No. A21-0201

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APPELLATE COURTS

# State of Minnesota
# In Supreme Court

STATE OF MINNESOTA,

*Respondent*,

v.

DEREK MICHAEL CHAUVIN,

*Petitioner*.

## RESPONSE TO PETITION FOR REVIEW OF DECISION OF COURT OF APPEALS

**Date of Filing of Court of Appeals Decision: March 5, 2021.**

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## INTRODUCTION

It is a bedrock principle of judicial review that a lower court must follow a higher court's authoritative interpretation of the law. In this case, however, the District Court did not adhere to that simple principle. Instead, the District Court held that it could refuse to abide by a precedential Court of Appeals decision so long as the judgment was not yet final. It declined to follow that precedential Court of Appeals decision because it found the majority opinion "unpersuasive," and agreed instead with the dissent.

In a thorough and well-reasoned opinion, the Court of Appeals reversed. It held that its precedential opinions have the force of precedent from the moment they issue, and that the District Court therefore erred in declining to abide by such an opinion of the Court of Appeals while the judgment remained pending.

Every single source of authority confirms that the Court of Appeals reached the right result. There is no reason for this Court to intervene. The decision below comports with the Court of Appeals' longstanding practice across multiple cases. Indeed, throughout this entire appeal, Petitioner has not identified a single instance in which a district court has been permitted to consciously ignore a precedential appellate decision simply because the judgment was not yet final. This case should not be the first. The Court of Appeals' decision also accords with the purpose of *stare decisis*: to treat like cases alike and ensure the equal application of the law. Meanwhile, *nothing* in the Rules of Civil Appellate Procedure that this Court has promulgated even hint that an appellate decision designated precedential by the appellate panel lacks "precedential effect until a particular time or event." Op. 9.

The arguments in the Petition do not change this commonsense conclusion. *First*, there is no conflict in the Court of Appeals. In case after case, the Court of Appeals has confirmed that its decisions are precedential from the day they issue. Petitioner's entire theory for review rests on a single line of dictum in a single Court of Appeals decision, *State v. Collins*, 580 N.W.2d 36 (Minn. App. 1998). But the opinion below spends three pages analyzing *Collins* and concludes that *Collins* did not radically depart from longstanding principles of *stare decisis*. *See* Op. 11-13. Indeed, the quoted sentence is dictum. *Collins* stands for the unremarkable proposition that if this Court remands a Court of Appeals decision "for further consideration in light of an intervening supreme court opinion," the remanded opinion is not binding precedent. *Id*. at 13.

*Second*, Petitioner now points to two jurisdictions which have adopted express rules limiting the precedential effect of a pending intermediate appellate decision. Pet. 11-12. But that just proves that the Court of Appeals got it right: Minnesota's rules *lack any* such provision. As the court below stated, this Court "could have easily promulgated a rule stating that the precedential effect of a precedential opinion of [the Court of Appeals] is stayed pending further review. But [this Court] has not done so." Op. 10. There is thus no reason for this Court to intervene, and this Court should deny the Petition.

Given the ongoing proceedings in the underlying trial, the State requests that the Court immediately deny the Petition. In the event the Court does grant the petition, the State requests oral argument at the earliest available moment.

## STATEMENT OF LEGAL ISSUE

Can a district court refuse to follow a precedential decision—and side with a dissent in the Court of Appeals—while the judgment in the precedential case remains pending?

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

Petitioner Derek Chauvin and three other former Minneapolis Police Department officers face criminal charges in connection with the death of George Floyd.

In June 2020, the State charged Petitioner with three counts: (i) second-degree unintentional murder, Minn. Stat. § 609.19, subd. 2(1); (ii) third-degree murder, Minn. Stat. § 609.195(a); and (iii) second-degree manslaughter, Minn. Stat. § 609.205(1). On October 21, 2020, the District Court granted Petitioner's motion to dismiss the third-degree murder charge, on the ground that there were no "published Minnesota Supreme Court or Court of Appeals opinions affirming third-degree murder convictions . . . in which the defendant's allegedly criminal conduct was directed at and specifically focused on a single victim." Order & Memo. Op. on Defense Motions to Dismiss for Lack of Probable Cause 63 (Oct. 21, 2020). The District Court subsequently severed Petitioner's trial from that of his co-defendants. *See* Order Regarding Discovery, Expert Witness Deadlines, And Trial Continuance 4 (Jan. 11, 2021).

Approximately three months later, the Court of Appeals issued its precedential opinion in *State v. Noor*, ____ N.W.2d ____, 2021 WL 317740 (Minn. App. Feb. 1, 2021), holding "that a conviction for third-degree murder . . . may be sustained even if the death-causing act was directed at a single person." *Id.* at *7.

Three days after *Noor*, the State moved for the District Court to reinstate the third-

degree murder charge against Petitioner. The District Court denied the motion, concluding that it was not bound by the Court of Appeals' precedential opinion until any proceedings for further review before this Court have concluded. Order & Mem. Op. Denying State's Mot. to Reinstate or Add Third-Degree Murder Charge 4 (Feb. 11, 2021). According to the District Court, the Court of Appeals' precedential opinions become binding on lower courts only after this Court denies review or grants review and affirms. Until that point, the District Court held, it could decline to follow *Noor*. The District Court then concluded that it "agree[d] with the analysis in the *Noor* dissent," and that it found the *Noor* majority opinion "unpersuasive." *Id*. at 6. It "decline[d] to adopt the *Noor* majority opinion's holding that a Murder in the Third Degree charge may be submitted to a jury under a fact pattern in which the death-causing act was solely directed at a single person and was not eminently dangerous to others." *Id*.

The State appealed. While briefing was ongoing, this Court granted further review in *Noor* and set argument for June 2021. *See State v. Noor*, A19-1089 (Mar. 1, 2021).

On March 5, 2021, the Court of Appeals unanimously reversed the District Court's order declining to reinstate Petitioner's third-degree murder charge. Op. 2. The Court of Appeals explained that the "plain language of the relevant rules" and this Court's consistent "practice of not vacating . . . precedential decisions pending further review" indicate that published Court of Appeals decisions bind district courts as soon as they are entered. *Id.* at 11. A contrary approach, the court recognized, "would result in uneven, unpredictable, and inconsistent application of law." *Id.* at 16.

Yesterday, March 8, Petitioner petitioned this Court for further review. The same

day, the District Court began preliminary trial proceedings in the District Court. The State has moved the Court of Appeals to stay trial proceedings pending disposition of this Petition. That motion remains pending.

## ARGUMENT

### I. The Court of Appeals Followed Its Longstanding Practice Of Treating Precedential Decisions As Binding From The Date They Issue.

In case after case, the Court of Appeals has followed a consistent practice: It gives prior published opinions immediate precedential force *even* where this Court might review—or had actually granted review of—the earlier decision. The decision below comports with that practice. There is no need for this Court to intervene.

Time and again, the Court of Appeals has stated its precedential opinions have immediate effect. For example, in *State v. Meger*, No. A15-1823, 2016 WL 3961841 (Minn. App. July 25, 2016), *rev'd on other grounds*, 901 N.W.2d 418 (Minn. 2017), the Court of Appeals explained that though a decision "might not be 'final,' " the Court "generally follow[s]" the "rule of law" the decision announces "until the Minnesota Supreme Court announces a different rule of law." *Id.* at *4.

That decision is hardly unusual. *See, e.g.*, *State v. Gray*, No. A19-0819, 2020 WL 4045684, at *2 (Minn. App. July 20, 2020) ("[W]e follow a published opinion of this court unless and until the supreme court announces a different rule of law."); *State v. Ziegler*, No. A18-1825, 2019 WL 4164893, at *3 n.1 (Minn. App. Sept. 3, 2019) ("Generally, we follow the rule of law articulated in a published opinion, even one subject to further review, until the Minnesota Supreme Court announces a different rule of law."); *Fishel v.*

*Encompass Indem. Co.*, No. A16-1659, 2017 WL 1548630, at *2 (Minn. App. May 1, 2017) ("[T]his court typically follows the rule of law announced in a published opinion, even one subject to further review, until the Minnesota Supreme Court announces a different rule of law."); *State v. Truelson*, No. A14-1028, 2015 WL 1608828, at *3 (Minn. App. Apr. 13, 2015) ("Even though an opinion may not be 'final,' this court typically follows the rule of law announced in a published opinion, even one subject to further review, until the Minnesota Supreme Court announces a different rule of law."), *review granted, judgment vacated* (June 30, 2015); *State v. Armstrong*, No. A04-2142, 2006 WL 91336, at *3 (Minn. App. Jan. 17, 2006) (adhering to prior decision even though review had been granted by the Supreme Court); 3 *Minnesota Practice, Appellate Rules Annotated* R. 117 (2020) (The Court of Appeals "typically follows the rule of law announced in a published opinion, even one subject to further review, until the Minnesota Supreme Court announces a different rule of law.").

Indeed, even precedents that Petitioner cites *confirm* this rule. Consider *State v. Fishel*. *See* Pet. 10 n.5. There, the Court of Appeals rejected the notion that a pending decision should not be binding. Instead, the Court of Appeals stated that it "typically follows the rule of law announced in a published opinion, even one subject to further review, until the Minnesota Supreme Court announces a different rule of law." 2017 WL 1548630, at *2. Thus, far from creating any conflict with prior decisions, the decision below simply followed longstanding practice.

## II. The Decision Below Comports With Minnesota's Rules of Procedure And Bedrock Principles of *Stare Decisis*.

The Court of Appeals' prevailing practice—and the decision below—is no accident. It conforms with both the Minnesota Rules of Civil Appellate Procedure and hornbook law.

*First*, the decision below comports with every rule this Court has promulgated. Tellingly, before this Court, Petitioner does not cite the text of a *single* procedural rule that supports his case—in fact, he includes just one stray citation to a rule in his entire petition. *See* Pet. 8. That is no accident. As the Court of Appeals explained, "the plain language of the relevant rules and the supreme court's practice of not vacating [the Court of Appeals'] precedential decisions pending further review support the state's argument that a precedential opinion of this court has immediate authoritative effect." Op. 11.

Consider Rule of Civil Appellate Procedure 136.01, which states that the "panel deciding the merits of an appeal also determines the form of the written opinion, which may be a precedential opinion, nonprecedential opinion, or order opinion." Minn. R. Civ. App. P. 136.01, subd. 1(a). That language demonstrates that the merits panel's designation—and nothing more—is what ultimately gives an opinion its precedential status. As the Court of Appeals stated: "[R]ule 136.01 does not impose any limitations or restrictions on the immediate authoritative force of a precedential opinion." Op. 9.

Or consider Rule 136.02. That Rule simply provides that, unless the parties stipulate otherwise, the Court of Appeals enters judgment thirty days after issuing a decision. Minn. R. Civ. App. P. 136.02. This window provides time for the parties to petition for further review from this Court. And if a petition is filed with this Court, judgment "shall be entered

upon the denial of a petition for review or rehearing." Minn. R. Civ. App. P. 136.02. This language again says nothing about the binding effect of a precedential opinion before judgment has been entered. "[T]he supreme court could have easily promulgated a rule stating that the precedential effect of a precedential opinion of [the Court of Appeals] is stayed pending further review. But the supreme court has not done so." Op. 10.

*Second*, the decision below conforms with bedrock principles of *stare decisis*. Indeed, in this entire proceeding Petitioner has failed to offer any rationale *why* his theory would make any sense or comport with the law of precedent—not in the District Court, not in the Court of Appeals, and not here.

And that is because Petitioner's decision has no basis in the law. "*Stare decisis*—in English, the idea that today's Court should stand by yesterday's decisions—is a foundation stone of the rule of law." *See Kimble v. Marvel Entm't, LLC*, 576 U.S. 446, 455 (2015) (internal quotation marks omitted). *Stare decisis* ensures that courts act according to neutral principles and not based on their "arbitrary discretion." *Patterson v. McLean Credit Union*, 491 U.S. 164, 172 (1989). It guarantees that courts treat like cases alike, providing all litigants "equal treatment under law." Bryan A. Garner et al., THE LAW OF JUDICIAL PRECEDENT 21 (2016). It "promote[s] the stability of the law and the integrity of the judicial process." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 604 (Minn. 2014); *Fleeger v. Wyeth*, 771 N.W.2d 524, 529 (Minn. 2009) ("[F]ollowing precedent promotes stability, order, and predictability in the law."). And it "reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation." *Kimble*, 576 U.S. at 455.

The justifications for adhering to *stare decisis* apply with particular force when a district court is asked to apply a higher court's precedent. Though an appellate court is typically "extremely reluctant to overrule [its] previous cases," an appellate court may do so for truly a "compelling reason." *Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401, 406 (Minn. 2000). By contrast, district courts may *never* overrule this Court, the Court of Appeals, or the United States Supreme Court. *See State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010) ("The district court, like this court, is bound by supreme court precedent and *the published opinions* of the court of appeals." (emphasis added)). Unless "we wish anarchy to prevail," a precedent of the Court of Appeals "must be followed" "no matter how misguided" the district court thinks it is. *Hutto v. Davis*, 454 U.S. 370, 375 (1982). Any other result invites endless proceedings, with lower courts refusing to obey authority and cases ping-ponging back and forth on appeal. Indeed, if districts courts can ignore the Court of Appeals precedent so long as the judgment is not yet final, it may be *years* before the Court of Appeals' opinions gain *stare decisis* effect, and years before the rule of law prevails.

Moreover, in criminal cases, a district court's refusal to abide by published precedent could lead to an especially worrisome result: A district court's erroneous order refusing to follow a precedential decision of the Court of Appeals may evade appellate review altogether. Rule 28.04 permits the State to appeal a "pretrial order" only before "jeopardy has attached." Minn. R. Crim. P. 28.04 subds. 1(1), 2(8). If district courts can ignore precedential opinions until the Minnesota Supreme Court has denied review or has granted review and affirmed, jeopardy may attach—and the State may lose its right to

appeal—before that recently published Court of Appeals decision becomes final. The Court of Appeals would then have no way to correct the error once that decision becomes final, giving district courts an end-run around decisions with which they disagree in criminal cases.

Here, once the jury acquits or convicts on any count, the State will be unable to bring a third-degree murder charge against Petitioner, and will likewise be unable to appeal the District Court's decision to prevent the State from presenting the third-degree murder charge to the jury. As a result, unless this Court allows the Court of Appeals' decision below to stand, *Noor*'s holding will not apply to this case—even though that appellate decision was issued more than a month before the first trial in this case was scheduled to begin. Indeed, if this Court affirms *Noor* before Petitioner's co-defendants proceed to trial in August, *they* will be charged with third-degree murder for the exact same incident. That counterintuitive result applies criminal law unequally from one case to the next based on little more than a quirk of timing or the preference of a single district court judge.

## III. There Is No Conflict With *State v. Collins* And Other Jurisdictions Confirm That The Decision Below Was Correct.

Petitioner chiefly rests his case for further review on a single sentence in *State v. Collins*. *See* 580 N.W.2d at 43 ("This court's decisions do not have precedential effect until the deadline for granting review has expired."). But as appealing as that sentence might be for Petitioner, there is no way to consider that stray comment as anything but dictum. And there is no need for this Court to intervene when the Court of Appeals corrects erroneous dictum.

As the Court of Appeals explained, *Collins* dealt with an entirely different circumstance: This Court had "accepted review and disposed of" a Court of Appeals decision "by remanding it" "for further consideration in light of an intervening supreme court opinion." Op. 13. *Collins* correctly concluded that the original, *remanded* decision "was not binding precedent." *Id*. But *Collins* had "no need" "to comment on a situation in which the deadline for granting review of [a Court of Appeals'] opinions had yet to expire." *Id*. (internal quotation marks omitted). Nor did the *Collins* opinion "suggest that such a situation was the subject of adversarial briefing and argument by counsel on appeal." *Id*. That made *Collins*' lone sentence—the sentence on which Petitioner hangs his case—quintessential and unnecessary dictum. *See id*.

Indeed, the Court of Appeals has long recognized that *Collins* did not radically alter the deep-seated principles of *stare decisis*. For instance, that court had previously explained that *Collins* stands for the unremarkable proposition that published decisions "acquire precedential value *unless* the supreme court grants review *and does not affirm*." *State v. Sickmann*, No. A05-2478, 2006 WL 3593042, at *5 (Minn. App. Dec. 12, 2006) (emphasis added); *see State v. Kowalzyk*, No. A18-1397, 2019 WL 3545835, at *5 (Minn. App. Aug. 5, 2019) (same); *City of Duluth v. Duluth Police Local*, No. A04-2374, 2005 WL 1620352, at *1 (Minn. App. July 12, 2005) (same).

And the case which *Collins*' dicta cited further confirms that *Collins* did not unsettle *stare decisis* principles. *See Collins*, 580 N.W.2d at 43 (citing *Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173 (Minn. 1988)). That case, *Hoyt*, does not speak to this situation. Instead, *Hoyt* involved an unrelated question: When

does a judgment become final such that the parties can no longer relitigate aspects of that particular lawsuit in a subsequent proceeding? *See id*. at 176. *Hoyt* does not suggest that the Court of Appeals or a district court should disregard otherwise-binding precedent simply because the time for review has not elapsed. *See Fishel*, 2017 WL 1548630, at *2.

Nor do the unpublished cases which Petitioner identifies support the conclusion that there is any kind of simmering conflict in the Court of Appeals. As a threshold matter, to the extent there might have been any confusion in the Court of Appeals' nonprecedential case law based on *Collins*' dictum, the precedential decision below has eliminated any such confusion. But there was no confusion to begin with. Indeed, throughout this entire litigation, Petitioner has failed to identify a *single* case—from the thousands decided every year in Minnesota—in which another district court was informed about precedential caselaw from the Court of Appeals, acknowledged that the precedent controlled the case, but nonetheless refused to follow that appellate decision. Petitioner's continued silence tells this Court all it needs to know: The District Court's refusal to follow a Court of Appeals decision departed from the most foundational principles of *stare decisis* and has no basis in the law.

Consider the two cases Petitioner cites in the text of his Petition, *State v. Reek*, No. A11-185, 2011 WL 6141626 (Minn. App. Dec. 12, 2011) and *State ex rel. Ward v. Roy*, No. A15-1475, 2016 WL 3375989 (Minn. App. June 20, 2016).

The first, *Reek*, did not involve a comparable situation to this case. Instead, it is clear from *Reek* that the district court had been completely *unaware* of the Court of Appeals' recent decision invalidating a standard jury instruction. That was because the

defendant in *Reek* had "failed to object to the jury instructions at trial." 2011 WL 6141626, at *2. In that particular context, the Court of Appeals held that the district court did not plainly err in applying the standard (though recently invalidated) jury instructions. *Id*. at *4. And it makes perfect sense not to find plain error in that circumstance. Courts chiefly rely on the parties to identify relevant legal precedent. It would be unreasonable to require a district court judge to be aware of every decision from an appellate court the moment it issues, before that decision might even appear in electronic databases. By contrast, in this case, the State affirmatively brought *Noor* to the District Court's attention within days. But the District Court did not follow *Noor* because it said that it agreed with the dissent and not the majority.

*Ward* is also inapposite. There, the Court of Appeals chose to "not rely" on a prior precedential decision in which its own judgment was not yet final. 2016 WL 3375989, at *3. But the Court of Appeals explained that its prior decision was persuasive authority and "illustrate[d] our understanding of the intersection of supervised release and conditional release." *Id*. In that context, *Ward*'s comment that its prior decision was "not binding" was unnecessary dicta, as it did not affect the result. *Id*. And whatever *Ward* might permit for a coordinate Court of Appeals panel, it nowhere blesses the notion that a *district court* could disagree with a published decision of the Court of Appeals.

Finally, because nothing in Minnesota supports his position, Petitioner now looks to other jurisdictions. Pet. 11-12. But those jurisdictions simply confirm that the Court of Appeals got it right here: Both Kansas and California have *express* rules that displace traditional *stare decisis* principles. Kan. Sup. Ct. R. 8.03(k); Cal. R. Ct. 8.1115(e)(1).

Unfortunately for Petitioner, Minnesota has no such rule: "If [this Court] had intended for precedential opinions of [the Court of Appeals] to have limited or no precedential effect until a particular time or event, [this Court] would have expressly said so." Op. 9.

Petitioner's invocation of Colorado procedure is even less relevant. Pet. 12. In Colorado, one division of the court of appeals need not give binding effect to decisions from other divisions. *Id*. Unlike Colorado, Minnesota has a unitary intermediate court, which is "bound by precedent established in the supreme court's opinions and [its] own published opinions." *Jackson on behalf of Sorenson v. Options Residential, Inc.*, 896 N.W.2d 549, 553 (Minn. App. 2017) (collecting cases). And its precedential opinions are binding on all *district courts* in Minnesota. *See* Op. 7. There is thus no reason for this Court to intervene.

## CONCLUSION

This Court should deny the Petition immediately. If this Court does grant the Petition, it should set the case for oral argument at the earliest available moment.

Dated: March 9, 2021

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## CERTIFICATE OF DOCUMENT LENGTH

I hereby certify that this brief conforms to the document length requirements as set forth by Minnesota Rule of Criminal Procedure 29.04, subdivision 5. Specifically, this response to petition for review does not exceed 4,000 words in length, exclusive of the caption, signature block, and addendum. This brief was written using Word for Microsoft Office 365, and, pursuant to Rule 29.04, the respondent reports that the length of this brief is 3,900 words.

Dated: March 9, 2021

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