

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

Case No. 2210-015

Respondent.

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### **FINAL DECISION**

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1. The Crime Victims Rights Board (the "Board") finds that the complainant KV<sup>1</sup> has shown by clear and convincing evidence that the Milwaukee County District Attorney's office ("Respondent") violated KV's rights as a crime victim.

### **BOARD PROCEDURE**

2. KV filed a complaint with the Board on October 5, 2022.
3. Upon receipt of the complaint, the Board contacted the Department of Justice, Office of Crime Victim Services, Victim Resource Center (VRC), which verified that the substance of the complaint had been presented to the VRC and that the VRC had completed its action under Wis. Stat. § 950.08(3). *See* Wis. Admin. Code CVRB § 1.05(1), (4).

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<sup>1</sup> This final decision uses the initials of the victim to protect the victim's privacy.

4. The Board gave a copy of the complaint to Respondent and invited it to answer the complaint. *See Wis. Admin. Code CVRB § 1.05(5)*. Respondent, through Assistant District Attorney Emily Zimmel (“ADA Zimmel”), filed a response on November 28, 2022.

5. The Board made a probable cause determination at a meeting on April 13, 2023. *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 notified the parties and the VRC of its conclusions through the issuance of a probable cause determination dated May 17, 2023. *See Wis. Admin. Code CVRB § 1.05(8)*.

### **PROBABLE CAUSE DETERMINATION**

8. The Board found probable cause that Respondent violated KV’s right to be heard at a proceeding implicating a victim’s right (Wis. Const. art. I, § 9m(2)(i)), her right to adequate notice of relevant proceedings and developments (Wis. Const. art. I, 9m(2)(g); Wis. Stat. § 950.04(1v)(g)), and her right to fairness and sensitivity toward victims (Wis. Const. art. I, § 9m(2)(a); Wis. Stat. § 950.04(1v)(ag)).

## **INVESTIGATION**

9. The Board requested additional information from the parties regarding the allegations on which probable cause was found.

10. The Board obtained a transcript of the relevant dismissal hearing and a packet of additional material from Respondent, including call notes and a confidential memorandum authored by the prosecutor regarding her dismissal decision. The Board elects to keep that confidential summary under seal because it contains sensitive information.

## **HEARING REQUEST**

11. The Respondent submitted a request for an evidentiary hearing, as permitted by Wis. Admin. Code CVRB § 1.07(1).

12. The Board finds that an evidentiary hearing is unnecessary because the Board has all the information it needs to resolve any material factual disputes and issue a final decision on the complaint.

## **FINDINGS OF FACT<sup>2</sup>**

13. The Board's evidentiary standard for resolving disputed factual questions is the "[c]lear and convincing evidence" standard. "Clear and

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<sup>2</sup> Unless otherwise described, the facts described in this section summarize uncontested facts derived from the Complainant's complaint, Respondent's response, and the supplemental materials obtained during the Board's investigation.

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).

14. 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 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.

15. The Board finds the following facts.

16. KV is a victim in Milwaukee County Case No. 2017CF005431.

17. On or around November 24, 2017, KV underwent surgery at Aurora St. Luke’s Hospital in Milwaukee, Wisconsin. During the rehabilitation process that followed, Tonatuh Trujano-Ramos, a nursing staff employee, was assigned to assist KV.

18. Several times during KV’s rehabilitation process, KV alleges that Mr. Trujano-Ramos sexually assaulted her.

19. KV reported these alleged incidents to the police which resulted in a referral to the Milwaukee District Attorney’s Office. On November 27, 2017, charges for second degree sexual assault were filed against Mr. Trujano-

Ramos. The case was initially assigned to Assistant District Attorney Sara Schroeder (“ADA Schroeder”).

20. Mr. Trujano-Ramos was arrested soon after KV reported the alleged assault. During his initial interview with police, he denied sexually assaulting KV. However, after being told that he would only receive probation if he told investigators the truth, he admitted to some inappropriate contact with KV.

21. A sexual assault exam followed, and none of the DNA results implicated Mr. Trujano-Ramos in the alleged sexual assault.

22. As the criminal case proceeded, Mr. Trujano-Ramos retained an expert witness to testify about concerns that Mr. Trujano-Ramos had confessed falsely.

23. ADA Schroeder handled the case for the next four years, during which KV participated remotely in various court proceedings. KV expressed satisfaction with her treatment by ADA Schroeder during this period.

24. In July 2021, ADA Zimmel replaced ADA Schroeder as the prosecuting attorney. On September 29, 2021, the case was set for a jury trial to begin on February 14, 2022.

25. ADA Zimmel scheduled a meeting with KV on February 10, 2022, to discuss KV’s testimony. ADA Zimmel’s practice is to meet with victims as close to trial as possible in order to minimize trauma.

26. ADA Zimmel and the DA's victim advocate met with KV on February 10, 2022, to discuss the facts of the case. KV's statements during this meeting about the alleged sexual assault differed from those she had initially made to investigators. KV had difficulty answering questions and became argumentative during the meeting.

27. ADA Zimmel reviewed the case file over the following weekend, considering also her February 10, 2022, meeting with KV. Given the available facts, including the expert report, the DNA test results, and KV's demeanor and inconsistent statements, ADA Zimmel decided that she could not prove the charges beyond a reasonable doubt. ADA Zimmel therefore resolved to dismiss the charges against Mr. Trujano-Ramos rather than proceed with a jury trial.

28. KV again met with ADA Zimmel and DA-based advocate Sandra Garduno on the morning of February 14, 2022, before the scheduled jury trial began. At that meeting, ADA Zimmel informed KV that, based on her review of the case file over the weekend, she intended to dismiss the charges against Mr. Trujano-Ramos. ADA Zimmel referred to language barriers, inconsistent testimony, and a concern about a false confession as reasons for dismissing the charges.

29. There are conflicting accounts of what occurred at the meeting on February 14, 2022. ADA Zimmel asserts that she told KV that KV had the right to appear in court and to request that the charges not be dismissed. KV alleges

that she asked to speak to the presiding judge to relay her concerns with the decision to dismiss charges, but that ADA Zimmel refused to allow KV to do so. KV also alleges that she requested that a new ADA be assigned to the matter, but that ADA Zimmel also refused that request. KV also allegedly asked whether she could appeal the decision to dismiss charges, and ADA Zimmel told her that she could not. There is nothing in the written record to resolve these disputes. However, it is not necessary to resolve these conflicts of fact to reach our decision here.

30. Hearing the news that charges against Mr. Trujano-Ramos would be dismissed caused KV significant emotional distress.

31. ADA Zimmel then attended a hearing and moved to dismiss the charges; KV did not attend and did not make any in-court statements in opposition to the dismissal. Charges were dismissed that day on ADA Zimmel's motion.

### **VICTIM RIGHTS AT ISSUE**

32. KV's complaint raises three potential victim rights violations: the right to be heard at a proceeding implicating a victim's right; the right to adequate notice of relevant proceedings and developments; and the right to fairness and sensitivity toward victims.

33. The right to be heard at relevant proceedings is governed by Wis. Const. art. I, § 9m(2)(i), which provides victims the right "[u]pon request, to be

heard in any proceeding during which a right of the victim is implicated, including release, plea, sentencing, disposition, parole, revocation, expungement, or pardon.”

34. The right to adequate notice of relevant proceedings is governed by Wis. Const. art. I, 9m(2)(g), which provides victims the right “[u]pon request, to reasonable and timely notification of proceedings.” *See also* Wis. Stat. § 950.04(1v)(g) (establishing right to “to have reasonable attempts made to notify the victim of hearings or court proceedings”).

35. The right to fairness and sensitivity is governed by Wis. Const. art. I, § 9m(2)(a), which provides victims the right “[t]o be treated with dignity, respect, courtesy, sensitivity, and fairness.” *See also* Wis. Stat. § 950.04(1v)(ag) (establishing right “[t]o be treated with fairness, dignity, and respect for his or her privacy”).

## **CONCLUSIONS OF LAW**

36. The Board finds that KV was a crime victim because she alleged that she suffered multiple sexual assaults, conduct prohibited by state law and punishable by a fine or imprisonment or both. *See* Wis. Stat. § 940.225(2)(g).

37. The Board finds that Respondent is an agency subject to the authority of the Board. *See* Wis. Stat. § 950.09(2)(a).



38. The Board concludes that none of the allegations in the complaint are time-barred because they relate to conduct that occurred within three years before the complaint was filed. *See* Wis. Admin. Code CVRB § 1.04(5).

39. The Board finds that KV's complaint implicates the right to be heard at a proceeding implicating a victim's right; the right to adequate notice of relevant proceedings and developments; and the right to fairness and sensitivity toward victims. *See* Wis. Const. art. I, §§ 9m(2)(a), (i), (g); Wis. Stat. §§ 950.04(1v)(ag), (g).

40. The Board concludes that Respondent violated each of these rights.

41. First, the Board considers KV's right to be heard at a proceeding implicating a victim's right. The parties' versions of events materially differ regarding whether KV was notified of her right to appear at the February 14, 2022, dismissal hearing. KV alleges that ADA Zimmer told her she had no right to appear and address the court; ADA Zimmer alleges the opposite.

42. The Board concludes that it need not resolve this dispute to find a violation of KV's right to be heard; for purposes of this decision, the Board will assume that KV was told she had a right to appear and address the court. Even so, the circumstances show that KV was not given a meaningful chance to exercise that right. These sensitive sexual assault charges had been pending for over four years, and KV had just prepared for trial with ADA Zimmer days

before and therefore reasonably expected that the case would go to trial. Then, hours before the trial was set to begin, KV learned that the charges would be dismissed. That understandably triggered a strong emotional response in KV.

43. The Board finds that, in this stressful, upsetting situation, KV did not have an adequate opportunity to exercise her right to be heard at the dismissal hearing. To do so, she would have had to compose herself in a short time in order to appear and speak in court—an unfamiliar and likely stressful setting. Indeed, ADA Zimmel knew that KV was upset, given how KV left after their meeting and did not attend the hearing. ADA Zimmel even told the court that KV “strongly disagree[d] with the decision” to dismiss charges. (Feb. 14, 2022 Hearing Tr.) The contact notes submitted by Respondent substantiate this, as they state that “V[ictim] not happy w[ith] decision.” Under these circumstances, KV could have meaningfully exercised her right to be heard only if the dismissal hearing had been adjourned to a later date, so that she could process the dismissal decision and have time to compose herself to appear in court.

44. The Board therefore finds that KV’s right to be heard at the dismissal hearing was violated.

45. Second, we consider KV’s right to adequate notice of relevant proceedings and developments. Although the criminal case against Mr.

Trujano-Ramos had been pending for over four years and had been set for a jury trial since September 29, 2021, KV was not informed until the morning the jury trial was scheduled to begin that the charges would be dismissed. For largely the same reasons that the Board finds that KV could not adequately exercise her right to be heard, it also concludes that this short notice was not adequate and violated KV's rights.

46. To be clear, the Board does not mean to question ADA Zimmel's trial preparation methods. Her decision to wait until shortly before trial to prepare with KV was reasonable, and her need to take time to decide whether to dismiss charges was also reasonable. However, proceeding with the dismissal hearing the same day as informing KV of the decision to dismiss charges was not reasonable.

47. Third, we consider KV's right to fairness and sensitivity toward victims. KV experienced substantial emotional distress upon learning the morning of February 14, 2022, that charges against her alleged assailant would be dismissed. Again, it was unreasonable to expect KV to compose her thoughts in the short time between hearing the news that morning and the dismissal hearing in order to meaningfully exercise her right to be heard at the hearing. The Board concludes that this treatment was unfair and insensitive given the totality of the circumstances and nature of the case.


48. The Board understands that the substantial delay in this case made the abrupt dismissal even more upsetting. The overall circumstances likely involve the conduct of several criminal justice actors in this case. Our procedures do not allow us to investigate the conduct of the judiciary and answer the question of how this sensitive crime was allowed to remain pending for four years leading up to these events. Similarly, the procedures that govern our analysis of complaints do not afford us the opportunity to learn whether there had been objections against these delays by the assigned prosecutors or the leadership of the Milwaukee District Attorney's Office. Clearly, the fundamental harm that occurred in this case was in many ways derivative of the delay that occurred, and there are other criminal justice system actors who likely played a part in what transpired.

## ORDER

Based on the foregoing, it is hereby ORDERED:

1. That the complainant has shown by clear and convincing evidence that the respondent violated her rights as a crime victim.
2. That a sanction for that violation is ordered in the form of a private reprimand, which will be sent under separate cover to the respondent.
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 8th day of December 2023.

  
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Chairperson Jennifer Dunn  
Crime Victims Rights Board

## SERVICE LIST

KV

[street address withheld]

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