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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-178**

State of Minnesota,
Appellant,

vs.

Jeffrey Robert Barrows,
Respondent.

**Filed July 27, 2010
Reversed and remanded
Worke, Judge**

Clay County District Court
File No. 14-CR-09-4834

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Pamela Harris, Assistant County Attorney,
Moorhead, Minnesota (for appellant)

Brian P. Toay, Wold Johnson, P.C., Fargo, North Dakota (for respondent)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

WORKE, Judge

The state argues that the district court erred in staying adjudication of respondent's
violation of a no-contact order. We reverse and remand.

DECISION

The state argues that the district court erred in staying adjudication, over the prosecutor's objection, of respondent Jeffrey Robert Barrows's violation of a domestic-abuse no-contact order when there was no abuse of prosecutorial discretion in charging. A stay of adjudication is an exercise of inherent judicial authority that must be used sparingly to avoid interfering with the separation-of-powers doctrine, specifically, the prosecutor's charging function. *State v. Foss*, 556 N.W.2d 540, 540-41 (Minn. 1996). The proper standard for allowing a stay of adjudication when the prosecutor has objected to the stay is limited to a "clear abuse of the prosecutorial charging function." *State v. Lee*, 706 N.W.2d 491, 496 (Minn. 2005).

The district court found that the state proved beyond a reasonable doubt that respondent violated the no-contact order, but stayed adjudication, concluding that the prosecutor engaged in a clear abuse of discretion in charging respondent because the circumstances presented a "true emergency." The district court relied on *State v. Streiff*, 673 N.W.2d 831 (Minn. 2004). But *Streiff* involved the district court's acceptance of pleas to lesser-included offenses over the prosecutor's objection; the case did not involve a stay of adjudication. 673 N.W.2d at 833 (stating that the court accepted the pleas after finding that it would be a manifest injustice to prosecute for a felony). Additionally, in *Streiff*, the supreme court held that there was no abuse of prosecutorial discretion. *Id.* at 839 (stating that the collateral consequences of prosecuting felony charges would not constitute a manifest injustice).

Respondent argues that the cases discussed in *Streiff* support the court's inherent authority to stay adjudication over the prosecutor's objection. In *State v. Krotzer*, the supreme court held that the district court had inherent power to stay adjudication in the "furtherance of justice" when special circumstances exist. 548 N.W.2d 252, 255 (Minn. 1996). Krotzer was 19 years old when he was charged with statutory rape for having consensual sexual relations with his 14-year-old girlfriend. *Id.* at 253. He pleaded guilty, but the district court stayed adjudication over the prosecutor's objection after the presentence investigation concluded that there was no aggression involved in the defendant's past or in the current offense and it was inappropriate to require him to register as a sex offender under the circumstances. *Id.* at 253 n.1. And in *State v. Olson*, the supreme court upheld the district court's decision to stay a prison sentence based on mitigating factors supporting a departure. 325 N.W.2d 13, 15, 16 (Minn. 1982). The district court found that the victim, the defendant's ex-wife, did not suffer serious or permanent harm, she did not believe that the defendant was a threat to her, and she did not want the defendant to go to prison, because if he did, she would have to sell her family home, evict her children, and interrupt or terminate their education. *Id.* 16-17.

But these cases are not applicable here. The "furtherance-of-justice" reasoning in *Krotzer* was appropriate in that matter because the defendant was 19 years old, had a brief consensual sexual relationship with his girlfriend, ended the sexual component of the relationship when his girlfriend's mother so instructed, did not know that his acts were illegal, did not have a history of aggression, and a conviction would have resulted in him registering as a sex offender. 548 N.W.2d at 253. *Olson* involved the district court's

discretion in staying a prison sentence without regard to the mandatory-minimum-term requirements. 325 N.W.2d at 17. And the unique circumstances in *Olson* related to the victim and her children; if the defendant went to prison, she would have to sell her home, her children would be evicted, and their educations would be interrupted or terminated. *Id.* at 16-17.

Here, following a domestic-assault charge, a no-contact order was issued prohibiting respondent from having contact with his ex-wife, R.B. On November 15, 2009, R.B. called respondent to pick up their two special-needs children because she felt too ill to adequately care for them. Respondent understood that the no-contact order prohibited his presence at R.B.'s residence for any reason and initially refused R.B.'s requests, but ultimately chose to "tentatively" ignore the order because he believed that he had no other alternative. R.B.'s neighbor called the police to report respondent's violation of the order and he was arrested at R.B.'s home.

Respondent knew that the order existed because of charges of felony domestic assault by strangulation and child endangerment. Further, the parties had a system in place in which respondent's sister provided transportation for the children between the ex-spouses, but respondent did not ask his sister to pick the children up on November 15. And although R.B. claimed to be so ill that she could not care for the children, she was well enough to go to her neighbor's home immediately following respondent's arrest and was cited for her behavior during that visit.

The district court relied on the factors that may mitigate the seriousness of the offense, but none of these factors warrants imposition of a stay of adjudication over the

prosecutor's objection. *See Foss*, 556 N.W.2d at 541 (indicating that mitigating factors resulting in a "less serious" offense do not result in a clear abuse of the charging function but may justify a more lenient sentence); *State v. Leming*, 617 N.W.2d 587, 589-90 (Minn. App. 2000) (indicating that a defendant's remorse and cooperation with authorities do not justify a stay of adjudication); *State v. Thoma*, 569 N.W.2d 205, 209 (Minn. App. 1997) (recognizing that a district court's "desire to relieve an offender of the collateral consequences of [a] conviction" does not provide a basis for a stay of adjudication), *aff'd*, 571 N.W.2d 773 (Minn. 1997). Because the district court failed to demonstrate a clear abuse of the charging function by the prosecutor, the court erred in staying adjudication.

Reversed and remanded.