

Victim Rights Act (VRA) Subcommittee Findings on the Complaint Submitted By Mr. John Luhman

On August 27, 2021, the Victim Rights Act Subcommittee reviewed the complaint filed by Mr. John Luhman against the 12th Judicial District Attorney's Office. The purpose of this review was to determine whether there was a Basis in Fact for the allegation in this complaint.

Summary

On December 24, 2019, Mr. John Luhman reported to Sheriff Warwick of the Saguache County Sheriff's Office that Mr. Luhman was assaulted on three occasions by his partner Travis Tomlinson.

On December 19, 2019, Mr. Luhman reported that he was not feeling well and he asked Mr. Tomlinson to leave Mr. Luhman's house so he could get some rest. Mr. Tomlinson then jumped on Mr. Luhman and began beating him with open hands, closed fist and a belt.

On December 20, 2019, Mr. Tomlinson was at Mr. Luhman's house and he got upset with Mr. Luhman after Mr. Luhman asked Mr. Tomlinson to leave for the night. Mr. Tomlinson grabbed a piece of wood that was on fire in the wood stove and threw it on Mr. Luhman's bed, burning the bed.

The following morning, on December 21, 2019, Mr. Luhman and Mr. Tomlinson got into an argument and Mr. Tomlinson grabbed a knife. Mr. Luhman ran into the bedroom and tried to close the door to keep Mr. Tomlinson out. Mr. Luhman was trapped between the door and the wall and Mr. Tomlinson stabbed the door trying to get to Mr. Luhman. Mr. Tomlinson then forced Mr. Luhman into signing over his car to Mr. Tomlinson.

Sheriff Warwick determined that probable cause existed and Mr. Tomlinson was charged with third degree assault, domestic violence, criminal mischief, criminal extortion of a vehicle, false imprisonment, menacing and second degree assault.

On March 16, 2021, the 12th Judicial District Court dismissed the case on a prima facie basis and questioned the victim's creditability.

Allegation Against the 12th District Attorney's Office

Allegation #1: Mr. Luhman alleged that he was not treated with fairness, respect and dignity by the 12th Judicial District Attorney's Office.

Below are some excerpts from Mr. Luhman's complaint regarding the allegations related to fairness, respect and dignity.

- Mr. Luhman did not receive a "credible response" from the District Attorney's Office after inquiring why all of the charges would not be filed.
- The Victim Advocate gave Mr. Luhman the wrong WebEx link/call in information for an advisement hearing on July 1, 2020 and he was in the wrong "courtroom".

- The Victim Advocate did not respond to his emails.
- During a conversation with staff from the District Attorney's Office regarding the plea, Mr. Luhman was not provided a "credible explanation" why the plea was being offered and asked to speak to the District Attorney. Instead of speaking to the District Attorney, he was transferred to the Investigator who threatened to have him arrested for harassment if Mr. Luhman called or emailed the office again.
- According to Mr. Luhman, the case was dismissed because the District Attorney's Office informed Mr. Luhman that he was not a "credible witness". Mr. Luhman stated this is due to his PTSD and not having the opportunity to get into treatment.
- Mr. Luhman was not provided with the date and time of the status conference hearing on March 16, 2021, in which the case was dismissed.

The following is the relevant section of the Victim Rights Act:

C.R.S. §24-4.1-302.5(1) In order to preserve and protect a victim's rights to justice and due process, each victim of a crime shall have the following rights:

(a) The right to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.

Allegation #2: Mr. Luhman alleged that he was not provided the right to consult with the prosecutor about the resolution of the case.

According to Mr. Luhman, the District Attorney's Office made an offer to the defense attorney prior to speaking with him about the offer and it was not clear that the offer was contingent upon consultation with the victim.

The following are the relevant sections of the Victim Rights Act:

C.R.S. §24-4.1-302.5 (1) In order to preserve and protect a victim's rights to justice and due process, each victim of a crime shall have the following rights:

(e) The right to consult with the prosecution after any crime against the victim has been charged, prior to any disposition of the case, or prior to any trial of the case, and the right to be informed of the final disposition of the case;

C.R.S. §24-4.1-303(4) After a crime has been charged, unless inconsistent with the requirements of investigative activities, the district attorney shall consult, where practicable, with the victim concerning the reduction of charges, negotiated pleas, diversion, dismissal, seeking of death penalty, or other disposition. Failure to comply with this subsection (4) shall not invalidate any decision, agreement, or disposition. This subsection (4) shall not be construed as a restriction on or delegation of the district attorney's authority under the constitution and laws of this state.

Finding by the VRA Subcommittee: The VRA Subcommittee determined that there was **a Basis in Fact** for Allegations 1 and 2.

The VRA Subcommittee reviewed documentation provided by Mr. John Luhman and from the VRA Specialist. On June 21, 2021, the VRA Specialist emailed District Attorney Alonzo Payne the Formal Request for Information. The response to the Formal Request for Information was due on July 19, 2021. At the time of the VRA Subcommittee meeting, District Attorney Payne had not provided a response to the allegations in the complaint. The VRA Subcommittee determined that District Attorney Payne had the usual time to provide a response. Procedurally, the VRA Subcommittee can move forward with their review of a complaint based on the information that was received from the victim, which is what occurred in this case.

Requirements Set Forth by the VRA Subcommittee

The goal of the VRA compliance process is systemic change. Upon finding a basis in fact for a violation of the VRA, the Subcommittee may set forth requirements to help facilitate a system change and prevent such a violation from happening in the future. To meet these requirements, the subcommittee requests the following:

1. The staff at the District Attorney's Office attend a Victim Rights Act Training provided by the VRA Specialist and a member of the VRA Subcommittee. Please Coordinate with Kim Branham, VRA Specialist to schedule training.
2. The staff at the District Attorney's Office attend a Victim Empathy Training.
3. Please provide the policies that the District Attorney's Office uses to demonstrate that they are in compliance with the VRA. In addition, please provide information on how the policies are being utilized to ensure that that the District Attorney's Office is in compliance with the VRA.
4. Please add information on the District Attorney's Website to assist victims in locating a link to the Court website to allow victims the ability to attend court virtually. A link or a screen shot of this change on the website can be the documentation that the requirement has been addressed.

Documentation of the completion of these requirements should be sent to Steve Aurand, Chair of the VRA Subcommittee, care of the VRA Specialist at the address below, by **November 15, 2021.**

Please understand that failure to comply with the requirements, will result in a notice to the Crime Victim Service (CVS) Board. The CVS Board would then determine if a referral should be made to the Governor's Office for non-compliance. If a referral is made to the Governor's Office, copies of all written materials will be provided to the Governor with a formal written request from the Chair of the CVS Board to enforce compliance and the Attorney General's Office will be notified. Your office will be notified of the referral and the CVS Board's determination if the complaint has a basis in fact and cannot be resolved. Mr. Luhman and the Attorney General will also be informed if a referral is made.

Requesting a Reconsideration of the Findings of the Subcommittee

Per the Procedures for Reviewing and Responding to Requests for the Enforcement of Compliance, either party may request that the Subcommittee reconsider its findings. Reconsideration may be requested for any of the following reasons:

1. The complainant or identified party provides information demonstrating that the materials the Victim Rights Act Subcommittee utilized to make its findings are in error; or
2. The complainant or identified party provides information showing there was insufficient documentation to support the Subcommittee's decision; or,
3. The complainant or identified party provides additional information, material to the allegations in the case, which was not available to the complainant or identified party at the time the Subcommittee reviewed the original complaint. The Subcommittee will not consider information in a reconsideration that was available at the time of the Subcommittee hearing but was not provided to the Subcommittee.

The request for a reconsideration of the finding of the VRA Subcommittee must be received in writing by October 18, 2021. If you choose to submit a request for reconsideration, please send it to the attention of Steve Aurand, Chair of the Victim Rights Subcommittee, in care of Kim Branham, at the following address:

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