

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

Case No. 2210-017

Respondent.

FINAL DECISION

1. The Crime Victims Rights Board finds that the complainant, RS,¹ has not shown by clear and convincing evidence that the respondent, the Bayfield County District Attorneys' Office, violated her rights as a crime victim. *See Wis. Const. art. I, § 9m; Wis. Stat. § 950.04(1v).*

BOARD PROCEDURE

2. RS filed a complaint with the Board on October 18, 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).*
4. The Board gave a copy of the complaint to the respondent and invited them to answer the complaint. *See Wis. Admin. Code CVRB § 1.05(5).*

¹ This final decision uses the initials of the complainant to protect her privacy.

Bayfield County District Attorney Kimberly Lawton filed a response on behalf of her office on February 6, 2023.

5. The Board found probable cause that RS's rights had been violated at a meeting on April 13, 2023. *See* Wis. Admin. Code CVRB § 1.05(6).

6. The Board notified the parties and the VRC of its conclusions through the issuance of a written probable cause determination. *See* Wis. Admin. Code CVRB § 1.05(8).

PROBABLE CAUSE DETERMINATION

7. The Board found probable cause that RS was denied an opportunity to consult with the district attorney about changes to the proposed offer when she was sent notice of the plea agreement on April 26, 2021. *See* Wis. Const. art. I, § 9m(2)(h); Wis. Stat. § 950.04(1v)(j).

INVESTIGATION SUMMARY

8. The Board directed its operations director to conduct an investigation and obtain additional information from the parties regarding the allegations on which probable cause was found.

9. On July 19, 2023, District Attorney Lawton submitted a Request for Hearing (RFH) on behalf of the agency, with documentation that addressed the allegations on which probable cause was found. The RFH comprised 69 pages which included a summary, the minutes from every court hearing in the case, selected email correspondence with RS, selected case documents, and

transcripts of hearings that took place on March 2, 2021, March 16, 2021, April 27, 2021, and May 18, 2021. DA Lawton stated she did not believe a hearing would be necessary at the conclusion of the investigation but requested the Board preserve her right to request a hearing as permitted by Wis. Admin. Code CVRB § 1.07(1).

HEARING REQUEST

10. 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

11. 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).

12. 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.

13. The Board finds the following facts.

14. On August 21, 2020, Jody Heffner, the victim witness coordinator for the DA's office, sent a letter to RS informing her, among other things, of her rights as a victim, including that she had "the right to communicate with District Attorney Kimberly Lawton regarding the prosecution of this case, as well as possible outcomes including potential plea agreements and sentencing recommendations." (RFH, p. 39.)

15. On September 22, 2020, Ms. Heffner sent a letter to RS "that [the] negotiation of a final [plea] agreement, if any, can happen quickly depending on a number of factors. If you want to know the status of the negotiation please contact me." The letter also informed RS that "[s]ometimes defendants will decide to take an offer to settle at the last minute before a status conference. If you want to be at sentencing please make sure to let me know so that the District Attorney can schedule a sentencing date instead of having a last minute sentencing at a status conference without you." (RFH, p. 38)

16. RS conferred with the DA's office on February 5, 2021.

17. The respondent stated that the standard procedure in Bayfield County is for defense counsel to report the status of the case at status conferences. The Board's review of the hearing transcripts submitted shows this to be the case.

18. The court conducted a status conference on March 2, 2021. At the conference, defense counsel indicated that he had received an updated plea offer and requested that the court set another status conference, which was scheduled for March 16. (RFH, pp. 66–68 (Mar. 2, 2021, Hr’g Tr., pp. 1–3).)

19. On March 15, 2021, the victim witness coordinator for the DA’s office emailed RS and informed her that “[i]t does not appear that the defense attorney ha[d] accepted the new offer. At tomorrow’s status conference, they will update the court and schedule the matter for further proceedings.” (RFH, p. 23.)

20. At the March 16, 2021, status conference, defense counsel told the court that he “believe[d] we have everything needed for an agreement. I do need to reach out to my client one more time to confirm that. And I believe the State just needed to confirm something with the alleged victim in the matter.” (RFH, p. 63 (Mar. 16, 2021, Hr’g Tr., p. 2).) The circuit court then set a plea and sentencing hearing for April 27, 2021. (RFH, pp. 63–64 (Mar. 16, 2021, Hr’g Tr., pp. 2–3).)

21. The prosecution and defense continued negotiations over the weekend of April 24–25 due to new DNA test results that excluded the defendant. (RFH, pp. 2–3.)

22. On April 26, 2021, the victim witness coordinator emailed RS informing her that there were changes to the offer and described the new offer in detail. (RFH, pp. 22–23.)

23. The morning of April 27, 2021, prior to the hearing, the victim witness coordinator had a call with RS informing her that the plea and sentencing hearing may not occur. RS stated that she had questions and expressed her desire to consult with the DA's office. (RFH, p. 3.)

24. At the April 27, 2021, hearing, defense counsel stated that he spoke “with the State over the weekend and we have some new evidence, and then we had an updated offer which I was able to speak with Mr. Rosin about yesterday,” and that the defendant was agreeable to the offer. The court set a plea and sentencing hearing for May 18, 2021. (RFH, pp. 59–60 (Apr. 27, 2021, Hr'g Tr., pp. 2–3).)

25. On April 27, 2021, the victim witness coordinator emailed a letter to RS notifying her that a plea and sentencing hearing had been set for May 18, 2021, at 9:30 a.m. The letter informed RS that she had a right to appear at the hearing and submit a victim impact statement for the court to consider. (RFH, p. 20.)

26. Later that day, RS requested a meeting with DA Lawton via email. The victim witness coordinator responded with a link to an electronic

scheduling program that RS could use to schedule a meeting for a time when both RS and DA Lawton were available. (RFH, p. 21.)

27. RS conferred with DA Lawton on May 5, 2021, about the new plea offer. (RFH, p. 3.)

28. On May 14, 2021, DA Lawton filed a letter with the court that the “State has complied with victim rights legislation” and specifically that the victim had been notified of the hearing, the right to attend, and the State had conferred with the victim if requested. DA Lawton also informed the court that an amended crime victim information form CR-247 had been e-filed and that updated restitution information and a victim impact statement had been previously e-filed. (RFH, p. 35.)

29. The plea and sentencing hearing occurred on May 18, 2021. The defendant pled guilty to fourth degree sexual assault contrary to Wis. Stat. § 940.225(3m) with a recommended imposed and stayed sentence of six months in jail and eighteen months of probation. RS spoke at the hearing and stated that, while she understood the law that the court and the attorneys needed to follow, “it’s almost been a year and it’s still not getting any easier for me. And it’s just not fair that I have to deal with this the rest of my life and he’s pretty much just getting away with it.” (RFH, p. 49 (May 18, 2021, Hr’g Tr., p. 9).)

CONCLUSIONS OF LAW

30. The Board concludes that RS is a crime victim because she was the victim of sexual assault, conduct prohibited by state law and punishable by a fine or imprisonment or both. *See* Wis. Stat. §§ 939.12, 940.225(3m).

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

32. The Board concludes that none of the allegations in the complaint occurred more than three years before the complaint was filed. *See* Wis. Admin. Code CVRB § 1.04(5).

33. The victim right at issue here was the right to consult with the attorney for the government. Under Wis. Const. art. I, § 9m(2)(h), a crime victim is entitled “[u]pon request, to confer with the attorney for the government.” Similarly, under 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).”

34. Wisconsin Stat. § 971.095(2) provides:

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.

35. “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).

36. The Board finds that RS has not shown by clear and convincing evidence that the respondent violated her rights as a crime victim by denying her an opportunity to consult with the district attorney in a timely manner.

37. The record shows that RS did have the opportunity to consult with the DA’s office in a timely manner and that the DA’s office communicated with RS throughout the plea negotiation process. From the materials initially submitted, it was not clear that RS had the opportunity to consult with the DA’s office in a timely manner prior to the final plea and sentencing hearing. The documents provided by the respondent, including emails with RS and transcripts of court hearings, show that the DA’s office did consult with RS as the plea offers changed.

38. Specifically, the DA’s office emailed a letter to RS the day before the April 27, 2021, hearing describing the revised plea offer in detail and letting RS know that the next day’s hearing would likely not be a plea and sentencing. After the hearing, the DA’s office emailed RS and notified her that

a plea and sentencing hearing had been set for May 18, 2021, at 9:30 a.m. The letter informed RS that she had a right to appear at the hearing and submit a victim impact statement for the court to consider.

39. On April 27, 2021, RS requested a meeting with DA Lawton via email. The victim witness coordinator responded that day with a link to schedule a consultation with DA Lawton about the new plea offer, which occurred on May 5, 2021. That conference afforded RS an opportunity to consult with DA Lawton in a timely manner and provide meaningful input on the case because it occurred before the plea was accepted on May 18, 2021. 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 RS 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).

40. The Board would like to commend the DA's office, particularly the victim witness coordinator, on its efforts to communicate with RS throughout the case. The victim witness coordinator explained the legal concepts and proceedings in plain language so that a layperson could understand what was happening in the case.

41. The Board understands that RS is upset with the terms of the plea agreement and feels that the defendant did not receive a sufficient sentence for his crime. The Board's review, however, is statutorily limited to alleged

violations of a victim's rights under the Wisconsin Constitution or the Wisconsin Statutes. The potential violation in this case was whether the right to consult with the attorney for the government was violated, and the evidence showed that the respondent did not violate that right.

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–.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 12th day of December, 2023.



Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

RS

[street address withheld]

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