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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0824**

State of Minnesota,
Appellant,

vs.

Davone Halsana,
Respondent.

**Filed December 2, 2008
Reversed and remanded
Stauber, Judge**

Dakota County District Court
File No. 19K408000078

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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Considered and decided by Stoneburner, Presiding Judge; Shumaker, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

The State of Minnesota challenges the district court's stay of adjudication of guilt following respondent Davone Halsana's guilty plea to providing alcohol to a minor.

Because the reasons cited by the district court for ordering the stay of adjudication fail to demonstrate a clear abuse of the charging function by the prosecutor, we reverse and remand.

FACTS

On November 19, 2007, the Burnsville police department conducted a compliance check regarding the sale of alcoholic beverages to minors at Mekong River Thai Cuisine Restaurant. Two undercover police officers visited the restaurant accompanied by 19-year-old S.L.G. After being seated, S.L.G. and one of the officers ordered alcoholic beverages from respondent Davone Halsana, a restaurant employee. Respondent brought the beverages to the table and asked S.L.G. and the officer for identification to verify their ages. S.L.G. provided a driver's license indicating that S.L.G. was underage. Despite her examination of the license, respondent left the drinks at the table and walked away.

Respondent was subsequently charged with providing alcohol to a minor in violation of Minn. Stat. § 340A.503, subd. 2(1) (2006). Respondent later reached a plea agreement with the state that allowed her to plead guilty to the charge in exchange for a misdemeanor sentence that included a stay of imposition, probation to the court for one year, and a \$300 fine. After accepting respondent's plea, the district court declined to adopt the sentencing recommendation. Instead, the court stated that a stay of adjudication and one year of probation was a more appropriate penalty because respondent had no prior record, spoke English as a second language, and did not intend to commit the crime. The district court later issued a sentencing order that provided three

additional reasons for its decision. The court found that a clear abuse of prosecutorial discretion had occurred because (1) the city of Burnsville did not offer a diversion program; (2) the police played a “major role” in the offense; and (3) the circumstances surrounding the alleged incident “differ from the common scenarios that play out in this type of charge.”

This appeal followed.

D E C I S I O N

A clear-abuse-of-discretion standard applies to appellate review of stays of adjudication of criminal convictions. *State v. Angotti*, 633 N.W.2d 554, 556 (Minn. App. 2001). A stay of adjudication is an exercise of “inherent judicial authority” that must be used sparingly so as to avoid interference with the separation of powers. *State v. Foss*, 556 N.W.2d 540, 541 (Minn. 1996). A district court may only grant a stay of adjudication over the prosecution’s objection “for the purpose of avoiding an injustice resulting from the prosecutor’s clear abuse of discretion in the exercise of the charging function.” *State v. Lee*, 706 N.W.2d 491, 496 (Minn. 2005) (emphasis omitted).

The state challenges each of the district court’s justifications for imposing the stay of adjudication claiming that they are insufficient to override the prosecutor’s charging discretion. Each is addressed in turn.

I. No diversion program

First, the state argues that its failure to offer a diversion program does not constitute an abuse of charging discretion. As one of its bases for the stay of adjudication, the court noted:

The [C]ity of Burnsville does not have a diversion program in place so that someone in [respondent's] position can admit to her transgression without being convicted of a crime. If [respondent] had committed this offense in another jurisdiction, for example in rural Dakota County where the county attorney has jurisdiction, a pre-trial diversion program would be available to [respondent]. This possibly violates her equal protection rights under the law.

But, as the state suggests, there is no legal requirement that municipalities establish diversion programs, and the court's conclusion relies upon the assumption that every defendant convicted of serving alcohol to minors in a diversion-available jurisdiction is afforded the opportunity to participate in such a program. *See* Minn. Stat. § 401.065, subds. 1(2), 2 (2006) (requiring *counties* participating in the community corrections act to establish pretrial diversion programs and affording prosecutors the discretion to decide whether to offer diversion).

II. Police involvement in the offense

The district court's decision was also based on its belief that, although "the police played a major role in th[e] offense," the defense of entrapment would be unsuccessful. This basis is also flawed. The police performed an undercover sting operation that is routinely used to monitor establishments' compliance with state liquor laws and has been found constitutionally permissible. *See State v. Fitzpatrick*, 690 N.W.2d 387, 390-91 (Minn. App. 2004) (concluding that, in the absence of police coercion or targeting of specific individuals, undercover compliance checks for the sale of alcohol to minors do not violate due process).

III. Unique circumstances

Finally, the district court concluded that the unique circumstances surrounding the offense demonstrate that the state abused its charging authority. The court noted that respondent (1) does not have an arrest record; (2) speaks English as her second language; (3) did not receive formal training from her employer; and (4) appears to have made a good-faith effort to verify the minor's age by checking identification.

We disagree that these circumstances resulted in a clear abuse of the charging function. The lack of a criminal record does not constitute a special circumstance justifying a stay of adjudication. *State v. Leming*, 617 N.W.2d 587, 589 (Minn. App. 2000). And although each of the remaining factors may tend to mitigate the criminality of respondent's conduct and might support a more lenient sentence, they do not warrant a stay of adjudication. *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).

Reversed and remanded.