

IN THE MATTER OF COMPLAINT
AGAINST THE POLK COUNTY
DISTRICT ATTORNEY'S OFFICE AND
THE POLK COUNTY SHERIFF'S OFFICE,

Case No. 227-012

Respondents.

PROBABLE CAUSE DETERMINATION

1. The Crime Victims Rights Board reviewed a complaint filed by JA¹ against the Polk County District Attorney's Office and the Polk County Sheriff's Office. The Board evaluated the complaint and other relevant information to determine whether there is probable cause that the respondents violated JA's rights as a crime victim. *See Wis. Stat. § 950.04(1v)*. The Board finds no probable cause.

BOARD PROCEDURE

2. JA filed a complaint with the Board on July 1, 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 alleged victim to protect his 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 respondents and invited them to answer the complaint. *See* Wis. Admin. Code CVRB § 1.05(5). Polk County Sheriff Brent Waak filed a response on behalf of his office on October 25, 2022.

5. The Board made this probable cause determination at a meeting on February 15, 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 DOJ 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

JA's complaint.

8. JA alleges that he was a child victim in a 30-year-old homicide case, Polk County Case No. 92-CF-0045.

9. JA claims that in May 2020 a documentary film about the homicide case began airing on the YouTube channel.

10. The film allegedly featured several Polk County officials and was filmed inside Polk County government buildings.

11. JA alleges that his name, photo, and confidential statements were included in the film.

12. JA claims that when he brought the film to the attention of the respondents, they failed to offer him any support or services and instead turned him away because he is the defendant in an open criminal case.

The Sheriff's Office's response.

13. Sheriff Waak provided a written response to the complaint along with numerous exhibits, including criminal complaints from the homicide case (Polk County Case No. 92-CF-0045) and two open cases in which JA is the defendant (Polk County Case Nos. 20-CF-0151 and 21-CF-0590).

14. According to Sheriff Waak, JA was an unindicted accessory after-the-fact in the homicide case. JA was granted immunity in exchange for his testimony against the defendant. (Resp. 1–2, 32–34.)

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 respondents are 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 respondents 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.” Wis. Stat. § 950.02(4)(a)1.; *see also* Wis. Const. art. I, § 9m(1)(a)1. A crime victim “does not include the person charged with or alleged to have committed the crime.” Wis. Stat. § 950.02(4)(b); *see also* Wis. Const. art. I, § 9m(1)(b) (victim “does not include the accused”).

18. Whether respondents are 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 of a crime victims rights violation.

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

24. The Board concludes that JA does not meet the legal definition of a crime victim. While there is no question a crime was committed, a crime victim “*does not include* the person charged with or alleged to have committed the crime.” Wis. Stat. § 950.02(4)(b); *see also* Wis. Const. art. I, § 9m(1)(b) (victim “*does not include* the accused”). Here, it is undisputed that JA is the defendant, not the victim, in the two open criminal cases. And JA was not a victim in the homicide case either; he was an unindicted accessory after-the-fact and was granted immunity in exchange for his testimony against the defendant. JA is not a crime victim, and the Board, therefore, finds no probable cause that a victim rights violation occurred.

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 4th day of April, 2023.



Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

J.A.

[street address withheld]

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