

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

Case No. 226-009

Respondent.

PROBABLE CAUSE DETERMINATION

1. The Crime Victims Rights Board (the "Board") reviewed a complaint filed by RK¹ against the Milwaukee County District Attorney's Office (the "DA's Office"). The Board evaluated the complaint to determine whether it stated probable cause that the DA's Office violated RK's rights as a crime victim. *See* Wis. Stat. § 950.04(1v). The Board finds no probable cause.

BOARD PROCEDURE

2. RK filed a complaint with the Board on May 24, 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 had completed the informal complaint process as to the issue raised in the complaint. *See* Wis. Admin. Code CVRB § 1.05(1), (4).

¹ This probable cause determination uses the victim's initials to protect the victim's privacy.

4. The Board gave a copy of the complaint to the DA's Office and invited it to answer the complaint. *See Wis. Admin. Code CVRB § 1.05(5)*. Milwaukee County Assistant District Attorney Michael Lonski ("ADA Lonski") and former Victim Witness Advocate Ljiljana Newport filed a joint response on behalf of the DA's Office.

5. The Board made this probable cause determination at a meeting on July 20, 2022. *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 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

I. RK's complaint.

8. RK's wife was seriously injured in a car crash involving a vehicle driven by CE on December 13, 2020. RK's wife later died from her injuries. The case was referred to the DA's Office to determine if criminal charges would be issued against CE. In late July or early August of 2021, ADA Lonski reviewed the case and concluded that no criminal charges would be filed.

9. RK disagrees with the DA Office's charging decision and rejects the reasons the DA's Office gave him for the decision, claiming that "[a]ll the [e]vidence is there" to charge CE criminally. (Compl. 5.) RK alleges that CE's testimony in a civil case deposition provides a factual basis for issuing criminal charges and that he tried to contact the DA's Office "numerous times with this new evidence to no [r]esponse back at all." (Compl. 6.) RK feels that this inaction was "very [d]isrespectful" and especially hurtful after "[a]ll the grief & sadness of losing my wife." (Compl. 6.)

II. The DA's Office's response.

10. ADA Lonski reports that he reviewed the case in late July or early August of 2021 and concluded that "[CE's] driving did not reach the high level of recklessness or negligence required to support a criminal homicide charge." (Resp't Resp. 2.) Shortly thereafter, ADA Lonski informed RK of his charging decision over the phone.

11. According to ADA Lonski, after being informed of the decision, RK made several phone calls and sent a letter expressing his disagreement with the decision. As a result of RK's communications, the DA's Office met with RK in-person on August 24, 2021, to further explain the reasoning behind the decision. ADA Lonski, Victim Witness Advocate Ljiljana Newport, Milwaukee County District Attorney John Chisholm, and a senior officer from the Milwaukee Police Department Traffic Reconstruction Unit attended the

meeting. They shared investigative findings, an eyewitness statement, crash scene investigation information, and data downloaded from the vehicles involved in the crash. They also shared legal opinions and jury instructions to explain why they believed the facts did not support charging CE criminally. ADA Lonski recounts that RK challenged the truthfulness of evidence shared with him at the meeting and “could not accept that speeding alone does not necessarily constitute criminal recklessness or negligence.” (Resp’t Resp. 2.) After about an hour, the discussion “was just going in circles,” according to ADA Lonski, and the meeting was ended. (Resp’t Resp. 2.) ADA Lonski describes RK as “agitated” and “aggressive” in his demeanor. (Resp’t Resp. 3.)

12. ADA Lonski recalls additional contacts from RK, but ADA Lonski, having already discussed RK’s concerns at length, felt that further communication about the case would be fruitless and would likely become contentious.

ALLEGATIONS OF VICTIM RIGHTS VIOLATIONS

13. The majority of RK’s complaint concerns his belief that the charging decision was made in error and should be reconsidered based on CE’s testimony in a civil deposition. RK complains about the DA Office’s lack of responsiveness and refusal to engage with him further on the matter. The Board interprets this as an allegation that he was not treated with fairness and dignity.

14. A crime victim has a right to “be treated with fairness [and] dignity.” 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

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

INTERPRETATIONS OF LAW

16. 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.

17. 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

a child, the parent, guardian or legal custodian of that person. Wis. Stat. § 950.02(4)(a)1., 2.

18. 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).

19. 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).

20. 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).

21. 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

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

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

24. The threshold question is whether RK is a crime victim. The Board finds that RK was a crime victim during the time relevant to the complaint because his wife's death was caused by a car crash which could have been punishable by fine or imprisonment or both. *See Wis. Stat. §§ 939.12, 950.02(4)(a)1., 4.*

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

26. The next question is whether any of the allegations in the complaint are time-barred. The Board finds 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).*

27. The final question is whether the allegations in the complaint implicate a constitutional or statutory victim right.

28. RK alleges that the DA's Office should have criminally charged CE, ignored RK's attempts to provide new information, and refused to continue to engage in discussions about the case. The DA's Office does not dispute that after two discussions about the reasons for the charging decision, staff stopped engaging with RK about the charging decision.

29. As a preliminary matter, the DA's Office's charging decision does not alone implicate a victim right. The record before the Board shows that the DA's Office provided RK with timely information about the charging decision and an in-person review of the facts and opinions that formed the basis for that decision. It is uncontested that RK was unwilling to accept the veracity and legitimacy of the facts and legal reasoning provided by the DA's Office.

30. While the Board has deep sympathy for RK over the loss of his wife, a decision that the facts do not support a criminal charge is one the DA's Office has discretion to make, and the uncontested facts show that the DA's Office's decision was reasonable and made in good faith.

31. RK further alleges that CE's testimony from a civil deposition revealed information relevant to the charging decision and that the DA's Office ignored RK's phone calls about this new information, causing RK great distress. The record does not resolve whether RK provided the deposition transcript to the DA's Office prior to filing his complaint with the Board.² Nonetheless, the information available to the Board does not show a refusal to receive or review new information from RK but rather a refusal to continue to engage verbally after numerous previous discussions.

32. The undisputed facts show that the DA's Office explained the charging decision to RK more than once and convened high-level justice system officials to provide RK with a comprehensive review of the case. Viewing these uncontested facts in the light most favorable to RK, the Board finds that DA's Office's refusal to engage in further discussions was not unreasonable or a violation of RK's right to be treated with fairness and dignity.

² RK included the transcript with his complaint, and the Board provided both to the DA's Office.

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. §§ 227.52–227.59. *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 7th day of September, 2022.



Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

RK

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