisputed.

13. On January 12, 2021, the court was scheduled to hear a status update in the case in which JF was a victim. District Attorney Lisa Riniker ("DA Riniker") appeared for the state from her office via videoconference. During the hearing, the defendant stated that he wanted to enter a plea to the

charged offense and be sentenced. The DA's Office had no prior notice that the defendant intended to proceed in this way. These facts are undisputed.

14. DA Riniker contacted Victim Witness Coordinator Adams, who was in an adjacent office, and asked her to contact JF. Adams was able to speak with JF while he was at work. She explained what was happening and asked if moving forward was acceptable to him. These facts are undisputed.

15. The parties dispute what happened next. JF says he wanted to attend the hearing but was unable to join the proceeding by phone or video, as Adams suggested. JF says he offered to drive to court to attend the hearing in person, but Adams said they could not wait for him. The DA's Office says that JF told Adams that he wanted to get the case over with and did not want to appear.

16. The Board resolves this factual dispute in favor of JF. Both the witness statement and hearing transcript corroborate JF's version of the facts.

17. In a written statement, a witness to JF's side of the call with Adams reports that he overheard JF offer to drive to the hearing. The witness further reports that after the call JF told him that the hearing was in progress, and they were not willing to wait for him. According to the witness, JF was upset by this.

18. The transcript further corroborates JF's story. The Board finds the following portion of the transcript particularly enlightening:

THE COURT: Mr. Carter now appears by Zoom video from Columbia Correctional. We're here for a status as to the NGI report. We have received a report which, if memory serves me correctly, opines that Mr. Carter's NGI plea is not supported by this evaluator's analysis. In light of that, Attorney Burdick, where are we at?

MR. BURDICK: Judge, in light of that, in speaking with Mr. Carter, we would like to resolve this case. He and I have reviewed the substance of a plea questionnaire. We would be ready to go today. Or, if the Court wants a different day, that's fine with us too. We would defer. But we are ready to proceed to a plea and sentencing if -- or when the Court decides we should do so.

THE COURT: I am willing to do it today if you are willing to do it today, Mr. Carter. Do you want to do it today?

MR. CARTER: Yes, sir.

THE COURT: Attorney Riniker, is the State in a position to do it today?

MS. RINIKER: Yes.

THE COURT: We don't have any victim notification issues or anything of that nature?

MS. RINIKER: Well, the victim was notified that there was a hearing today. The hearing was for the status of the doctor's report. So, they have notice of the hearing. The purpose of it is a little different than what they were notified of.

THE COURT: I'm ready to go ahead if the State is.

MS. RINIKER: Yes.

(Hearing Tr. 2:21–3:24.)

19. DA Riniker agreed to go forward with the plea and sentencing that day, even though the court and defense counsel seemed amenable to waiting. Further, when the Court asked about "victim notification issues," DA Riniker simply stated that JF was notified of the hearing but not that it was converted

to a plea and sentencing. At no time did DA Riniker explain to the court that her office had contacted JF and that he had agreed that they could go forward with the plea and sentencing, as would be expected if that is what transpired.

20. Based on the record before it, the Board finds JF's version of the facts to be more credible and, therefore, resolves this factual dispute in his favor.

### **CONCLUSIONS OF LAW**

21. 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.

22. The Board concludes that JF was a victim of Battery by Prisoners, a class H felony, prohibited by Wis. Stat. § 940.20(1).

23. The Board concludes that the DA's Office is a public agency subject to the authority of the Board. *See* Wis. Stat. § 950.09(2)(a).

24. The Board considered whether the undisputed facts demonstrate that the DA's Office violated JF's right to attend court proceedings in the case pursuant to Wis. Const. art. I, § 9m(2)(e) and Wis. Stat. § 950.04(1v)(b).

25. The record shows that the DA's Office contacted JF during the January 12, 2021, hearing and informed him that the hearing had converted

to a plea and sentencing. JF told the DA's Office that he wanted to attend the hearing, that he was unable to attend by phone or video, and that he was willing to drive to court. The DA's Office said that was not possible because the hearing was underway. The DA's Office then agreed to go forward with the plea and sentencing, even though JF wanted to attend and there was no pressure from the court or defense counsel to go forward that day. Based on these facts, the Board finds that JF has shown by clear and convincing evidence that the DA's Office violated his right to attend a court proceeding in the case. *See* Wis. Const. art. I, § 9m(2)(e) and Wis. Stat. § 950.04(1v)(b).

## ORDER

Based on the foregoing, it is hereby ORDERED:

1. That the complainant has shown by clear and convincing evidence that the respondent violated his rights as a crime victim.
2. That the Board issues a private reprimand against the DA's Office. *See Wis. Stat. § 950.09(2)(a)*. The private reprimand will be provided under separate cover.
3. 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.
4. That judicial review of this final decision is governed by Wis. Stat. §§ 227.52–.59. *See Wis. Admin. Code CVRB § 1.10*.
5. 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 25th day of April, 2022.



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Chairperson Jennifer Dunn  
Crime Victims Rights Board

## SERVICE LIST

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[address withheld]

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