

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

vs.

TOU THAO,

THOMAS KIERNAN LANE,

J. ALEXANDER KUENG,

Defendants.

**ORDER FOR ATTORNEY'S FEES PURSUANT  
TO MINN. R. CRIM. 28.04 SUBD. 2(6) AND  
MINN. STAT. § 611.27 SUBD. 16 ON  
STATE'S INTERLOCUTORY APPEAL**

Court File No. 27-CR-20-12646

Court File No. 27-CR-20-12951

Court File No. 27-CR-20-12953

This matter is before the Court on the motion of all three Defendants for attorney fees pursuant to Rule 28.04 subd. 2(6) of the Minnesota Rules of Criminal Procedure and Minn. Stat. § 611.27 subd. 16 in connection with an interlocutory appeal (Appeal) taken by Plaintiff State of Minnesota on February 12, 2021 from this Court's February 11, 2021 Order denying the State's February 4, 2021 motion to amend the complaints in all three cases to add a charge of aiding and abetting third-degree murder in the wake of the Court of Appeals' opinion in *State v. Noor*, 955 N.W.2d 644 (Minn. App. Feb. 1, 2021). The Appeal was assigned Appellate Case Number A21-0202 by the Clerk of the Minnesota Appellate Courts. For purposes of Minn. R. Crim. P. 28.04 subd. 2(6) and Minn. Stat. § 611.27 subd. 16, the State of Minnesota is the governmental unit responsible for the prosecution of this case.

The State filed a motion on February 16, 2021 to consolidate the Appeal with an appeal the State had also filed in *State v. Derek Chauvin*, 27-CR-20-12646, in which the State sought review of this Court's February 11, 2021 Order denying the State's motion to reinstate the third-degree murder charge in Chauvin's case. On February 19, 2021, Defendants filed a motion to dismiss the Appeal. On February 23, 2021, the Court of Appeals filed an order denying the State's motion to consolidate the Appeal with the State's appeal of the related issue in *Chauvin*, and denying the State's motion for expedited consideration of the Appeal. Defendants moved to dismiss the Appeal on the ground the State had not met its burden to show how this Court's February 11, 2021 Order would have a critical impact on the outcome of the trial(s) in these cases, which motion the Court of Appeals denied by order filed March 2, 2021.

On March 5, 2021, the Court of Appeals issued its opinion in the State's appeal on this issue in *Chauvin*, reversing this Court's February 11, 2021 Order and remanding for further proceedings. On May 20, the Court of Appeals heard oral arguments in the Appeal. On June 30, 2021, in *State v. Kueng*, 2021 WL 2794525 (Minn. App. June 30, 2021), the Court of Appeals issued its order on the Appeal, also reversing this Court's February 11, 2021 Order as to these three defendants on the authority of the precedential opinion issued by the Court of Appeals in *State v. Chauvin*, 955 N.W.2d 684 (Minn. App. March 5, 2021). The Appeal in Appellate Case Number A21-0202 is final.

Defendants are now before this Court seeking their attorney's fees from the State for the work performed by their counsel, Deb Ellis, in connection with the Appeal at the approved rate in this district, \$125/hour, set pursuant to Minn. Stat. § 611.27 subd. 16(b).

Ms. Ellis filed an Affidavit, on July 28, 2021, in which she itemized 54.20 hours she spent in connection with the Appeal, including reviewing relevant materials, conducting legal research, preparing motions and briefs filed with the Court of Appeals, preparing for and presenting oral argument to the Court of Appeals, and other miscellaneous work related to the Appeal. As the time value of those hours, at the approved statutory rate of \$125/hour, exceeds the \$5,000 cap on reimbursable attorney fees in such appeals, Ms. Ellis seeks reimbursement for the \$5,000 maximum in attorney fees, plus costs of \$550, for a total of \$5,550.

Based upon the foregoing, the Court finds that Defendants' request for attorney fees in the amount of \$5,000 for the work performed in connection with the Appeal is fair and reasonable, and that costs in the amount of \$550 were reasonably incurred. Accordingly,

**IT IS ORDERED** that plaintiff State of Minnesota pay to Defendants' attorney, Deb Ellis, the amount of \$5,550.00.

**BY THE COURT:**



Digitally signed by Cahill, Peter  
Date: 2021.08.25 08:24:47 -05'00'

Peter A. Cahill  
Judge of District Court

As to fees authorized in excess of \$1,000.

**BY THE COURT:**



Todd S. Barnette  
Chief Judge of Hennepin County District Court