

IN THE MATTER OF COMPLAINT
AGAINST THE TAYLOR COUNTY
DISTRICT ATTORNEY'S OFFICE
AND THE MILWAUKEE COUNTY
MEDICAL EXAMINER'S OFFICE,

Case No. 223-005

Respondents.

PROBABLE CAUSE DETERMINATION

1. The Crime Victims Rights Board reviewed a complaint filed by ST¹ against the Taylor County District Attorney's Office ("DA's Office") and the Milwaukee County Medical Examiner's Office ("ME's Office"). The Board evaluated the complaint and other relevant information to determine whether there is probable cause that the respondents violated ST's rights as a crime victim. *See* Wis. Stat. § 950.04(1v). The Board finds no probable cause.

BOARD PROCEDURE

2. ST filed a complaint with the Board on March 14, 2022.

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

¹ This probable cause determination uses the initials of the victim and others involved in the case to protect the victim's privacy.

had completed the informal complaint process as to the issues raised in the complaint. *See Wis. Admin. Code CVRB § 1.05(1), (4).*

4. The Board gave a copy of the complaint to the respondents and invited them to answer the complaint. *See Wis. Admin. Code CVRB § 1.05(5).* Milwaukee County Chief Medical Examiner Brian Peterson filed a response on behalf of his office on August 3, 2022, and Taylor County District Attorney Kristi Tlusty filed a response on behalf of her office on August 23, 2022.

5. The Board made this probable cause determination at a meeting on January 18, 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, responses, and DOJ letter documenting the informal complaint process. *See Wis. Admin. Code CVRB § 1.05(7)(a)–(c).*

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

STATEMENT OF THE CASE

ST's complaint.

8. ST alleges that her father was the victim of a homicide on February 21, 1999.

9. The manner of death was listed as homicide on his death certificate.

10. The Taylor County Sheriff's Department investigated the case as a homicide with one main suspect.

11. In early 2017, a television crime show called "Cold Justice" examined ST's father's case and aired an episode about it on September 22, 2017.

12. On September 26, 2017, ST called DA Tlusty for an update on her father's case. ST says she was "given the impression that time and lack of help was [the] reason for the delay in reviewing the case and possibly moving forward with charging of the suspect." (Compl. 5.)

13. On December 20, 2017, DA Tlusty sent ST an email stating that DOJ was unable to appoint an attorney to help her with the case and she would notify ST as soon as she made a charging decision.

14. On April 20, 2018, ST learned that one of the detectives investigating her father's death was facing charges for providing additional case files to "Cold Justice" without permission.

15. On May 26, 2018, ST emailed DA Tlusty for an update on the case.

16. On May 31, 2018, DA Tlusty responded, explaining that the charging decision was delayed due to a potential conflict involving the prosecution of the detective.

17. On June 14, 2018, DA Tlusty sent ST an email stating that she contracted to hire a retired prosecutor to help her review of the case.

18. On September 5, 2018, ST met with the new prosecutor, Mark Williams, who told ST that he would have a charging decision by the end of November.

19. On January 4, 2019, Williams asked the Milwaukee County Medical Examiner, Dr. Brian Peterson, to review the case and consider whether ST's father's death could have been suicide. (Compl. 6; Compl. Attach. 12.)

20. On January 18, 2019, Dr. Peterson issued a report, opining that ST's father most likely died by suicide. (Compl. Attach. 12.)

21. On February 2, 2019, Williams filed his final report with the court, stating that based on the facts of the case and Dr. Peterson's report on the manner of death, as verified by a medical examiner from another county, "it cannot be proven beyond a reasonable doubt that [ST's father's] death was caused by a homicide." (Comp. Attach. 10–11.)

22. On February 7, 2019, ST emailed DA Tlusty, asking about "this sudden turn around of manner of death." (Compl. 7.)

23. DA Tlusty responded that she was no longer responsible for the case and that Williams was appointed to decide whether to prosecute.

DA Tlusty encouraged ST to contact Williams to schedule a time to discuss her concerns.

24. On March 20, 2019, ST met with Williams and Peterson at the ME's Office.

25. ST describes the meeting as "tense." (Compl. 9.) ST disputed Peterson's conclusion about the manner of death and wanted an explanation. She asked detailed questions to which Peterson responded but was "defensive" and had "a demeanor the entire meeting that his decisions were not to be challenged." (Compl. 11.)

26. ST says Williams "gave zero explanations to [her] concerns" and "offered no intervention of a conversation that was consistently one-sided with Peterson being the aggressor." (Compl. 9–10.)

27. After the meeting, Peterson and Williams had a casual conversation and were laughing in view of ST. Neither offered an apology.

The DA's Office's response.

28. DA Tlusty provided a written response to the complaint along with 34 pages of emails and other documents.

29. According to DA Tlusty, her review of the case did not start until after June 9, 2017, when the sheriff's department referred the case for review and charging. (DA Resp. 1.)

30. On June 12, 2017, DA Tlusty asked DOJ for assistance in prosecuting the case given its complexity and her inexperience with homicide cases. (DA Resp. 1, 5.)

31. DOJ reviewed the case, and DA Tlusty provided additional information. (DA Resp. 1, 4–14.)

32. On December 20, 2017, DOJ notified DA Tlusty that the agency was unable to provide representation due to a conflict: DOJ was prosecuting the Taylor County detective charged with misconduct in public office for providing additional case files to “Cold Justice” without permission. (DA Resp. 10.)

33. DA Tlusty continued her review of the case reports and asked the sheriff’s department to conduct some follow-up investigation. (DA Resp. 2, 14.)

34. DA Tlusty also continued to seek an attorney who could assist with the case or serve as a special prosecutor. She learned that Williams might be willing to assist, and she contacted him directly. On June 12, 2018, Tlusty made arrangements to meet with Williams to review the case. (DA Resp. 2.)

35. On June 28, 2018, DA Tlusty contacted the Wisconsin Department of Administration (DOA) to appoint Williams as special prosecutor. DOA appointed Williams special prosecutor because it concluded that DA Tlusty had a conflict due to her involvement with the investigation and prosecution of the detective in the case. (DA Resp. 2, 18.)

The ME's Office's response.

36. Dr. Peterson submitted a written response to the complaint on behalf of the ME's Office.

37. Dr. Peterson understood ST to be “upset with [his] opinion, despite having misunderstood it.” He explained that he “opined that the manner of death of [ST's] father is most likely suicide, but [he] cannot rule out homicide given the materials available (20 years after the fact) for review.” (ME Resp.)

38. Dr. Peterson further explained that ST may have misunderstood his detached attitude at the March 20, 2019, meeting: “the issue that day was that [ST] was advocating a single position, while I was not. As I tried to explain my reasoning, [ST] became increasingly upset. As I had no emotional connection to this case, I did not.” (ME Resp.)

ALLEGATIONS OF VICTIM RIGHTS VIOLATIONS

39. The Board construes ST's complaint as raising two timely victim rights violations.

40. **Right to a speedy disposition of the case.** A crime victim has a right to “a speedy disposition of the case in which they are involved as a victim in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.” Wis. Stat. § 950.04(1v)(k); *see also* Wis. Const. art. I, § 9m(2)(c), (d).

41. **Right to be treated with fairness, dignity, and respect.** A crime victim has a right to 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) (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).

DETERMINATIONS OF FACT

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

INTERPRETATIONS OF LAW

43. 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 are time-barred; (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.

44. Whether a person is a crime victim is determined by statute. “A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both.” Wis. Stat. § 939.12. A crime victim is “[a] person against whom a crime has been committed” or, if that person is deceased, a family member of that person. Wis. Stat. § 950.02(4)(a)4.

45. Whether a 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).

46. Whether the allegations are time-barred 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).

47. 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).

48. 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

49. The Board finds no probable cause that ST's rights as a crime victim were violated.

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

51. The threshold question is whether ST is a crime victim. ST was a crime victim during the time relevant to the complaint because her father's death was investigated as a possible homicide, conduct prohibited by state law and punishable by a fine or imprisonment or both. *See Wis. Stat. §§ 939.12, 950.02(1m), (4)*.

52. The next question is whether the respondents are subject to the authority of the Board. The DA's Office and ME's Office are public agencies subject to the authority of the Board. *See Wis. Stat. § 950.09(2)(a)*.

53. The next question is whether any of the allegations in the complaint are time-barred. ST's allegations about conduct that occurred prior to March 14, 2019, are time-barred because that alleged conduct occurred more than three years before ST filed her complaint with the Board on March 14, 2022. The Board declines to exercise its discretion to issue a report and recommendation as to the respondents' alleged conduct before March 14, 2019. *See* Wis. Admin. Code CVRB § 1.04(5). The Board will address alleged conduct occurring prior to March 14, 2019, only to the extent it bears on allegations relating to conduct occurring after that date.

54. The fourth question is whether the allegations in the complaint implicate ST's constitutional or statutory rights as a victim. The Board finds that ST's complaint implicates the right to a speedy disposition of the case, Wis. Stat. § 950.04(1v)(k); Wis. Const. art. I, § 9m(2)(c), (d), and the right to be treated with dignity, respect, courtesy, sensitivity, and fairness, Wis. Const. art. I, § 9m(2)(a); Wis. Stat. § 950.04(1v)(ag).

55. The final question is whether there is probable cause to believe that the respondents violated these rights.

Right to a speedy disposition of the case.

56. ST alleges that the DA's Office violated her right to a speedy disposition because of the time it took to make a charging decision. The Board finds no probable cause as to this allegation.

57. The case was referred to DA Tlusty on June 9, 2017. Given the complexity of the case and her inexperience with homicide cases, DA Tlusty immediately reached out to DOJ for assistance. For the next six months, DOJ considered the request and sought additional information from DA Tlusty, which she provided. On December 20, 2017, DOJ notified DA Tlusty that the agency was unable to provide representation due to a conflict. For the next six months, DA Tlusty continued to review the case and seek the assistance of a special prosecutor. Williams was appointed special prosecutor at the end of June 2018. Williams then took another six months to review the case, seek the opinion of Dr. Peterson, and ultimately make the decision not to prosecute the case because he could not prove beyond a reasonable doubt that the death was caused by homicide. Williams notified the court of his decision not to prosecute on February 2, 2019, and notified ST shortly thereafter.

58. The Board finds no unreasonable delay attributable to the DA's Office. The amount of time from the referral to the decision not to prosecute was reasonable, given the complexity of the case and DA Tlusty's explanations for the time it took to review the case and appoint a special prosecutor, who then had to familiarize himself with the case and make a decision. The Board further finds no unreasonable delay between the decision not to prosecute and informing ST of that decision, as it was only a matter of days. Viewing these facts in the light most favorable to ST, the Board finds no probable cause

that the DA's Office violated ST's right to a speedy disposition. *See* Wis. Stat. § 950.04(1v)(k); Wis. Const. art. I, § 9m(2)(c), (d).

Right to be treated with fairness, dignity, and respect.

59. ST alleges that the DA's Office and ME's Office violated her right to fairness, dignity, and respect during her March 20, 2019, meeting with Williams and Dr. Peterson.

60. There is no dispute that this meeting was tense. ST vehemently disagreed with Dr. Peterson's conclusion about the manner of death and with Williams's subsequent decision not to prosecute. ST was intent on getting answers to her questions, and Dr. Peterson, in turn, defended his conclusion. Williams supported Dr. Peterson, as his decision not to prosecute turned on Dr. Peterson's conclusion. The Board acknowledges that this conversation was likely uncomfortable for everyone involved. While the respondents' detached attitude was not well-received by ST, given her pain and frustration over the outcome of the case, the respondents' actions did not rise to the level of a victim rights violation. The Board, therefore, finds no probable cause that the respondents violated ST's right to fairness, dignity, and respect. *See* Wis. Stat. § 950.04(1v)(ag); Wis. Const. art. I, § 9m(2)(a).

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 9th day of March 2023.



Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

S.T.

[address withheld]

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