

*This opinion is nonprecedential except as provided by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
A22-1313**

In the Matter of the Welfare of:
M. B. W., Child.

**Filed March 27, 2023
Affirmed
Worke, Judge**

Scott County District Court
File No. 70-JV-22-5247

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant M. B. W.)

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

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Elisabeth M. Kirchner, Assistant County Attorneys, Shakopee, Minnesota (for respondent State of Minnesota)

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

NONPRECEDENTIAL OPINION

WORKE, Judge

Juvenile-appellant argues that the district court judge who denied his motion for a stay of adjudication was disqualified. We affirm.

FACTS

Juvenile-appellant M.B.W. was cited for misdemeanor fifth-degree assault under Minn. Stat. § 609.224, subd. 1(2) (2020). In August 2022, the district court held a hearing.

M.B.W. admitted the following facts to support his admission to committing fifth-degree assault. He stated that on March 18, 2022, he went to a park with a friend and encountered three other boys. There was “bad blood” between M.B.W.’s group of friends and the other boys. Z.R.L. was one of the other boys. Words were exchanged, and M.B.W. and Z.R.L. “squared off.” M.B.W. “grabbed Z.R.L. and threw him to the ground holding on to him tight.” M.B.W. described his act as putting Z.R.L. in a “choke hold.” M.B.W. agreed that he “would not let go of [Z.R.L.] unless he tapped out.” He agreed that this act would harm Z.R.L. and “restrict his breathing.”

The district court immediately proceeded to a disposition hearing. M.B.W. requested a stay of adjudication. The prosecutor opposed this request. The district court stated: “I had some experience with this in the [related] [h]arassment [r]estraining [o]rder [(HRO)] hearing, and so I want to make sure my memory is accurate.” The district court addressed Z.R.L.:

THE COURT: [R]emind me, did you lose consciousness?

Z.R.L.: Yes.

THE COURT: That was my recollection. Okay. And did you seek some treatment? Did you go to the doctor or to the emergency room?

Z.R.L.: Yes, we went to the ER right after.

THE COURT: Okay. And what happened there?

....

Z.R.L.’s FATHER: They checked him out, x-ray or what not, and there was no, like, fractures or anything. It was just the pressure that was on his neck or upper chest area, and it was fine.

The district court stated:

[F]irst-time offenders frequently get stays of adjudication in [j]uvenile [c]ourt. That is not unusual for that to happen, and certainly in more serious cases than this it happens.

My concern here, obviously, is the . . . loss of consciousness. That makes for a more serious assault and could easily have been charged as a [f]elony offense as opposed to a [m]isdemeanor. So that's what makes me concerned.

The other thing that makes me concerned is that this assaultive behavior can only be used to enhance a future offense if you are, in fact, adjudicated of it, and I want this . . . to create some peril for you to make sure that your behavior in the future remains on the straight and narrow.

. . . .
[F]or those reasons, I am going to accept your admission today and adjudicate you as delinquent as to the [f]ifth [d]egree [a]ssault.

This appeal followed.

DECISION

M.B.W. argues that the district court judge who adjudicated him delinquent used extra-record information to reach that disposition and was disqualified for partiality.

M.B.W. argues that this matter should be remanded to a different judge for disposition.

Due process affords to every party the right to an impartial judge. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980); *see State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005) (stating that a criminal defendant has a fundamental right to a fair trial before an impartial judge). Due-process protections apply in juvenile-delinquency proceedings. *In re Welfare of J.C.P., Jr.*, 716 N.W.2d 664, 668 (Minn. App. 2006), *rev. denied* (Minn. Oct. 17, 2006). “[A]utomatic reversal is required” when a criminal defendant is deprived of the constitutional right to an impartial judge. *Dorsey*, 701 N.W.2d at 253.

“A judge must maintain the integrity of the adversary system at all stages of the proceedings.” *State v. Schlien*, 774 N.W.2d 361, 367 (Minn. 2009). Judges must disqualify themselves from “any proceeding in which the judge’s impartiality might reasonably be questioned.” Minn. Code Jud. Conduct Rule 2.11(A). We review de novo whether a judge has violated the Code of Judicial Conduct. *Dorsey*, 701 N.W.2d at 246.

The right to an impartial judge “requires that conclusions reached by the [judge] be based upon the facts in evidence . . . and prohibits the [judge] from reaching conclusions based on evidence sought or obtained beyond that adduced in court.” *Id.* at 249-50. To remain impartial, judges should avoid the appearance of impropriety and act to assure that parties have no reason to think their case is not being handled fairly. *State v. Munt*, 831 N.W.2d 569, 580 (Minn. 2013). Although judges are presumed to have the ability to set aside extra-record knowledge, the “source” of this knowledge “could create a reasonable question regarding the judge’s impartiality.” *Dorsey*, 701 N.W.2d at 248 (emphasis omitted). “[W]hen a judge possesses extra-record knowledge that is prejudicial to a defendant . . . the judge may not disclose that knowledge” but must either “disqualify herself or set the knowledge aside.” *Id.* at 252.

Regarding the knowledge that a judge possesses, our supreme court has made a distinction between knowledge that a judge acquires during their work as a judge and knowledge that the judge obtains through an independent investigation. *State v. Malone*, 963 N.W.2d 453, 465-66 (Minn. 2021). In *Malone*, the judge investigated how domestic-abuse no-contact orders were served. *Id.* at 460. The state characterized the judge’s investigation into the service procedure as “confirming information the judge already

knew.” *Id.* at 465. But the supreme court observed that the record indicated otherwise—the judge asked a clerk how service is done and if it is done a particular way in every instance. *Id.* at 460, 465. The clerk then investigated the procedure and reported back to the judge. *Id.* The supreme court concluded that the judge was disqualified because of the independent investigation, especially because the investigation related to the defendant’s knowledge of the order, which is an essential element of the crime he allegedly committed. *Id.* at 466.

Here, the district court judge stated that she “had some experience” with the matter because the judge had presided over the related HRO hearing. To ensure that she remembered accurately, the judge asked Z.R.L. to remind her if he lost consciousness. Z.R.L. replied that he had, and the judge stated that was her recollection. The judge then denied M.B.W.’s request for a stay of adjudication because the loss of consciousness made the assault more serious than a typical assault and the offense is subject to enhancement to a more serious charge only if M.B.W. is adjudicated delinquent.

M.B.W. argues that the judge was disqualified because she learned through the related HRO matter that Z.R.L. lost consciousness, and she relied on this fact to decide disposition. We disagree.

The district court judge did not conduct an independent investigation. The district court judge merely confirmed what she already knew about the case. *See Dorsey*, 701 N.W.2d at 250 (stating that district court has an obligation to refrain from obtaining evidence outside that presented by the parties). The judge’s question about whether Z.R.L. lost consciousness was to confirm what she learned at the HRO hearing. The judge did not

rely on facts that were not in the record. Information about Z.R.L.'s injuries, a fact about what he suffered, was easily confirmed during the disposition hearing and made part of the record. As such, the disposition imposed was based on statements that were made part of the record during the disposition hearing. *See id.* at 252 (concluding that a judge must "consider only the evidence adduced in deciding the case"). We conclude that the district court judge was not disqualified.

Affirmed.