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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2298
A10-2300**

State of Minnesota,
Appellant,

vs.

Michael David Bear Grossoehme,
Respondent.

**Filed June 20, 2011
Reversed and remanded
Peterson, Judge**

Cass County District Court
File No. 11-CR-10-441

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

Christopher J. Strandlie, Cass County Attorney, Walker, Minnesota (for appellant)

David W. Merchant, Chief Appellate Public Defender, Michael W. Kunkel, Assistant
Public Defender, St. Paul, Minnesota; and

Michael D. Udem, Ninth District Public Defender, Walker, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Minge, Judge; and Worke,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this pretrial appeal, appellant State of Minnesota argues that the district court erred by staying adjudication of third-degree-burglary and theft-of-a-motor-vehicle charges over appellant's objection when the district court did not find that there had been a clear abuse of the prosecutorial charging function. We reverse and remand.

FACTS

Following a high-speed chase, respondent Michael David Bear Grossoehme was stopped by a police officer and admitted committing several crimes. Respondent was charged by three separate complaints with multiple counts of burglary, theft, and criminal damage to property, and one count of attempted arson. The charges arose out of three incidents involving four victims. A rule-20 examination found appellant competent. Respondent pleaded guilty to one count of third-degree burglary and one count of theft of a motor vehicle, and the remaining charges were dismissed. The plea agreement provided for a stayed sentence and a ten-year probation period.

The presentence investigation report recommended a stay of adjudication for both offenses. It was noted at the sentencing hearing that respondent suffers from fetal alcohol syndrome and apparent mental disabilities. Over appellant State of Minnesota's objection, the district court stayed adjudication of both offenses. The district court stated the following reasons for the stays of adjudication:

[Respondent's] presence in the courtroom, I don't know, half a dozen times at least probably before we settled this case. A couple things are apparent. First of all, that [the

father's] been on the spot and I don't remember that any appearances have been missed, and if there is any question as to [the father's] ability to provide for [respondent], I haven't seen it in the courtroom. . . . That being said, there a lot of issues that [respondent] has, and . . . when it comes down to it [respondent] is either going to screw up in the future or isn't and the Court is confident we could deal with him if he does and not if he doesn't and I don't have any confidence that [respondent] has a clue of what any of this means and the opportunities for him are limited tremendously and I don't want to see him limited by a felony on his record if there's a way for us to not have that there.

This appeal followed.

DECISION

In *State v. Krotzer*, 548 N.W.2d 252, 254-55 (Minn. 1996), the supreme court concluded that a decision to stay adjudication of a criminal charge is within the “inherent judicial power” of the district court. The supreme court also concluded in *Krotzer* that the district court's determination that a stay of adjudication was warranted was well supported by the special circumstances of the case. *Id.* at 254.

In *State v. Foss*, 556 N.W.2d 540, 540 (Minn. 1996), the supreme court explained that, in *Krotzer*, it had held that “if ‘special circumstances’ are present, then a trial court may stay an adjudication of guilty over the prosecutor's objection without violating the separation-of-powers doctrine.”

The *Foss* court further explained:

It was not our intention [in *Krotzer*] that mere disagreement by the trial court with the prosecutor's exercise of the charging discretion would constitute “special circumstances.” Rather, it was our intention that the inherent judicial authority recognized in [*Krotzer*] be relied upon *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. at 541. In *State v. Mitchell*, 577 N.W.2d 481, 493 (Minn. 1998), the supreme court reiterated the statements it made in *Krotzer* and *Foss* and also explained that “this power [to stay adjudication] is to be exercised only when there are special circumstances, such as selective or discriminatory prosecutorial intent.”

In *State v. Lee*, the supreme court rejected the argument that a district court may stay adjudication over a prosecutor's objection when either special circumstances exist or the prosecutor abused its discretion in charging. 706 N.W.2d 491, 495 (Minn. 2005). The supreme court stated that it is not possible “to read *Foss* as permitting a stay of adjudication whenever there are *either* special circumstances *or* an abuse of the charging function” and again reiterated that the district court must find a clear abuse of the prosecutorial charging function “before it may order a stay of adjudication over the prosecutor's objection.” *Id.* at 496; *see also State v. Angotti*, 633 N.W.2d 554, 556 (Minn. App. 2001) (“The district court must provide reasons, in writing or on the record, supporting an order for a stay of adjudication.”).

The district court did not find that there was a clear abuse of the prosecutorial charging function in charging respondent. Respondent does not dispute that *Krotzer* has been limited by *Foss* and *Lee* or that, under *Foss* and *Lee*, the district court erred by staying adjudication. We, therefore, reverse the stay of adjudication and remand for further proceedings.

Reversed and remanded.