

FILED

February 23, 2021

**OFFICE OF
APPELLATE COURTS****STATE OF MINNESOTA
IN COURT OF APPEALS**

State of Minnesota,

ORDER

Appellant,

#A21-0201

vs.

Derek Michael Chauvin,

Respondent.

Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and Gaïtas, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE FOLLOWING REASONS:

On February 12, 2021, the state filed this pretrial appeal pursuant to Minn. R. Crim. P. 28.04, subd. 1(1), from the district court's February 11, 2021 order denying the state's motion to reinstate the charge of third-degree murder against respondent. On February 16, 2021, respondent filed a motion to dismiss this appeal, asserting that it is untimely and that the state failed to demonstrate that the district court's order would have a critical impact on its ability to prosecute respondent.

Timeliness

The state charged respondent with second-degree unintentional murder, third-degree murder, and second-degree manslaughter. Respondent moved to dismiss the

charges for lack of probable cause. On October 21, 2020, the district court issued an order denying the motion with respect to the charges of second-degree murder and second-degree manslaughter, but granting the motion with respect to the charge of third-degree murder. The state did not appeal this order.

On February 1, 2021, this court issued a precedential opinion in *State v. Noor*, ___ N.W.2d ___, ___, 2021 WL 317740, at *7 (Minn. App. Feb. 1, 2021), which held that “a conviction for third-degree murder . . . may be sustained even if the death-causing act was directed at a single person.” On February 4, 2021, the state filed a motion in district court to reinstate the third-degree murder charge. On February 11, 2021, the district court issued an order denying the state’s motion, disagreeing with *Noor*’s holding and concluding that it was not binding precedent because the judgment had not yet become final. The state filed this appeal the following day.

Respondent argues that the state’s February 4 motion should be construed as a motion for reconsideration of the October 21, 2020 order dismissing the third-degree murder charge. Because the state did not appeal from the earlier order or file a motion for reconsideration within the period in which to appeal, respondent argues that this appeal must be dismissed as untimely.

Generally, the state is permitted to appeal “from any pretrial order” in a criminal case within five days after notice of entry of the order appealed. Minn. R. Crim. P. 28.04, subds. 1(1), 2(8). But “where the right to appeal from an unvacated appealable order has expired, the right of appeal is not revived by a negative order on a second motion for the same relief.” *Bongard v. Bongard*, 342 N.W.2d 156, 158 (Minn. App. 1983) (quotation

omitted). Accordingly, if the state fails to file a timely appeal from an adverse pretrial order, it may not appeal from a subsequent order denying a renewed motion seeking the same relief. An exception is made, however, when a party's second claim for relief is based "upon grounds not asserted in the first motion, if satisfactory reasons appear for the omission." *Wilson v. Mitchell*, 349 N.W.2d 586, 588 (Minn. App. 1984). When the exception applies, a party is not precluded from taking an appeal from an adverse decision. *Id.*; *see also Bongard v. Bongard*, 342 N.W.2d 156, 158 (Minn. App. 1983).

The state's motion to reinstate the charge of third-degree murder relied on a ground not previously asserted—this court's recent analysis and holding in *Noor*. Because the opinion in *Noor* was not available to the state until recently, there was a satisfactory reason it was not previously raised. The state is not precluded from appealing the district court's February 11 order and this appeal is timely.

Critical Impact

In a pretrial appeal, the state is required to file a statement of the case that includes "a summary statement by the prosecutor explaining how the district court's alleged error, unless reversed, will have a critical impact on the outcome of the trial." Minn. R. Crim. P. 28.04, subd. 2(2)(b). The rule requires the prosecutor to allege the error and "explain the critical impact on the outcome." *State v. Lugo*, 887 N.W.2d 476, 482 (Minn. 2016). Critical impact is a threshold issue, and this court will not review a pretrial order absent such a showing. *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017).

This court has held that a district court's denial of a motion to amend a complaint to charge a new offense satisfies the critical impact requirement when the offense to be

amended arises from the same behavioral incident as any of the existing offenses. *State v. Baxter*, 686 N.W.2d 846, 850-51 (Minn. App. 2004). This is so because, if the prosecution is not permitted to charge a defendant in a single proceeding with all offenses arising out of a single behavioral incident, it is procedurally barred from doing so later after a conviction or acquittal on any of the offenses. Minn. Stat. § 609.035 (2020); *see id.*

Here, there is no dispute that the charge of third-degree murder charge arises from the same behavioral incident as the remaining charges. Preventing the state from amending the complaint against respondent to charge third-degree murder will have a critical impact on its ability to prosecute that offense.

Respondent argues that the state failed to demonstrate critical impact based upon the law-of-the-case doctrine—because the district court ruled as a matter of law that third-degree murder was inapplicable in this case, and because the state failed to appeal from that decision—and the state should now be precluded from relitigating the issue.

The law-of-the-case doctrine “provides that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” *State v. Miller*, 849 N.W.2d 94, 98 (Minn. App. 2014) (quotations omitted). The doctrine is not a rule of law, but rather

a rule of practice followed between the Minnesota appellate courts and the lower courts. It is a discretionary doctrine developed by the appellate courts to effectuate the finality of appellate decisions. It ordinarily applies where an appellate court has ruled on a legal issue and has remanded the case to the lower court for further proceedings. . . . The doctrine is not normally applied by a trial court to its own prior decisions.

Loo v. Loo, 520 N.W.2d 740, 744 n.1 (Minn. 1994) (citations omitted); *see also Interstate Power Co. v. Nobles Cty. Bd. of Comm'rs*, 617 N.W.2d 566, 582 (Minn. 2000); *Anderson v. Anderson*, 897 N.W.2d 828 (Minn. App. 2017) (quoting *Loo*). And as a discretionary doctrine, it “does not serve as a substantive limitation to a court’s power.” *Kornberg v. Kornberg*, 525 N.W.2d 14, 18 (Minn. App. 1994) (citing *Braunwarth v. Control Data Corp.*, 483 N.W.2d 476, 476 n. 1 (Minn. 1992)). Indeed, “[b]etween coordinate courts, a court is not deprived of the power to revisit a previously decided issue, so long as the case remains within its jurisdiction.” *Id.* (quotation omitted).

Because the issue of probable cause for the third-degree murder charge was never reviewed by an appellate court, the law-of-the-case doctrine is not applicable. The district court has authority to reconsider its own decisions and the state is not barred from requesting that the charge of third-degree murder be reinstated. The state has also established that the denial of its motion satisfies the critical impact requirement.

IT IS HEREBY ORDERED: Respondent’s motion to dismiss this appeal is denied.

Dated: February 23, 2021

BY THE COURT



Michelle A. Larkin
Presiding Judge