This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0590

State of Minnesota,
Appellant,

vs.

Angelo Oshea Umphress,
Respondent.

Filed January 10, 2022
Reversed and remanded
Larkin, Judge
Concurring specially, Johnson, Judge

Hennepin County District Court
File No. 27-CR-19-19216

Keith Ellison, Attorney General, St. Paul, Minnesota; and

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Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

The state challenges the district court's order granting a stay of adjudication after respondent pleaded guilty to a criminal-sexual-conduct offense. Because there was no clear abuse of the prosecutorial charging function under existing caselaw, we reverse and remand for resentencing.

FACTS

In August 2019, appellant State of Minnesota charged respondent Angelo Umphress with one count of first-degree criminal sexual conduct. According to the complaint, Umphress sexually abused his younger half-sister periodically between 2007 and 2009, when Umphress was 14 to 15 years old. The victim was four to six years old when the abuse occurred. The sexual abuse included touching the victim all over her body and forcing her to perform oral sex. The victim told her mother about the sexual abuse in 2018, but her mother did not report it to the authorities. The victim told her father about the abuse in March 2019, and he reported it to the police. The police interviewed Umphress, and he admitted the allegations. The police described him as "extremely remorseful." In January 2021, Umphress pleaded guilty as charged, without the benefit of a plea bargain.

A presentence-investigation report (PSI) was prepared for sentencing. The PSI described Umphress's childhood as "very disruptive," noting that he was exposed to drug trafficking, gang activity, violence, prostitution, and pornography in his home. Despite his exposure to drugs and gang activity during his childhood, Umphress did not engage in such activity. Umphress had no prior criminal history, other than an arrest for domestic assault

in 2018, which did not result in a criminal charge. The PSI indicated that Umphress's mother once walked into the room while Umphress was sexually abusing his half-sister. Although his mother did not report his actions, Umphress realized that his behavior was wrong and did not sexually abuse his half-sister again. The PSI recommended that the district court stay an adjudication of guilt.

The district court ordered a stay of adjudication over the state's objection. In doing so, the district court concluded that there had been an abuse of the prosecutorial charging function. The district court ordered that entry of judgment be stayed for five years, placed Umphress on probation, required him to complete sex-offender treatment as a condition of probation, and required him to register as a predatory offender. The state appeals.

DECISION

A stay of adjudication is a procedure in which "the district court, upon a defendant's guilty plea or a fact-finder's determination of guilt, does not adjudicate the defendant guilty but imposes conditions of probation." *State v. Martin*, 849 N.W.2d 99, 102 (Minn. App. 2014) (quotation omitted), *rev. denied* (Minn. Sept. 24, 2014). "If a district court orders a stay of adjudication, and if the defendant successfully completes probation, the defendant avoids a criminal conviction." *Id.* (quotation omitted). We review de novo "a district court order that precludes adjudication of a defendant's guilt." *Id*. at 105.

I.

As a preliminary matter, the state contends that it is unclear whether the district court convicted Umphress at the plea hearing. The state argues that it is therefore unclear whether the district court could stay adjudication at the sentencing hearing. The state asks

this court to clarify whether a district court should always postpone its acceptance of a guilty plea whenever it considers a stay of adjudication, so as to avoid inconsistency in the law.

If a defendant tenders a valid guilty plea, the district court may either "accept the plea on the terms of the plea agreement, reject the plea, or defer its decision to accept or reject the plea pending completion of a presentence investigation." *State v. Jeffries*, 806 N.W.2d 56, 62 (Minn. 2011). A conviction occurs when a guilty plea is "accepted and recorded by the court." Minn. Stat. § 609.02, subd. 5(1) (2020). As the state points out, caselaw is inconsistent regarding the precise words that a district court must use to accept and record a guilty plea. The supreme court has noted that the words "convicted" and "I accept your plea" are not "magic words that will always result in a conviction for double jeopardy purposes." *Jeffries*, 806 N.W.2d at 63. It also has stated that a formal judgment of conviction may satisfy the requirement to record a guilty plea, but that method is not the only method to do so. *Id.* Instead, a conviction occurs "when the district court accepts the guilty plea and the acceptance is on the record." *State v. Nodes*, 863 N.W.2d 77, 81 (Minn. 2015).

Here, the district court told Umphress, "I am going to find that you made a knowing, intelligent and voluntary waiver of your trial rights and that you gave me a sufficient factual basis to find you guilty, so I am going to accept your guilty plea. We will schedule this for sentencing." The district court did not use any words indicating that it was adjudicating guilt at that time. Nor did it enter a formal judgment of conviction. Moreover, at the plea

hearing, defense counsel told the district court that Umphress was seeking a stay of adjudication, and the district court indicated that it would consider that issue at sentencing.

On this record, it is clear that the district court did not convict Umphress at the plea hearing. Thus, it is not necessary for this court to settle any inconsistencies in the law regarding when a conviction occurs.

II.

The state contends that the district court erred by staying adjudication over the state's objection. The legislature has provided that, except under statutes not applicable here or based on the agreement of the parties, "a court may not refuse to adjudicate the guilt of a defendant who tenders a guilty plea . . . or who has been found guilty by a court or jury following a trial." Minn. Stat. § 609.095(b) (2020). A district court may not order a stay of adjudication over a prosecutor's objection unless there has been "a clear abuse of discretion by the prosecutor in the exercise of the charging function." *State v. Lee*, 706 N.W.2d 491, 492 (Minn. 2005). "Generally, a prosecutor has broad discretion in the exercise of the charging function and ordinarily, under the separation-of-powers doctrine, a court should not interfere with the prosecutor's exercise of that discretion." *State v. Foss*, 556 N.W.2d 540, 540 (Minn. 1996).

History of the Standard

The Minnesota Supreme Court first considered a district court's authority to stay an adjudication of guilt over the state's objection in *State v. Krotzer*, 548 N.W.2d 252 (Minn. 1996). In *Krotzer*, the state charged the defendant with third-degree criminal sexual conduct after he engaged in consensual sex with his 14-year-old girlfriend when he was 19

years old. 548 N.W.2d at 253. Both the girlfriend and the girlfriend's mother opposed the criminal prosecution. *Id.* at 253 n.2. The district court stayed adjudication over the state's objection. *Id.* at 253. The Minnesota Supreme Court affirmed the stay of adjudication, noting that there were "special circumstances" in the case, including that the district court "strongly disagreed with the prosecutor's decision to file charges" and "felt that justice would not be served by giving [the defendant] a criminal record as a predatory sex offender." *Id.* at 254. The supreme court concluded that a stay of adjudication was within the district court's inherent judicial power and was "necessary to the furtherance of justice." *Id.* at 254-55.

Shortly after *Krotzer*, the supreme court decided *Foss* and clarified that "mere disagreement by the [district] court with the prosecutor's exercise of the charging discretion" does not constitute "special circumstances." *Foss*, 556 N.W.2d at 541. Instead, the supreme court held that the district court can use its inherent judicial authority to stay adjudication "*sparingly* and only for the purpose of avoiding an injustice resulting from the prosecutor's *clear abuse of discretion* in the exercise of the charging function." *Id.* The supreme court later decided *Lee* and explained that the mere existence of "special circumstances" did not permit a district court to stay adjudication. 706 N.W.2d at 496.

Here, the district court reached its decision in part by comparing the facts of this case to those of *Krotzer*. The state argues that *Krotzer* is factually distinct and that *Foss* and *Lee* have called its validity into question. There is merit to the state's argument that *Krotzer* is no longer good law. *See id.* at 497 (Page, J., concurring) (stating that in *Foss*, "we effectively overruled *Krotzer*"). Because the district court cannot order a stay of

adjudication over the state's objection unless there has been a clear abuse of the prosecutorial charging function, the principal reasons listed in *Krotzer*—"special circumstances," strong disagreement with the decision to charge, and the interests of justice—do not justify a stay of adjudication. We therefore apply the standard from *Foss* and *Lee*: there must be a clear abuse of the prosecutorial charging function.

Caselaw provides guidance regarding circumstances that do not demonstrate a clear abuse of the prosecutorial charging function. For instance, a defendant's remorse and lack of a criminal record cannot support a stay of adjudication, *State v. Leming*, 617 N.W.2d 587, 589-90 (Minn. App. 2000), nor can the collateral consequences of a conviction or the benefits of avoiding those consequences, *State v. Ohrt*, 619 N.W.2d 790, 792 (Minn. App. 2000). The existence of "mitigating circumstances" may allow the district court to be lenient at sentencing, but it does not justify a stay of adjudication. *State v. Thoma*, 569 N.W.2d 205, 208-09 (Minn. App. 1997), *aff'd mem.*, 571 N.W.2d 773 (Minn. 1997). Similarly, a finding that the offense was less serious than typical may permit a more lenient sentence, but it does not permit a stay of adjudication. *Foss*, 556 N.W.2d at 541.

The District Court's Reasoning

The district court relied on three circumstances in concluding that there was a clear abuse of the exercise of the charging function in this case:

> (1) [Umphress] committed the offense as a juvenile, but he was not charged until years later, as an adult and after the opportunity for rehabilitation instead of a conviction was no longer possible; (2) [Umphress] has no criminal record; he has not committed [a] similar offense or other offenses, and he has chosen a law-abiding life despite the difficult and trying

> circumstances of his childhood; and (3) the stay of adjudication is supported by the probation officer who completed the [PSI].

The second and third reasons are not proper grounds for a stay of adjudication. A defendant's lack of a criminal record cannot support a stay of adjudication. *See Leming*, 617 N.W.2d at 589. And the probation department's recommended disposition is unrelated to the exercise of the prosecutor's charging function.

The district court's first reason, however, presents a more difficult question. We are not aware of an appellate case addressing circumstances similar to those here. The issue does not involve collateral consequences, mitigating circumstances, or any other circumstances that have been rejected as a basis for a stay of adjudication. Indeed, the circumstances here are unique to our jurisprudence regarding stays of adjudication: Umphress committed an offense when he was 14 to 15 years old and now faces a significantly harsher punishment than he likely would have received if the offense had been reported when it occurred.

Minnesota's Juvenile Justice System

At this point, a review of Minnesota's juvenile justice system is useful. The relevant statutes provide:

> The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior. This purpose should be pursued through means that are fair and just, that *recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth*.

Minn. Stat. § 260B.001, subd. 2 (2020) (emphasis added).

With certain exceptions, a "delinquent child" means a child who has violated any state or local law. Minn. Stat. § 260B.007, subd. 6(a)(1) (2020). Generally, the juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be delinquent. Minn. Stat. § 260B.101, subd. 1 (2020).

However, "[w]hen a child is alleged to have committed, after becoming 14 years of age, an offense that would be a felony if committed by an adult, the juvenile court may enter an order certifying the proceeding for action under the laws and court procedures controlling adult criminal violations." Minn. Stat. § 260B.125, subd. 1 (2020). And the juvenile court may designate a proceeding involving a child alleged to have committed a felony offense as an extended jurisdiction juvenile prosecution under certain circumstances if the child was at least 14 years old at the time of the offense. Minn. Stat. § 260B.130, subd. 1(1) (2020). If an extended jurisdiction juvenile prosecution results in a finding of guilt, the court imposes both a juvenile disposition and a stayed adult criminal sentence. *Id.*, subd. 4(a) (2020).

If, as is the case here, an adult is alleged to have committed an offense before the adult's 18th birthday, and a criminal complaint is filed after the adult's 21st birthday, the district court has original and exclusive jurisdiction over the proceeding. Minn. Stat. § 260B.193, subd. 5(d) (2020).

Unlike the laws and procedures governing sentencing in adult criminal prosecutions, dispositions in juvenile court are governed by the following principle:

> In a delinquency disposition the [district] court must take the *least drastic step necessary* to restore law-abiding conduct in the juvenile. To determine what is necessary the [district] court must balance the severity of the child's delinquency, and the severity of the proposed remedy. This disposition *must serve the best interests of the child*. That is, there must be evidence that the aims of the law cannot be satisfied without removal of the child from home and that the placement is suitable for the needs of the child.

In re Welfare of M.R.S., 400 N.W.2d 147, 151 (Minn. App. 1987) (emphasis added) (quotation and citations omitted); *see also In re Welfare of C.A.R.*, 941 N.W.2d 420, 422 (Minn. App. 2020) (stating that "the district court may not place a delinquent child out of home unless that is the least drastic step necessary to restore law-abiding conduct" (quotation omitted)), *rev. denied* (Minn. May 19, 2020).

Moreover, subject to limited exceptions, no adjudication "upon the status of any child in the jurisdiction of the juvenile court shall operate to impose any of the civil disabilities imposed by conviction, nor shall any child be deemed a criminal by reason of this adjudication, nor shall this adjudication be deemed a conviction of crime." Minn. Stat. § 260B.245, subd. 1(a) (2020).

As to the circumstances here, if the underlying offense had been reported when it occurred—when Umphress was 14 to 15 years old—original jurisdiction would have been with the juvenile court. Although the law would have allowed the state to move to certify Umphress for prosecution as an adult or to prosecute him as an extended jurisdiction juvenile, the state does not argue that those options would have been utilized in this case. In fact, at oral argument, the state indicated that in 2008, it received a referral alleging similar sexual misconduct by Umphress and declined to file delinquency charges, deciding

instead to address his conduct in the child-protection system. It is therefore fair to conclude that Umphress likely would not have received a criminal conviction or faced a prison sentence if his offense had been reported around the time of its occurrence. But because the offense was not reported and Umphress was not charged until he was almost 26 years old, he could only be prosecuted as an adult.[1] Accordingly, instead of receiving an opportunity for rehabilitation in the juvenile justice system, Umphress faced a criminal conviction and a presumptive sentence of 144 months' imprisonment for his conduct 12 years earlier, when he was 14 to 15 years old.

The disproportionality between those outcomes was an appropriate consideration when deciding whether to charge the underlying offense. The American Bar Association (ABA) has established standards of conduct for prosecutors, and the Minnesota Supreme Court has stated, "We expect that prosecutors, as well as defense counsel, are aware of our case law proscribing particular conduct as well as the standards of conduct prescribed by the ABA." *State v. Ramey*, 721 N.W.2d 294, 301 (Minn. 2006) (discussing the ABA standards for prosecutors and defense counsel).

The ABA standards provide that, at a minimum, the prosecutor should file criminal charges only if he or she reasonably believes that probable cause supports the charges. *ABA Criminal Justice Standards for the Prosecution Function*, Standard 3-4.3(a) (4th ed. 2017). But evidentiary support is not the only relevant factor. "In order to fully implement the prosecutor's functions and duties, including the obligation to enforce the law while

[1] There is no indication or suggestion that Umphress did anything to prevent the victim from reporting the abuse or that he was otherwise responsible for the delayed report.

exercising sound discretion, the prosecutor is not obliged to file or maintain all criminal charges which the evidence might support." *Id.*, Standard 3-4.4(a). Other factors that the prosecutor may consider include "whether the authorized or likely punishment or collateral consequences are disproportionate in relation to the particular offense or the offender." *Id.*

That factor is reasonably relevant to the charging decision in this case. Nonetheless, existing caselaw does not establish that a clear abuse of the charging function results from a decision to charge even though a disproportionate punishment will result. And given that the Minnesota Supreme Court has tended to restrict, and not to expand, the district court's authority to stay adjudication over the state's objection, we decline to expand that authority in this case. *See LaChapelle v. Mitten*, 607 N.W.2d 151, 159 (Minn. App. 2000) (stating that this court "is limited in its function to correcting errors" and "cannot create public policy"), *rev. denied* (Minn. May 16, 2000).

Umphress argues that there was a clear abuse of the charging function because that function includes both the state's decision to bring charges and its decisions regarding any ensuing plea negotiations. Accordingly, Umphress argues that this court must consider not only the state's decision to charge him, but also its refusal to agree to a stay of adjudication during plea negotiations. Umphress cites *State v. Streiff*, 673 N.W.2d 831 (Minn. 2004), and *State v. Hart*, 723 N.W.2d 254 (Minn. 2006), in support of his position. But neither of those cases involved a stay of adjudication. In *Streiff*, the issue was whether the district court erred by accepting the defendant's guilty plea to two lesser-included offenses under Minn. R. Crim. P. 15.07, over the prosecutor's objection. 673 N.W.2d at 833. In *Hart*, the issue was whether the state could refile a complaint and obtain a writ of mandamus to

compel the district court to make a probable-cause determination on the refiled complaint after a district court had dismissed the criminal complaint with prejudice and in the interests of justice. 723 N.W.2d at 256.

Although *Streiff* and *Hart* refer to the charging and plea-bargaining functions and state that a prosecutor has broad discretion when exercising those functions, it does not follow that plea negotiations are a part of the charging function. Although that function may include the decision whether to "maintain all criminal charges which the evidence might support," *ABA Criminal Justice Standards*, *supra*, Standard 3-4.4(a), we are not persuaded that it includes decisions short of dismissal when plea bargaining. Thus, we do not treat the prosecutor's refusal to agree to a stay of adjudication as an exercise of the charging function.

Conclusion

Given the unique circumstances of this case, one might understand the district court's desire to provide Umphress an opportunity to avoid a criminal conviction based on his conduct when he was 14 to 15 years old. But existing caselaw does not support a conclusion that the state clearly abused its discretion in the exercise of the prosecutorial charging function. Accordingly, we reverse the district court's stay of adjudication and remand for further proceedings consistent with this opinion.

Reversed and remanded.

JOHNSON, Judge (concurring specially)

I concur in the opinion of the court insofar as it applies *State v. Lee*, 706 N.W.2d 491 (Minn. 2005), and concludes that the district court erred by staying adjudication of guilt.

I write separately to note that I do not join my respected colleagues in their subtle suggestion that there should be an expansion of the recognized bases for a judicial declaration that a prosecutor's charging decision is a clear abuse of discretion. "As a general rule, the prosecutor's decision whom to prosecute and what charge to file is a discretionary matter which is not subject to judicial review absent proof by defendant of deliberate discrimination based on some unjustifiable standard such as race, sex, or religion." *State v. Herme*, 298 N.W.2d 454, 455 (Minn. 1980). To expand the existing caselaw in the manner suggested in the opinion of the court would threaten the constitutionally required separation of powers between the executive and judicial branches of government. *See* Minn. Const. art. III, § 1; *State v. Foss*, 556 N.W.2d 540, 540 (Minn. 1996); *State v. Carriere*, 290 N.W.2d 618, 620 & n.3 (Minn. 1980) (*dicta*); *see also State v. Krotzer*, 548 N.W.2d 252, 256-60 (Minn. 1996) (Coyne, J., dissenting).

If an expansion of the existing caselaw were considered, the ABA standards cited in the opinion of the court would not support it. Those ABA standards have not been adopted in Minnesota for purposes of limiting a prosecutor's discretion in making a charging decision or objecting to a stay of adjudication. *See Herme*, 298 N.W.2d at 455 (citing ABA standards in support of prosecutorial discretion). In addition, those standards do not contemplate that a prosecutor could be forbidden from filing criminal charges if the

charges are supported by probable cause. The standards state only that a prosecutor "may," in his or her discretion, consider various other factors that might cause the prosecutor to refrain from filing otherwise appropriate charges. *See ABA Criminal Justice Standards for the Prosecution Function*, Standard 3-4.4(a) (4th. ed. 2017). Furthermore, the ABA standards cited in the opinion of the court are intended merely to assist prosecutors in making their charging decisions; the standards are *not* intended to guide courts in reviewing prosecutors' charging decisions. *See id.*, Standard 3-1.1(b), (c).

In this case, the prosecutor clearly was within the bounds of prosecutorial discretion in charging Umphress with a serious crime to which he had confessed. Umphress sexually assaulted a young girl on multiple occasions, and she continues to suffer psychological harm. Given the facts alleged in the complaint, which are consistent with the record of the plea hearing, the prosecutor reasonably decided to hold Umphress accountable by initiating the only type of prosecution permitted by law given his age: a criminal action in district court. *See* Minn. Stat. § 260B.193, subd. 5(d) (2020).

When the case proceeded to sentencing more than a year after charging, the prosecutor took a lenient approach by offering Umphress a plea agreement by which he would have received a stay of imposition of sentence, which would have given him the opportunity to avoid imprisonment by completing probation. At the sentencing hearing, the prosecutor clearly articulated the state's objection to a stay of adjudication. Yet the district court ordered a stay of adjudication.

The district court's order cannot be reconciled with the plain language of the statute that states that "a court *may not refuse to adjudicate the guilt* of a defendant" who has

tendered a valid guilty plea, unless there is an "agreement of the parties" for a stay of adjudication. *See* Minn. Stat. § 609.095(b) (2020) (emphasis added). The quoted text was inserted into the statute two years after the supreme court issued its opinions in *Krotzer* and *Foss*. *See* 1998 Minn. Laws ch. 367, art. 6, § 1, at 726. It appears that the legislature amended the statute for the specific purpose of allowing prosecutors to prevent district courts from ordering stays of adjudication based on "inherent judicial power," which was the rationale identified in *Krotzer* and *Foss*. *See Krotzer*, 548 N.W.2d at 254-55; *Foss*, 556 N.W.2d at 540-41.[1] Since the 1998 amendment to section 609.095(b), however, this court's opinions have assumed without explanation that the statute does not negate or limit a district court's inherent judicial power or authority to order a stay of adjudication. *See, e.g., State v. Martin*, 849 N.W.2d 99, 102-04 (Minn. App. 2014), *rev. denied* (Minn. Sept. 24, 2014); *State v. Colby*, 657 N.W.2d 897, 898-99 (Minn. App. 2003); *State v. Ohrt*, 619 N.W.2d 790, 792 (Minn. App. 2000); *cf. State v. Lattimer*, 624 N.W.2d 284, 292 (Minn.

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[1]The statutory text quoted above first appeared in a bill that was introduced in the Minnesota Senate in February 1997 and referred to the Committee on Crime Prevention. *See* S.F. 537, 1997 Reg. Sess. (as introduced); State of Minnesota, *Journal of the Senate*, 80th Sess. 205 (Feb. 13, 1997). At a subsequent committee hearing, the bill's primary sponsor explained that the bill was a response to the supreme court's *Krotzer* opinion, which she described as an "overstepping of the bounds," and she further explained that the supreme court's invocation of "inherent judicial authority" gave rise to concerns about "separation of powers." Hearing on S.F. No. 537 Before the Sen. Comm. on Crime Prevention (Feb. 13, 1998) (statement of Sen. Junge). The bill was passed by the Senate. State of Minnesota, *Journal of the Senate*, 80th Sess. 6057 (Mar. 20, 1998). The companion bill did not advance in the House of Representatives. *See* H.F. 644, 1997 Reg. Sess. (as introduced). The text of S.F. 537 was incorporated into an omnibus criminal-justice bill. *See* S.F. 3345, 1998 Reg. Sess., art. 6, § 1(b) (3d engrossment). The omnibus bill was passed by the Senate and the House and was signed into law by the governor. State of Minnesota, *Journal of the Senate*, 80th Sess. 6309 (Apr. 1, 1998); State of Minnesota, *Journal of the House*, 80th Sess. 8885-86 (Apr. 1, 1998); 1998 Minn. Laws ch. 367, at 795.

App. 2001) (Kalitowski, J., dissenting), *rev. denied* (Minn. May 15, 2001). But that assumption is questionable in light of the supreme court's most recent statement on inherent judicial authority. *See State v. M.D.T.*, 831 N.W.2d 276, 280-84 (Minn. 2013). The state, however, has not argued that the district court's decision should be reversed on the ground that it violates section 609.095(b). Accordingly, that issue is not before the court.

In sum, I conclude, without qualification, that the prosecutor did not commit a clear abuse of discretion in the exercise of the charging function and that the district court erred by staying adjudication of guilt.