

IN THE MATTER OF COMPLAINT
AGAINST THE FALL CREEK
POLICE DEPARTMENT,

Case No. 23-012

Respondents.

PROBABLE CAUSE DETERMINATION

1. The Crime Victims Rights Board (“the Board”) reviewed a complaint filed by J.W.¹ against the Fall Creek Police Department (FCPD). The Board evaluated the complaint and other relevant information to determine whether there is probable cause that the respondents violated J.W.’s rights as a crime victim. *See Wis. Stat. § 950.04(1v)*. **The Board finds no probable cause.**

BOARD PROCEDURE

2. On August 22, 2023, J.W. filed a complaint with the Board.
3. Upon receipt of this complaint, the Board contacted the Department of Justice’s Office of Crime Victim Services’ Victim Resource Center (VRC), which verified that the substance of the complaint had been presented to the VRC

¹ This probable cause determination uses the initials of the alleged victim to protect the victim’s privacy.

and that the VRC had completed its action under Wis. Stat. § 950.08(3). *See* Wis. Admin. Code CVRB § 1.05(1), (4).

4. Later J.W. requested the opportunity to supplement his complaint. J.W.'s final supplement was received on November 6, 2023.

5. On November 29, 2023, the Board met and conducted an initial review of the complaint. At that meeting, the Board dismissed several allegations that fell outside of the jurisdiction of the board and allegations which the Board declined to review pursuant to Wis. Admin. Code CVRB § 1.04(5). The Board amended the complaint record to include the remaining allegations properly before the Board and removed sensitive materials related to the dismissed allegations out of respect for the complainant's privacy. J.W. was notified of these decisions in an order issued on January 8, 2024.

6. On February 8, 2024, the Board gave a copy of the amended complaint to the respondents and invited them to answer the complaint. *See* Wis. Admin. Code CVRB § 1.05(5).

7. On February 27, 2024, the respondents filed their answer to the amended complaint.

8. The Board made this probable cause determination at a meeting on April 17, 2024. *See* Wis. Admin. Code CVRB § 1.05(6).

9. In making this probable cause determination, the Board considered all relevant information, the complaint, response, and the letter documenting the VRC's action. *See* Wis. Admin. Code CVRB § 1.05(7)(a)–(c).

10. 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

J.W.'S AMENDED COMPLAINT

Claim 1: J.W.'s right to fairness, dignity, and respect was violated by FCPD declining to reopen a 2019 sexual assault claim.

11. On January 18, 2019, J.W. reported to the FCPD that he had been sexually assaulted by A.J.

12. J.W. felt that he was mistreated by the FCPD and that the FCPD did not conduct a thorough investigation into J.W.'s allegation. (*See generally* CVRB #23-012 Initial Complaint.)

13. Specifically, J.W. alleged that the FCPD did not protect him, listen to him and his concerns, or acknowledge him, and allowed the brutality to continue. (*Id.* at 5.)

14. J.W. also alleged that the FCPD did not want to come and address the issue and listen to both sides. (*Id.* at 6.)

15. J.W. stated that the FCPD did not listen to his concerns and always talked with him in front of the owner and staff of the group home. J.W. said that the owners and staff would then harass him and intimidate him making J.W. very uncomfortable. (*Id.* at 7.)

Claim 2: Fall Creek Police Department failed to investigate a 2017 sexual assault allegation.

16. On October 25, 2021, J.W. alleged that he was sexually assaulted by a former group home staff person, S.S., on March 19, 2017.

17. J.W. stated that the FCPD refused to move forward with the investigation because the FCPD did not find him credible. (*Id.* at 4.)

18. J.W. articulated the same allegations regarding his treatment by the FCPD as stated in paragraphs 12–15 above.

FALL CREEK POLICE DEPARTMENT RESPONSE

19. Fall Creek Police Department Chief Colin Mumford, through counsel, provided a response to the complaint. (Resp’t Letter Response to Def.’s Complaint, Feb. 27, 2024.)

Claim 1: J.W.’s right to fairness, dignity, and respect was violated by FCPD declining to reopen a 2019 sexual assault claim.

20. Chief Mumford confirmed on January 18, 2019, FCPD was notified of a report of an alleged sexual assault at the Palmer Place Group Home (“Palmer Place”) involving J.W. and A.J.

21. On January 18, 2019, the FCPD was contacted by the owner of Palmer Place, C.B., who stated that on January 17, 2019, J.W. contacted staff and informed them that another resident, A.J., came into his room, laid on top of J.W. and asked J.W. if he wanted to have sex. J.W. told A.J. no and A.J. left the room. C.B. advised that on January 18, 2019, J.W. changed his statement. J.W. stated that he was sexually assaulted by A.J. and detailed the incident. C.B. spoke with A.J. who admitted to having sex with J.W. but stated that it was consensual. (*Id.* at 1.)

22. On January 21, 2019, former Chief Chad Dachel met with J.W. and conducted an audio recorded interview at Palmer Place. J.W. detailed the sexual assault that he alleged took place on January 17, 2019. (*Id.* at 2.)

23. Later, on January 21, 2019, Chief Dachel received a phone message from J.W. J.W. stated that the alleged sexual assault did not “play out” the way J.W. had suggested. J.W. said that the sex was a mutually consensual act between himself and A.J. (*Id.*)

24. On January 22, 2019, Chief Dachel reinterviewed J.W. J.W. stated that he was “curious” and consented to the sexual activity. J.W. said that they were caught by staff, and he was embarrassed. (*Id.*)

25. On February 5, 2019, J.W. called the FCPD. J.W. stated that he wanted to “come clean” about the sexual assault incident after speaking with

his therapist. J.W. said that his initial allegation of sexual assault was a lie and that the incident never occurred. (*Id.*)

26. Due to the changing nature of J.W.'s statements regarding the alleged January 17, 2019, sexual assault, and J.W.'s February 5, 2019, admission that the alleged incident never occurred, the FCPD closed its investigation due to lack of credible evidence. (*Id.*)

27. On May 11, 2021, the FCPD received an email from J.W. regarding a case that he filed with the Eau Claire County Sheriff's Office (ECSO) concerning an alleged sexual assault. J.W. alleged that he was assaulted again by A.J. and wanted to reopen the 2019 sexual assault investigation. J.W. provided the FCPD with additional information. (*Id.* at 3.)

28. The FCPD reviewed the information provided by J.W. and consulted with the Eau Claire County District Attorney's Office. The FCPD forwarded the 2019 and the 2021 sexual assault investigations to the Eau Claire County District Attorney's Office for review. No charges were issued. (*Id.*)

Claim 2: Fall Creek Police Department failed to investigate a 2017 sexual assault allegation.

29. On January 27, 2023, the ECSO was dispatched to Palmer Place to investigate J.W.'s allegation of a sexual assault that occurred six years prior, on March 19, 2017. (*Id.*)

30. J.W. alleged that a Palmer Place employee, S.S., had sexually assaulted J.W. in the Palmer Place community living room. (*Id.*)

31. J.W. stated that he had recently received his resident file from Palmer Place and wished to report the 2017 incident now that he had evidence. (*Id.*)

32. The ECSO deputy investigating this incident determined that J.W. had previously reported this incident to another ECSO deputy on October 25, 2021. (*Id.*)

33. In October 2021, a ECSO deputy investigated J.W.'s allegations and filed a report finding that due to lack of credible evidence and J.W.'s history of filing false reports, the investigation was closed. (*Id.* at 3–4.)

34. On October 27, 2021, the ECSO forwarded the deputy's report to FCPD because the allegation took place within the FCPD's jurisdiction. FCPD reviewed the report, agreed with the deputy's recommendation to close the matter, did not ask for any additional follow-up, and closed the investigation due to insufficient evidence. (*Id.* at 4.)

ALLEGATIONS OF VICTIM RIGHTS VIOLATIONS

35. **Right to be treated with dignity, respect, courtesy, sensitivity, and fairness.** Under the Wisconsin Constitution, a crime victim has a right “[t]o be treated with dignity, respect, courtesy, sensitivity, and fairness.” Wis. Const. art. I, § 9m(2)(a). The parallel statutory provision

provides that 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). 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

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

INTERPRETATIONS OF LAW

37. 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.

38. 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”).

39. 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).

40. 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).

41. 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).

42. 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

The Board Finds the Following:

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

44. That J.W. is a crime victim because of his reported sexual assaults in violation of the provisions of Wis. Stat. § 940.225.

45. That the members of the Fall Creek Police Department are public officials or employees subject to the authority of the Board. *See Wis. Stat. § 950.09(2)(a)*.

46. That J.W.'s May 2021, allegation of sexual assault and request to open his January 17, 2019, allegation as well as J.W.'s October 21, 2021, and January 27, 2023, reported allegation of a March 19, 2017, sexual assault

claim, fall within the three-year limitations period. *See* Wis. Admin. Code CVRB § 1.04(5).

As to Claim 1:

47. That on January 18, 2019, the FCPD was contacted by the owner of Palmer Place, who stated that J.W. alleged that he was sexually assaulted by A.J., another resident.

48. That on January 21, 2019, former Chief Chad Dachel met with J.W. and conducted an audio recorded interview regarding the sexual assault that J.W. alleged took place on January 17, 2019.

49. That later, on January 21, 2019, Chief Dachel received a phone message from J.W. J.W. changed his statement and said that the sex was a mutually consensual act between himself and A.J.

50. That on January 22, 2019, Chief Dachel reinterviewed J.W. J.W. stated that he consented to the sexual activity.

51. That on February 5, 2019, J.W. called the FCPD. J.W. stated that his initial allegation of sexual assault was a lie and that the incident never occurred.

52. That the FCPD closed its investigation due to lack of credible evidence and that this determination was made within the scope of the FCPD's official duties.

53. That on May 11, 2021, the FCPD received an email from J.W. regarding a case that he filed with the ECSO concerning an alleged sexual assault. J.W. alleged that he was assaulted again by A.J. and wanted to reopen the 2019 sexual assault investigation.

54. That the FCPD reviewed the information provided by J.W. and consulted with the Eau Claire County District Attorney's Office. The FCPD forwarded the 2019 and the 2021 sexual assault investigations to the Eau Claire County District Attorney's Office for review. No charges were issued.

55. The Board finds that there is not probable cause to find that the FCPD's response to J.W.'s January 17, 2019, and May 11, 2021, sexual assault allegations violated J.W.'s victims rights.

As to Claim 2:

56. That on October 25, 2021, J.W. alleged that he was sexually assaulted by a former group home staff person, S.S., on March 19, 2017. An ECSO deputy investigated the incident, interviewing J.W. as well one of the group home owners.

57. That on January 27, 2023, J.W. again reported the March 19, 2017, sexual assault allegations. An ECSO deputy responded and took a report. That report was forwarded to FCPD for further investigation. The report noted that the alleged incident occurred in FCPD jurisdiction, and that the same incident was reported to ECSO Deputy Reinke on October 25, 2021.

58. That the FCPD reviewed the reports submitted by ECSO.

59. That FCPD Chief Colin Mumford agreed with the ECSO's recommendation to close the case and did not order any additional investigation.

60. That FCPD Chief Colin Mumford acted within the scope of his authority when he determined that no further investigation was necessary and closed the investigation.

61. The Board finds that FCPD was responsive to J.W.'s March 17, 2019, sexual assault allegation.

62. The Board finds no indication that FCPD was dismissive or discourteous, and that FCPD did not ignore J.W.'s allegations.

63. The Board finds that FCPD used its discretion in determining that no further investigation was necessary.

As to both Claims:

64. Viewing these facts, in the light most favorable to the complainant, the Board finds no probable cause that the respondents violated J.W.'s right "[t]o be treated with dignity, respect, courtesy, sensitivity, and fairness." Wis. Const. art. I, § 9m(2)(a).

65. The Board also finds no probable cause that the respondents violated the parallel statutory provision providing that J.W. 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).

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 the parties and the VRC, as identified in the service list below, in accordance with Wis. Admin. Code CVRB § 1.05(8).

Dated this 13th day of June, 2024.



Chairperson Jennifer Dunn
Crime Victims Rights Board

SERVICE LIST

J.W.

[street address withheld]

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