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FOR IMMEDIATE RELEASE

Olmsted County Attorney Mark Ostrem announced today that no criminal or delinquency charges will be brought regarding the racial slur incident occurring on April 14, 2024, near Century High School.

In the early morning hours of April 14, 2024, a motorist observed a racial slur spelled out in plastic cups on the pedestrian bridge over East Circle Drive near Century High School. Shortly thereafter, a state trooper drove by, observed the slur, and immediately removed it.

This bridge has long been a message board for other messages, typically messages of support for local teams or other school events. Prior to the morning of April 14, an innocuous message had been posted on the bridge. It was apparent that during the overnight hours prior to dawn of April 14, someone had gone on the bridge, rearranged the cups to message the racial slur.

Rochester Police Department investigated the incident. Successively interviewing various young adults understood to frequent the area, investigators were able to confidentially identify four juvenile suspects as the perpetrators of the slur. This office has reviewed the investigation, relevant statutes, and case law. No delinquency (criminal) charges will be commenced for this incident.

This office reviewed four primary legal theories in response to the incident. Criminal Damage to Property, Threats of Violence, Harassment and Disorderly Conduct. For differing reasons, this office cannot meet the necessary burden of proof, beyond a reasonable doubt, to bring charges. Each theory is explained in brief below.

Criminal Damage to Property. Possibly the easier of the charging theories to eliminate, damage to property fails since there was no damage to the bridge, or any other property. As noted above, this bridge is a very common “billboard” for messages using red cups. In fact, there was an existing message that was rearranged to spell out the slur, and a week later, the community posted another message of healing. Nearly as long as the bridge has existed, it has been a canvas for messaging. As much as the community dislikes the message found on April 14, no new “damage” occurred.

Threats of Violence. The racial slur written on the bridge was one word. In this case, that one word does not become a threat. Also, that one word standing alone, could not be interpreted by a reasonable fact finder as targeting any person(s). Minnesota has developed significant case law defining the parameters of Threats of Violence and most certainly an identified victim as well as a specific threat of violence, are critical elements. The threat must have some imminence toward a victim as well.

Harassment fails as a prosecution theory largely because there was only one incident. Minnesota’s harassment statute criminalizes several different types of offending conduct. However, the statute generally criminalizes serial offending behaviors, not a single event, absent specific information about a target victim and intended response. Those facts don’t exist here.

Disorderly Conduct. Here, we get a little closer to a viable charge, albeit a misdemeanor. However, this theory fails as well.

The relevant elements of the Disorderly Conduct statute are 1) The defendant engaged in offensive or abusive language tending reasonably to arouse alarm, anger, or resentment in others. 2) The defendant knew or believed or had reasonable grounds to know that the conduct would, or could, tend to alarm or anger others. 3) The defendant's act took place in a public or private place.

While the conduct/message here meets all three elements, the further analysis is whether this was free speech protected by the First Amendment.

First Amendment analysis begins with the understanding that some deeply offensive speech is protected. To prosecute speech, it is not enough that it be hateful or even that it meets the statutory definition of a crime. Criminalized speech must also fall into a recognized exception to First Amendment protection.

There is one First Amendment exception relevant to this case, the fighting words doctrine.

The United States Supreme Court has decades of rulings shaping the fighting words doctrine. Free speech does not protect fighting words, those that by their very utterance would inflict injury or tend to incite an immediate breach of peace. In this evolution, various words, expressions and acts have been evaluated and found to be protected "free speech."

Context of the expression is a key element. If the expression is seen as a direct insult to someone or invitation to "fight," it is not protected. Lacking an identifiable "recipient" of the expression changes the context of the April 14 expression and falls into a First Amendment protection.

The racial slur in this case was particularly offensive. Few other offensive words are so closely associated with a history of violence. But even this very offensive word is not automatically a fighting word in every context.

The message was left on the bridge without any other context, and the juveniles fled the scene before it could be discovered. Although the message would obviously offend anyone who saw it, a fact finder would not reasonably expect it to provoke a breach of the peace. The people who drove beneath the sign at dawn would not reasonably be expected to break the peace or commit offenses in response. The message on the footbridge was protected speech.

Minnesota also has on the books other bias and hate crimes. However, those all criminalize assaultive behavior committed due to a victim's perceived race, gender, religion and other protected classes. The conduct here did not involve an assault as defined in our statutes.

Olmsted County Attorney Mark Ostrem commented "I am deeply disturbed that anyone in this community could be so oblivious to find humor or enjoyment in this type of conduct. We are better than that. But, we evaluate incidents based on the law, not our internal responses to the event. We will continue to work with leaders in the community to help us grow through this event."