

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

Case No. 23-016

Respondents.

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### PROBABLE CAUSE DETERMINATION

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1. The Crime Victims Rights Board (“the Board”) reviewed a complaint filed by J.P.<sup>1</sup> against the Milwaukee County District Attorney’s Office. The Board evaluated the complaint and other relevant information to determine whether there is probable cause that the respondents violated J.P.’s rights as a crime victim. *See Wis. Stat. § 950.04(1v)*. **The Board finds no probable cause.**

### BOARD PROCEDURE

2. On November 2, 2023, J.P. filed a complaint with the Board.<sup>2</sup>

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

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

<sup>2</sup> J.P. attempted to file the complaint on June 19, 2023, but it was incomplete. The completed complaint was filed on November 2, 2023.

4. On April 17, 2024, the Board provided a copy of the complaint to the Milwaukee County District Attorney's Office (MCDA) and invited them to answer the complaint. *See Wis. Admin. Code CVRB § 1.05(5).*

5. On May 3, 2024, the MCDA filed their answer to the complaint.

6. The Board made this probable cause determination at a meeting held on June 19, 2024. *See Wis. Admin. Code CVRB § 1.05(6).*

7. 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).*

8. The Board notified 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.P.'S COMPLAINT<sup>3</sup>

**Claim I: Respondents failed to provide reasonable and timely information about the status of the investigation and the outcome of the case and respondents failed to dispose of the case in a timely manner.**<sup>4</sup>

9. On January 17, 2022, J.P. was severely injured in a shooting incident. (CVRB No. 23-016 Compl. 4.)

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<sup>3</sup> This section is derived from the submissions of the complainant. The information contained in this section does not constitute findings of fact by the Board.

<sup>4</sup> The VRC reviewed this as two separate claims. The Board believes these are properly addressed as a single claim.

10. Two individuals were arrested by the Milwaukee Police Department and charges were submitted to the MCDA for review.

11. The MCDA pended the matter for additional investigation.

12. On April 4, 2022, J.P. contacted the Milwaukee County District Attorney's Office victim/witness specialist (MCVW) indicating that she had not received a call from the Assistant District Attorney (ADA). J.P. voiced that she had made many attempts to speak with the ADA and had left several messages that were not returned. (CVRB No. 23-016 Compl. 56–66.)

13. On January 25, 2023, J.P. contacted a specialist in the Office of Crime Victim Services (VRC-Specialist). J.P. expressed frustration with the MCDA because they had not communicated the status of the case with her. (*Id.* at 8.)

14. On January 31, 2023, the VRC-Specialist informed J.P. that the specialist had spoken to the MCVW assigned to her case. The MCVW indicated that the case was still under review and that she would talk to the ADA to get an update. (*Id.* at 9.)

15. On February 8, 2023, the VRC-Specialist informed J.P. that the MCVW responded that the ADA would have a charging decision made by Friday (February 10, 2023). (*Id.* at 14.)

16. J.P. was not contacted by anyone from the MCDA on February 10, 2023, to inform her of the charging decision. (*Id.* at 23.)

17. On March 29, 2023, the VRC-Specialist informed J.P. that she had spoken with the ADA and was told that he understands that the case has taken a

very long time but that he is still waiting for some investigative information. (*Id.* at 45.)

18. J.P. responded that she would like to make a formal complaint because she still had not been contacted by the ADA to discuss the case. The VRC-Specialist responded that she would close the informal complaint and begin the formal complaint process. (*Id.*)

**Claim II: Respondents failed to return J.P.'s firearm and cellular phone.**

19. On January 17, 2022, as part of the shooting investigation, law enforcement confiscated a black iPhone 7 and a 45 caliber High Point handgun from J.P.'s sister's residence. (CVRB No. 23-016 Compl. 69.)

20. On April 1, 2022, J.P. reached out to the investigating detective to try and recover these items. (*Id.*)

21. On April 4, 2022, J.P. communicated with MCVW indicating that a cell phone and 45 caliber High Point handgun had been taken during the investigation and she would like to MCDA to release them. (*Id.* at 56–59.)

22. On February 1, 2023, J.P. contacted a VRC-Specialist indicating that she wanted a cellular phone and a 45 mm handgun returned to her. (*Id.* at 11.)

**MILWAUKEE COUNTY DISTRICT ATTORNEY'S OFFICE RESPONSE<sup>5</sup>**

23. The MCDA, provided a response to the complaint. (Resp't Letter Resp. to Def.'s Compl., May 3, 2024.)

**Claim I: Respondents failed to provide reasonable and timely information about the status of the investigation and the outcome of the case and respondents failed to dispose of the case in a timely manner.**

24. On January 17, 2022, J.P. and multiple other individuals exchanged gun fire and J.P. was struck and injured. (*Id.* at 1.)

25. The ADA reviewing the matter for charges struggled with determining who shot first. J.P. concealed from officers that she was armed at the time of the incident. J.P.'s actions could have made her criminally responsible for the incident.

26. Two individuals involved in the incident indicated that J.P.'s sister was in possession of a firearm and threatened them. After the threats, there was a fist fight and the two individuals stated that people from the other side, including J.P., began shooting at them and they shot back in self-defense. (*Id.*)

27. Two citizen witnesses stated that they observed an African American female holding a firearm, which was in the locked back position, running away from the scene. The female appeared to be injured. J.P. was the only person injured in the incident.

28. Investigators recovered a .45 caliber handgun that was in the locked back position, from J.P.'s sister's residence. (*Id.* at 2.)

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<sup>5</sup> This section is derived from the submissions of the respondent. The information contained in this section does not constitute findings of fact by the Board.

29. Investigators spoke to J.P. in the hospital. J.P. did not say that she was in possession of a firearm during the incident. When investigators attempted to follow up, J.P. refused to speak with them without a lawyer.

30. The ADA was concerned that the two individuals that were brought in for charges may have had valid self-defense claims. The ADA was concerned that if the individual's statements were accurate, J.P. could be charged for threatening and shooting at the individuals first.

31. The ADA decided to pend the case and asked for additional investigation to see if he could determine who was criminally responsible for the incident. Part of the additional investigation was an analysis of the cellular phones recovered as part of the investigation. (*Id.*)

32. The MCDA indicated that MCVWs were in contact with J.P. on at least five occasions between February 2022 and April 2022 (2/8/22, 3/1/22, 3/23/22, 4/4/22, and 4/25/22) and then again on July 1, 2022. (*Id.* at 3.)

33. The ADA indicated that he was hesitant to speak with J.P. directly because J.P. may have been subject to criminal liability based on the investigation. J.P. was unrepresented and the ADA was concerned about his ethical obligations when speaking to an unrepresented person. (*Id.*)

**Claim II: Respondents failed to return J.P.’s firearm and cellular phone.**

34. The MCDA responded that return of property petitions can be filed with the circuit court.<sup>6</sup> The property was in the possession of the City of Milwaukee. The Milwaukee City Attorney’s Office represents the City in the return of property proceedings. (*Id.* at 3.)

35. Additionally, the 45-caliber handgun may have been evidence of a crime and the black iPhone 7 had been requested to be analyzed to determine if any evidence of the crime was contained on it. (*Id.*)

**ALLEGATIONS OF VICTIM RIGHTS VIOLATIONS**

36. **Right to reasonable and timely information about the status of the investigation and outcome of the case.** Under the Wisconsin Constitution, a crime victim has a right “[u]pon request, to reasonable and timely information about the status of the investigation and outcome of the case.” Wis. Const. art. I, § 9m(2)(o).

37. **Right to timely disposition of the case, free from unreasonable delay.** The Wisconsin Constitution states, a crime victim has a right “[t]o timely disposition of the case free from unreasonable delay.” Wis. Const. art. I, § 9m(2)(d). Wisconsin statutes also state that crime victims have a right “[t]o 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).

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<sup>6</sup> Wis. Stat. § 968.20 Return of property frozen or seized.

38. **Right to have property returned.** A crime victim has a right “[t]o have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, property subject to preservation under s. 968.205, and property the ownership of which is disputed, shall be returned to the person within 10 days of being taken.” Wis. Stat. § 950.04(1v)(s).

### **DETERMINATIONS OF FACT**

39. The Board finds that while there may be disputed facts between the parties, it is not necessary to resolve these factual disputes to determine probable cause in this matter.

### **INTERPRETATIONS OF LAW**

40. 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.

41. 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”).

42. 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).

43. 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).

44. 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).

45. 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:**

46. The Board cannot determine that J.P. is a crime victim as defined in Wis. Stat. § 950.02(4)(a)(1) because of the facts and circumstances of the incident. Although J.P. was initially considered a victim, further investigation revealed that J.P. may have been the initial shooter or at least a mutual participant in the gun fight. (Resp't Letter Resp. to Def.'s Compl., May 3, 2024.) 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"). As a result of this determination the Board cannot engage in further analysis.

47. The Board is concerned about the delay and lack of clear communication by the MCDA. The Board recognizes that the MCDA was in a difficult position because the case was presented with J.P. as a victim of a shooting. Victims' rights vest at the time of victimization. Wis. Const. art. I, § 9m(2). However, a victim's status may change when additional information and evidence come to light. Public

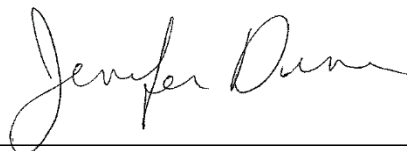
agencies must act upon the best information they have at any given time and provide victims' rights immediately and up until it becomes clear that a person is not a victim. Once it became clear that J.P.'s victim status had changed, the MCDA should have clearly communicated that to J.P. and clarified J.P.'s expectations.

### **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 22nd day of October, 2024.



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Chairperson Jennifer Dunn  
Crime Victims Rights Board