

FILED

June 30, 2021

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0202

State of Minnesota,

Appellant,

ORDER OPINION

vs.

Hennepin County District Court
File Nos. 27-CR-20-12953,
27-CR-20-12951,
27-CR-20-12949

J. Alexander Kueng,
Thomas Kiernan Lane,
Tou Thao,

Respondents.

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

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. In June 2020, appellant State of Minnesota charged respondents J. Alexander Kueng, Thomas Kiernan Lane, and Tou Thao with aiding and abetting both second-degree unintentional murder and second-degree manslaughter for the killing of George Floyd on May 25, 2020. *See* Minn. Stat. §§ 609.19, subd. 2(1) (second-degree murder), .205(1) (second-degree manslaughter), .05, subd. 1 (accomplice liability) (2018).

2. Respondents are codefendants of Derek Chauvin, who was charged with third-degree murder, among other charges. *See* Minn. Stat. § 609.195(a) (2018) (third-degree murder).

3. On October 21, 2020, the district court granted Chauvin’s motion to dismiss the third-degree murder charge on the ground that this charge cannot apply when a defendant’s conduct was directed toward a particular person.

4. After the district court dismissed the third-degree murder charge in Chauvin’s case, this court issued a precedential decision in *State v. Noor*, which holds that a charge of third-degree murder is permissible “even if the death-causing act was directed at a single person.” 955 N.W.2d 644, 648, 659 (Minn. App. 2021), *review granted* (Minn. Mar. 1, 2021).

5. Based on the *Noor* decision, the state moved the district court to reinstate the third-degree murder charge in Chauvin’s case. Additionally, the state moved to add new charges of third-degree murder to the complaints filed in respondents’ cases.

6. In an order issued on February 11, 2021, the district court denied the state’s motions to reinstate the third-degree-murder charge against Chauvin and to add this charge in respondents’ cases. The district court noted its disagreement with the *Noor* decision and reasoned that the decision was not yet binding precedent because there was still opportunity for supreme court review.

7. The state immediately filed two separate pretrial appeals to this court from the district court’s order—one in Chauvin’s case and one in respondents’ cases. *See* Minn. R. Crim. P. 28.04, subd. 1(1) (governing pretrial appeals by the state). Subsequently, the state moved to consolidate the appeals and to expedite their consideration. Due to the imminence of Chauvin’s trial, we expedited consideration of the state’s appeal in that

matter. We denied the state's motion to consolidate the appeals and to expedite the appeal in respondents' cases because their trial was scheduled to occur later.

8. Respondents moved to dismiss the state's appeal in their cases, arguing that the state had failed to satisfy its threshold burden of explaining how the district court's pretrial order would have a critical impact on the outcome of their trial. *See* Minn. R. Crim. P. 28.04, subd. 2(2)(b) (requiring prosecution to file a statement of the case that includes "a summary statement . . . explaining how the district court's alleged error, unless reversed, will have a critical impact on the outcome of the trial"). On March 2, 2021, we issued an order denying respondents' motion to dismiss the appeal in their cases. We concluded that "preventing the state from amending the complaints against respondents will have a critical impact on its ability to prosecute [the third-degree murder] offense against the respondents if not reversed." *State v. Kueng*, No. A21-0202 (Minn. App. Mar. 2, 2021) (order).

9. On March 5, 2021, we issued a precedential opinion in Chauvin's case holding that precedential decisions of the Minnesota Court of Appeals have immediate authoritative effect upon release. *State v. Chauvin*, 955 N.W.2d 684, 695 (Minn. App. 2021), *review denied* (Minn. Mar. 10, 2021). Given the immediate authoritative effect of our precedential decisions, we concluded that the district court erred in denying the state's motion to reinstate the third-degree murder charge against Chauvin on the ground that the *Noor* decision was not yet binding authority. *Id.* We reversed and remanded to the district court to reconsider the state's motion to reinstate the third-degree-murder charge.

10. On May 20, 2021, we heard oral arguments in the state's appeal of the district court's order as to respondents.

11. The state asks us to reverse and remand the district court's order denying its motion to add third-degree murder charges against respondents. The state contends that our holding in *Chauvin* also applies here, where the district court denied the motion to amend the complaints based solely on its understanding that *Noor* was not yet precedential. Because the district court has not had an opportunity to address any other arguments regarding the proposed third-degree murder charges, the state asserts that a remand to the district court to reconsider the state's motion to amend the complaints is appropriate.

12. Respondents ask us to affirm the district court's order on an alternative legal basis that was not presented to the district court. They argue that aiding and abetting the offense of third-degree murder is "legally impossible" under Minnesota statutes.

13. We agree with the state that our decision in *Chauvin* requires reversal of the district court's order, which denied the state's motion to add third-degree-murder charges against respondents on the ground that the *Noor* decision was not yet precedential.

14. Generally, we only consider legal issues that were presented to and addressed by the district court. *State v. Olson*, 887 N.W.2d 692, 699 (Minn. App. 2016); *see also State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989) (explaining that appellate courts decline to resolve issues not first addressed by the district court); *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (same). Because the district court has not considered respondents' argument that aiding and abetting third-degree murder is legally impossible, we will not address it in this appeal.

15. On remand, the district court has discretion to consider any additional arguments that respondents may raise in opposition to the state's motion to add charges of third-degree murder.

IT IS HEREBY ORDERED:

1. The district court's February 11, 2021 order denying the state's motion to amend the complaints against respondents is reversed and remanded.
2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: 6/30/2021

BY THE COURT



Judge Theodora Gaïtas

MINNESOTA
JUDICIAL
BRANCH