

IN THE MATTER OF COMPLAINT
AGAINST THE WAUSHARA COUNTY
SHERIFF'S OFFICE,

Case No. 2212-020

Respondent.

PROBABLE CAUSE DETERMINATION

1. The Crime Victims Rights Board reviewed a complaint filed by AC¹ against the Waushara County Sheriff's Office. The Board evaluated the complaint and other relevant information to determine whether there is probable cause that the respondent violated AC's rights as a crime victim. *See* Wis. Const. art. I, § 9m; Wis. Stat. § 950.04(1v). The Board finds no probable cause.

BOARD PROCEDURE

2. AC filed a complaint with the Board on December 28, 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

¹ This probable cause determination uses the initials of the complainant to protect her privacy.

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). Waushara County Sheriff Walter Zuehlke filed a response on behalf of his office on February 14, 2023.

5. The Board made this 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, the complaint, responses, and VRC letter documenting the informal complaint process. *See* Wis. Admin. Code CVRB § 1.05(7)(a)–(c).

7. The Board notifies the parties and the VRC of its conclusions through the issuance of this probable cause determination. *See* Wis. Admin. Code CVRB § 1.05(8).

STATEMENT OF THE CASE

AC's complaint.

8. AC alleges that on February 25, 2022, she was sitting in her car in her driveway during icy weather when a series of about ten shots was fired close to her. AC then dialed 911.

9. AC alleges that her neighbor admitted to shooting to the east while AC was in the car, which is to the east of where the shots were fired.

10. AC alleges that this is part of a pattern of harassment by the neighbor against her husband and her.

11. Deputy Lance Nelson and Deputy Minehan from the Sheriff's Office arrived at the scene following the 911 call.

12. AC raises several issues with Nelson's investigation of the incident. Among other things, AC says that although Nelson spent over 45 minutes walking on the neighbor's property, Nelson did not interview her, which led to his report diverging from her experience of the incident.

13. AC also contends that the officers refused to look at other evidence and made mistakes in the investigation.

14. AC has concerns about the officers asking for her phone number to provide to the neighbor, which they suggested so that the neighbor could contact AC before shooting.

15. AC called the Sheriff's Office to complain about this treatment, and spoke with Nelson's supervisor Lieutenant Stacy Vaccaro.

16. Vaccaro took a report from AC, said she would address issues with Nelson, and then referred the case to the district attorney for consideration of possible charges.

17. AC says that she “was satisfied with my interview with Lieutenant Vaccaro, felt that her response met my needs as a victim, and did not request any follow up from Deputy Nelson.” (Compl. 5.)

18. Nelson, however, called AC on March 2, 2022, and interviewed AC. AC takes issue with the way that interview was conducted.

19. AC alleges that Nelson said the neighbor would have a better claim that she and her husband were harassing him because they were “constantly calling the police.” (Compl. 6.)

20. Nelson also said he did not interview AC because he thought she would say the same thing as her husband.

The Sheriff’s Office’s response.

21. Sheriff Zuehlke provided a written response to the complaint along with copies of all the reports and videos in the Sheriff’s Office’s system related to AC and her neighbor.

22. Zuehlke “believe[s] that our Department has been doing its best to address the complaints and have not intentionally violated Chapter 950 of the Wisconsin Statutes.” (Resp. 1.)

ALLEGATIONS OF VICTIM RIGHTS VIOLATIONS

23. For purposes of its initial review, the Board construes AC’s complaint as potentially raising one victim rights violation.

24. **Right to be treated with respect and fairness.** A crime victim has a right “[t]o be treated with dignity, respect, courtesy, sensitivity, and fairness.” Wis. Const. art. I, § 9m(2)(a). *See also* Wis. Stat. § 950.04(1v)(ag) (right “[t]o be treated with fairness, dignity, and respect for his or her privacy by public officials, employees, or agencies”).

DETERMINATIONS OF FACT

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

INTERPRETATIONS OF LAW

26. 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 occurred outside the three-year limitations period; (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.

27. Whether a person is a crime victim is determined by the Wisconsin Constitution and by statute. In relevant part, the Constitution provides that a “victim” is “[a] person against whom an act is committed that would constitute a crime if committed by a competent adult.” Wis. Const. art. I, § 9(m)(1)(a)1; *see also* Wis. Stat. § 950.02(4)(a)1. “A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both.” Wis. Stat. § 939.12.

28. Whether the 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).

29. Whether the allegations occurred outside the three-year limitations period 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).

30. 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).

31. 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

32. The Board finds no probable cause of a crime victims rights violation.

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

34. The threshold question is whether AC is a crime victim. The Board finds AC was a crime victim during the time relevant to the complaint because she alleged that there was on-going harassment and she had been shot at on February 25, 2022, conduct prohibited by state law and punishable by a fine or imprisonment or both. *See Wis. Stat. §§ 939.12, 950.02(1m), (4)*.

35. The next question is whether the respondent is subject to the authority of the Board. The Sheriff's Office is a public agency subject to the authority of the Board. *See Wis. Stat. § 950.09(2)(a)*.

36. The third question is whether any of the allegations in the complaint occurred outside the three-year limitations period. The Board finds 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).

37. The fourth question is whether the allegations in the complaint implicate AC's constitutional or statutory rights as a victim. The Board finds that the complaint alleges actions that may implicate AC's right to be treated with respect and fairness. Wis. Const. art. I, § 9m(2)(a); Wis. Stat. § 950.04(1v)(ag).

38. The final question is whether there is probable cause to believe that the respondent violated this right.

39. First, the Board's review is limited to the interactions between AC and the respondent related to the February 25, 2022, incident.

40. The Board reviewed the parties' submissions, including photos, audio of 911 calls and radio traffic, four squad videos, and audio of a phone call between AC and Lieutenant Vaccaro.

41. AC raises several complaints about how Deputy Nelson conducted the investigation, including that he did not speak to her during his investigation and that he assumed that she and her husband would say the same thing.

42. Lieutenant Vaccaro spoke with AC regarding these issues, acknowledged that AC should have been interviewed as the complainant, and said she would address the issue with Nelson. Vaccaro also took a supplemental report regarding points that AC thought Nelson had gotten wrong in his report. Vaccaro also told AC that she would refer the matter to the district attorney for consideration.

43. The Board finds that the conversation between Vaccaro and AC was very respectful of AC and responded to AC's concerns about the investigation. AC's call to a supervisor like Vaccaro was an appropriate way to raise concerns about how the investigation had been conducted. Vaccaro's response was a fair and respectful response to AC's concerns about the quality of the investigation and the accuracy of Nelson's report.

44. The Board does not have authority to review the quality and scope of the investigation or the interviews that took place.

45. AC also alleges that Nelson later called and threatened her by claiming that the neighbor may have a claim against her if she keeps calling law enforcement. The Board, however, did not address matters related to ongoing reports and incidents regarding AC's neighbor.

46. The Board finds that AC's allegations arise from her dissatisfaction with the quality and scope of the investigation which are not matters subject to the authority of the Board. Her concerns were best

addressed by contacting a supervisor and a response by agency leadership, which occurred here.

47. The Board finds that AC has not met her burden of showing the respondent violated a constitutional or statutory victim right.

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–.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 8th day of June, 2023.



Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

AC

[street address withheld]

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