

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

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**STATE OF MINNESOTA,**

Plaintiff,

**ORDER FOR ATTORNEY'S FEES PURSUANT TO  
MINN. R. CRIM. 28.04 SUBD. 2(6) ON STATE'S  
FEBRUARY 12, 2021 INTERLOCUTORY APPEAL**

vs.

**DEREK MICHAEL CHAUVIN,**

Court File No. 27-CR-20-12646

Defendant.

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This matter is before the Court on Defendant Derek Michael Chauvin's (Chauvin) motion, filed August 20, 2021 [Dk No. 599], for attorney fees in connection with an interlocutory appeal (Appeal) filed by Plaintiff State of Minnesota on February 12, 2021 [Dk No. 331] from this Court's February 11, 2021 Order [Dk No. 328] denying the State's February 4, 2021 Motion [Dk No. 303] to reinstate the third-degree murder charge in the wake of *State v. Noor*, 955 N.W.2d 644 (Minn. App. Feb. 1, 2021), *rev'd*, 2021 WL 4185651 (Minn. Sept. 15, 2021).

Matthew Frank appeared on written filings for the State. Eric Nelson appeared on written filings for the Defense. The motion was submitted to the Court on the parties' written filings, without oral argument.

The Appeal was assigned Appellate Case Number A21-0201 by the Clerk of the Minnesota Appellate Courts. On February 23, 2021, the Court of Appeals denied Chauvin's motion to dismiss the appeal. [Dk No. 344] The Court of Appeals directed the parties to file briefs on an expedited basis, in view of the scheduled March 8, 2021 trial date, and heard oral

argument on March 1, 2021. See Court of Appeals February 23, 2021 Order [Dk No. 345]. On March 5, 2021, the Court of Appeals filed its opinion reversing this Court's February 11, 2021 Order and remanding to this Court to reconsider the State's motion to reinstate the third-degree murder charge consistent with the Court of Appeals' opinion. *State v. Chauvin*, 955 N.W.2d 684 (Minn. App. March 5, 2021), *review denied*, 2021 WL 921288 (Minn. March 10, 2021). The Appeal in Appellate Case Number A21-0133 is final.

Chauvin seeks attorney's fees for the work performed by his counsel, Eric Nelson, in connection with the Appeal pursuant to Rule 28.04 subd. 2(6) of the Minnesota Rules of Criminal Procedure at the approved rate in this district, \$125/hour, set pursuant to Minn. Stat. § 611.27 subd. 16(b). Minn. R. Crim. P. 28.04 subd. 2(6) provides that "[r]easonable attorney fees and costs incurred must be allowed to the defendant on such [an interlocutory] appeal [taken by the State], and they must be paid by the governmental unit responsible for the prosecution." For purposes of Minn. R. Crim. P. 28.04 subd. 2(6), the State of Minnesota is the governmental unit responsible for the prosecution of this case.

In support of the motion, Mr. Nelson filed an Affidavit and supporting time records itemizing 60.25 hours between February 11, 2021 and March 8, 2021 he spent reviewing relevant materials, conducting legal research, preparing 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, including additional legal research and the drafting of a brief responding to a subsequent motion by the State to stay jury selection. See Aug. 19, 2021 Nelson Aff. (attached to the motion at Dk No. 599). 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, Mr. Nelson seeks reimbursement for the \$5,000 maximum attorney fee. See Minn. Stat. § 611.27 subd. 16.

By letter dated August 25, 2021 [Dk No. 604], the State advised the Court it was not objecting to the Defense request for fees in connection with the Appeal, although the State did request clarification regarding the entry for 9.5 hours on March 5, 2021 and whether there was any overlap or duplication between that entry for purposes of this motion and a third motion Chauvin filed [Dk No. 601] for additional attorney's fees in connection with his counsel's efforts in researching, drafting, and filing with the Minnesota Supreme Court a petition for further review of the Court of Appeals' March 5, 2020<sup>1</sup> opinion. For purposes of this motion, even if all that time was duplicative of the time recorded on March 5, 2021 included in the fee reimbursement request in the third motion,<sup>2</sup> any such duplication is not relevant to the disposition of this motion because even excluding all 9.5 hours recorded for March 5, 2021 for purposes of this motion would still result in more than 50 hours devoted to the Appeal which is the subject of this motion, and the time value of those hours, at \$125/hour, is still in excess of the \$5,000 maximum statutory allowance.

Based upon the foregoing, the Court finds that Chauvin's 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 the State of Minnesota, as the prosecuting authority, is responsible for Defendant's attorney's fees incurred in connection with the Appeal.

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<sup>1</sup> That third motion will be addressed in a forthcoming order.

<sup>2</sup> By letter filed Sept. 13, 2021 [Dk No. 608], Mr. Nelson addressed the issue, noting that there was no "double billing" and that the time entry for March 5, 2021 in connection with this motion is separate from the time entry from March 5, 2021 in the third motion.

Accordingly,

**IT IS ORDERED** that plaintiff State of Minnesota pay to Defendant's attorney, Eric J. Nelson, the amount of \$5,000 as reasonable attorney's fees incurred in connection with the Appeal.

**BY THE COURT:**

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Peter A. Cahill  
Judge of District Court