

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2018).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1222**

State of Minnesota,
Appellant,

vs.

Sahra Abdilahi Ahmed,
Respondent.

**Filed April 6, 2020
Affirmed
Johnson, Judge**

Kandiyohi County District Court
File No. 37-CR-17-954

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

Shane D. Baker, Kandiyohi County Attorney, Willmar, Minnesota (for appellant)

Melvin R. Welch, Welch Law Firm, LLC, Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Bjorkman, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Sahra Abdilahi Ahmed was charged with three counts of nonconsensual dissemination of private sexual images, in violation of section 617.261, subdivision 1, of the Minnesota Statutes. The district court dismissed the complaint on the ground that the

statute setting forth the charged offenses is facially overbroad in violation of the First Amendment to the United States Constitution. Because this court has concluded that the statute is overbroad and unconstitutional, we affirm.

FACTS

Only a brief summary of the relevant facts is necessary because this appeal may be resolved based on a question of law. In September 2017, the Willmar Police Department received a report that a photograph of a woman and a man engaging in a sexual act had been posted on social media. The investigating officer interviewed the reporter (the woman depicted in the photograph) and the person who posted the photograph. Shortly thereafter, the reporter informed the officer that Ahmed had reposted the photograph on social media. The officer tried to contact Ahmed for an interview but was unsuccessful. The officer nonetheless determined that Ahmed reposted the photograph on three social media platforms.

The state charged Ahmed with three counts of nonconsensual dissemination of private sexual images, in violation of Minn. Stat. § 617.261, subd. 1 (2016). Before trial, Ahmed moved to dismiss the charges on two grounds: first, that the complaint was not supported by probable cause and, second, that section 617.261, subdivision 1, is facially overbroad. After a hearing, the district court filed an order in which it granted Ahmed's motion on the ground that there was a lack of probable cause. In light of that conclusion, the district court stated that it "need not address Defendant's constitutional challenges to Minn. Stat. § 617.261."

The state appealed. This court concluded that the district court erred because the complaint was supported by probable cause. Accordingly, we reversed and remanded for further proceedings. *State v. Ahmed*, No. A18-0891, 2018 WL 6595912, at *5 (Minn. App. Dec. 17, 2018), *review denied* (Minn. Mar. 19, 2019).

On remand, Ahmed asked the district court to rule on the second part of her motion to dismiss. In August 2019, the district court filed an order in which it granted Ahmed's motion on the ground that section 617.261, subdivision 1, is facially overbroad in violation of the First Amendment. Accordingly, the district court dismissed the complaint. The state appeals.

D E C I S I O N

The state argues that the district court erred by granting Ahmed's motion to dismiss. The state contends that section 617.261, subdivision 1, is not facially overbroad and, thus, not unconstitutional.

As a threshold matter, we note the general rule that the state is not entitled to appellate review of a district court's pretrial order as a matter of right. *See* Minn. R. Crim. P. 28.04, subd. 2; *see also* Minn. R. Crim. P. 28.04, subd. 1. Rather, the state may obtain appellate review of a pretrial order only if the order, if not reversed, would have "a critical impact on the outcome of the trial." *State v. Webber*, 262 N.W.2d 157, 159 (Minn. 1977). The state has asserted in its initial brief that the district court's dismissal of the complaint satisfies the critical-impact test. Ahmed has not challenged that assertion. We agree that the district court's order, if not reversed, would have the requisite critical impact.

We now turn to the sole issue raised by the state’s appeal. After both parties submitted their appellate briefs, this court issued a precedential opinion in another appeal that thoroughly analyzed and fully resolved the issue. In *State v. Casillas*, this court held that section 617.261, subdivision 1, is facially overbroad in violation of the First Amendment. 938 N.W.2d 74, 90 (Minn. App. 2019), *review granted* (Minn. Mar. 17, 2020). We further reasoned that the validity of the statute cannot be maintained by applying a narrowing construction or by severing problematic language. *Id.* at 90-91. We concluded that the statute must be invalidated. *Id.* at 91.

Before oral argument in this case, we asked the parties to submit supplemental letter briefs concerning “the impact of the *Casillas* opinion on this case.” The state submitted a four-page letter in which it urged the court to disregard or reconsider the *Casillas* opinion for three reasons. The state’s letter brief candidly states that one of its briefed arguments was not raised by the state in *Casillas*. The third argument in the state’s letter brief is necessarily inconsistent with this court’s reasoning in *Casillas*.

We decline to engage the state’s arguments due to our respect for the principle of *stare decisis*, which is “a foundation stone of the rule of law” that instructs appellate courts to “stand by yesterday’s decisions.” *Kimble v. Marvel Entm’t, LLC*, 135 S. Ct. 2401, 2409 (2015) (quotation omitted). “*Stare decisis* is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S. Ct. 2597, 2609 (1991). “The doctrine of *stare decisis* directs us to adhere to our former decisions in order to promote

the stability of the law and the integrity of the judicial process.” *Schuette v. City of Hutchinson*, 843 N.W.2d 233, 238 (Minn. 2014). Adherence to the principle of *stare decisis* promotes the important values of “stability, order, and predictability.” *Fleeger v. Wyeth*, 771 N.W.2d 524, 529 (Minn. 2009). Furthermore, the supreme court recently granted review of our *Casillas* opinion. If the state has additional arguments in favor of the constitutionality of the statute, the state may present those arguments to the supreme court in *Casillas*.

Thus, in light of our opinion in *Casillas*, the district court did not err by reasoning that section 617.261, subdivision 1, is facially overbroad, unconstitutional, and invalid. Therefore, the district court did not err by granting Ahmed’s motion to dismiss.

Affirmed.