

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

Case No. 223-004

Respondent.

FINAL DECISION

1. The Crime Victims Rights Board (the "Board") concludes that the complainant MN¹ has shown by clear and convincing evidence that the respondent Milwaukee County Sheriff's Office (the "Sheriff's Office") violated MN's rights as a crime victim.

BOARD PROCEDURE

2. MN filed a complaint with the Board dated February 28, 2022.
3. Upon receipt of the complaint, the Board contacted the Department of Justice (DOJ), 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).

¹ 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 the Sheriff's Office and invited it to answer the complaint. *See* Wis. Admin. Code CVRB § 1.05(5). Milwaukee County Sheriff Earnell R. Lucas filed a response on behalf of the Sheriff's Office.

5. At a meeting on December 15, 2022, the Board found probable cause that MN's victim rights had been violated. *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 the Sheriff's Office violated MN's right to receive written information about her rights, Wis. Stat. § 950.08(2g); Wis. Stat. § 950.04(1v)(t); to information about the status of the investigation, Wis. Const. art. I, § 9m(2)(o); and to be treated with fairness, dignity, and respect, Wis. Const. art. I, § 9m(2)(a); Wis. Stat. § 950.04(1v)(ag).

INVESTIGATION

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

9. MN submitted information responsive to the Board's request. The Sheriff's Office did not submit information responsive to the Board's request.

FINDINGS OF FACT

10. In January 2020, someone crashed a vehicle into MN's vehicle while she was driving.

11. MN spoke with the suspect on the scene before he fled in a vehicle that was waiting near the crash.

12. MN's then-newborn baby was also in the vehicle with her during the crash.

13. The day after the incident, Deputy Sheriff Shawn Bacich of the Sheriff's Office contacted MN by phone to discuss the evidence Deputy Bacich had collected regarding the incident.

14. Deputy Bacich told MN that he was able to identify the suspect as Simon Castillo.

15. Deputy Bacich said that he had been to several locations looking for Mr. Castillo in order to arrest him.

16. Deputy Bacich also let MN know that a warrant for Mr. Castillo's arrest would be issued and that Deputy Bacich would contact MN again when Mr. Castillo was located.

17. After this conversation between MN and Deputy Bacich, a summary-arrest package was put together and a charging conference was held with Assistant District Attorney Emily Zimmel.

18. All citations and charges against Mr. Castillo were dropped following the charging conference.

19. MN was not contacted before the citations and charges against Mr. Castillo were dropped. Nor was she notified afterward that this had occurred.

20. MN found out the charges had been dropped from Wisconsin's Consolidated Court Automation Programs (CCAP).

21. Deputy Bacich had no contact with MN following the charging conference with ADA Zimmel, even though MN left several messages with Deputy Bacich's supervisors asking that he return her calls.

22. MN was never given written information regarding her rights as a crime victim.

23. MN initiated a citizen complaint with the Sheriff's Office on July 30, 2021, regarding the vehicle crash on January 17, 2020.

24. MN's citizen complaint prompted the Sheriff's Office to open an internal investigation.

25. The internal investigation resulted in the Sheriff's Office suspending Deputy Bacich without pay for a period of time.

26. The Sheriff's Office notified MN of the outcome of its investigation on December 28, 2021.

VICTIM RIGHTS AT ISSUE

27. **Right to written information.** “No later than 24 hours after a law enforcement agency has initial contact with a victim of a crime,” that agency “shall make a reasonable attempt to provide to the victim written information” regarding his or her rights. Wis. Stat. § 950.08(2g); *see also* Wis. Stat. § 950.04(1v)(t) (providing that crime victims have right to “receive information from law enforcement agencies”).

28. **Right to information about the status of the investigation.** Crime victims have the right to receive, “[u]pon request, . . . reasonable and timely information about the status of the investigation and the outcome of the case.” Wis. Const. art. I, § 9m(2)(o).

29. **Right to be treated with fairness, dignity, and respect.** A crime victim has a right to “be treated with fairness, dignity, and respect for his or her privacy by public officials, employees, or agencies.” Wis. Stat. § 950.04(1v)(ag); *see also* Wis. Const. art. I, § 9m(2)(a) (providing the right to “be treated with dignity, respect, courtesy, sensitivity, and fairness”). This right “does not impair the right or duty of a public official or employee to conduct his or her official duties reasonably and in good faith.” Wis. Stat. § 950.04(1v)(ag).

CONCLUSIONS OF LAW

30. 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).

31. 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.

32. The Board concludes that MN was a crime victim because someone intentionally struck her vehicle with his and then fled the scene, conduct prohibited by state law and punishable by a fine or imprisonment or both. *See* Wis. Stat. § 346.67.

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

34. The Board concludes that none of MN's allegations occurred outside the three-year limitations period. *See* Wis. Admin. Code CVRB § 1.04(5).

35. The Board concludes that the allegations in MN's complaint implicate the right to written victim rights information, Wis. Stat. § 950.08(2g); Wis. Stat. § 950.04(1v)(t), the right to information about the status of the investigation, Wis. Const. art. I, § 9m(2)(o), and the right to be treated with fairness, dignity, and respect, Wis. Const. art. I, § 9m(2)(a); Wis. Stat. § 950.04(1v)(ag).

36. **Right to written information.** MN was entitled to receive written notice of her rights as a crime victim no later than 24 hours after she spoke with law enforcement. Wis. Stat. § 950.08(2g); Wis. Stat. § 950.04(1v)(t). It is undisputed that MN was not provided written notice of her rights at any time after the vehicle crash. Therefore, the Board concludes that the Sheriff's Office violated her rights as provided in Wis. Stat. § 950.08(2g) and Wis. Stat. § 950.04(1v)(t).

37. **Right to information about the status of the investigation.** Upon request, MN was entitled to receive reasonable and timely information about the status of the Sheriff's Office's investigation and the outcome of the case. Wis. Const. art. I, § 9m(2)(o). After the vehicle crash, Deputy Bacich failed to return MN's calls. MN was not contacted before the citations and charges against Mr. Castillo were dropped. Nor was MN notified of this development afterward. MN ultimately learned of the case status on CCAP. Therefore, the

Board concludes that the Sheriff's Office violated MN's rights as provided in Wis. Const. art. I, § 9m(2)(o).

38. **Right to be treated with fairness, dignity, and respect.** MN was entitled to be treated with fairness, dignity, and respect. Wis. Stat. § 950.04(1v)(ag); Wis. Const. art. I, § 9m(2)(a). Deputy Bacich told MN a warrant would be issued for the arrest of Mr. Castillo and that Deputy Bacich would be in touch with MN when Mr. Castillo was arrested. What happened instead is that Deputy Bacich ignored MN's calls. MN was also left unaware of the ultimate decision not to charge Mr. Castillo until she learned of it on CCAP. Deputy Bacich's failure to follow through or respond to requests for information from MN offended her right to be treated with fairness, dignity and respect in violation of Wis. Const. art. I, § 9m(2)(a) and Wis. Stat. § 950.04(1v)(ag).

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 the Board declines to issue a sanction. *See* Wis. Stat. § 950.09(2).
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 31st day of May 2023.



Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

MN

[street address withheld]

Milwaukee County Sheriff Denita Ball
Milwaukee County Safety Building
821 W. State St, Room 107
Milwaukee, WI 53233

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