

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Court File No. 27-CR-20-12646

State of Minnesota,

Plaintiff,

vs.

**DEFENDANT'S MOTION
FOR ATTORNEY'S FEES
PURSUANT TO**

Derek Michael Chauvin,

MINN. R. CRIM. P. 28.04, SUBD. 2(6)

Defendant.

**TO: THE ABOVE-NAMED COURT; AND THE HONORABLE PETER A. CAHILL,
JUDGE OF HENNEPIN COUNTY DISTRICT COURT.**

NOTICE OF MOTION

PLEASE TAKE NOTICE that the Defendant, Derek Michael Chauvin, through his attorney Eric J. Nelson, Halberg Criminal Defense, hereby moves this Court for the following relief:

MOTION

1. For an order granting reasonable attorney's fees, pursuant to Minn. R. Crim. P. 28.04, subd. 2(6) and Minn. Stat. § 611.27, subd. 16. On February 12, 2021, the State brought a pretrial appeal from this Court's February 11, 2021, Order denying the State's motion to add or reinstate a charge of third-degree murder against the Defendant. On February 14, 2021, undersigned counsel filed a motion to dismiss the appeal, which was assigned case no. A21-0201, and began to prepare a brief in response to State's brief, which was filed on February 22, 2021. On February 23, 2021, the court of appeals denied Mr. Chauvin's motion to dismiss. Counsel filed his brief on Mr. Chauvin's behalf on February 26, 2021, and argued the matter before the court of appeals on March 1, 2021. On the same day, the supreme court granted review in the case of *State v. Noor*. On the basis of the court's decision to review *Noor*, counsel filed a second motion to dismiss the State's pretrial

appeal. On March 5, 2021, the court of appeals remanded the matter to the district court. On March 8, 2021, the State filed a motion in the court of appeals for an order staying district court proceedings. The court of appeals ultimately denied both motions. On April 20, 2021, a jury convicted Mr. Chauvin of second-degree, unintentional murder. On June 25, 2021, this Court committed Mr. Chauvin to the Commissioner of Corrections for a period of 270 months. The matters at the base of the State's pretrial appeal are now final.

Pursuant to Minn. R. Crim. P. 28.04, subd. 2, the prosecuting authority is responsible for the defendant's reasonable attorney's fees in a pretrial appeal. The chief judge of each district in Minnesota sets the rate at which compensation is awarded. Minn. Stat. § 611.27, subd. 16. On January 12, 2021, the chief judge of the Fourth Judicial District, the Honorable Toddrick Barnette, issued a standing order setting an hourly rate of \$125.00 per hour, pursuant to section 611.27.

The undersigned respectfully requests an order directing the State, as the "governmental unit responsible for the prosecution" to reimburse undersigned counsel in the amount of \$5,000.00 for the 60.25 hours spent on this pretrial appeal. Minn. Stat. § 611.27, subd. 16. Under section 611.27, subd. 16(b), the maximum amount of attorney's fees that will be paid for a pretrial appeal is \$5,000.

At the hourly rate established in the Fourth Judicial District, full compensation for counsel's work on this pretrial appeal would be \$7,531.25. (Aff. of Eric J. Nelson). The rate of \$125.00 per hour is far less than counsel's usual billing rate. The request for payment of the statutory maximum reimbursement of \$5,000.00 is, therefore, fair and reasonable under the circumstances.

2. Any other relief deemed fair and equitable by the Court.

Respectfully submitted,

HALBERG CRIMINAL DEFENSE

Dated: August 9, 2021

/s/ Eric J. Nelson

Eric J. Nelson

Attorney License No. 308808

Attorney for Defendant

7900 Xerxes Avenue S., Ste. 1700

Bloomington, MN 55431

Phone: (612) 333-3673

AFFIDAVIT OF ERIC J. NELSON

State of Minnesota)
) ss:
County of Hennepin)

Eric J. Nelson, being first duly sworn, states and deposes under oath as follows:

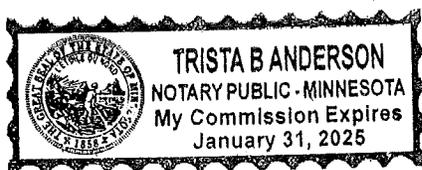
1. I am a lawyer licensed to practice law in Minnesota, Wisconsin, the United States District Court for the District of Minnesota, as well as various appellate courts.
2. I represented respondent in the pretrial appeal brought by the state in *State v. Chauvin* in appellate case number A21-0201.
3. In total, I spent 60.25 hours researching, writing, responding, and opposing the State's motion in this pretrial appeal, and preparing and attending oral arguments set by the appellate court. A copy of my time records is attached.
4. I understand that the chief judge of the Fourth Judicial District has set the hourly rate for attorney fees in state pretrial appeals at \$125.00 pursuant to Minnesota Statutes, section 611.27, subdivision 16(b).
5. This affidavit is submitted in support of my request for attorney fees in the amount of \$5,000.00, the statutory maximum allowed under Minnesota Statutes, section 611.27 subdivision 16(b).

Further affiant says not.

Signed and sworn to before me
this 19 day of August, 2021.


Eric J. Nelson


Notary Public



DATE	TIME (Hours)	
2/11/21	0.5	Review district court order denying motion to reinstate 3rd degree murder charge
2/12/21	4	Review state's pretrial appeal of order; research response
2/13/21	3	research, write motion to dismiss appeal
2/14/21	2	research, write motion to dismiss appeal
2/15/21	3.5	research, write motion to dismiss appeal; editing motion
2/22/21	2.5	Review state's pretrial appeal brief
2/23/21	6	review court's order denying motion to dismiss; begin researching and writing brief
2/24/21	9	researching and writing brief
2/25/21	10.5	researching and writing brief; editing brief
3/1/21	5.5	Oral argument prep; oral argument; review order granting Noor PFR; research write motion to dismi
3/2/21	0.5	review state's opposition to motion to dismiss
3/5/21	9.5	jurisdiction research; review COA order;
3/8/21	3.75	COA memo response to State mtn; file response to state's motion

Total Hours

60.25 Total Due at 125/hr

\$7,531.25