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August 25, 2021

The Honorable Peter Cahill
Judge of District Court
Hennepin County Govt. Center
1251 Court Tower
300 South Sixth Street
Minneapolis, MN 55487

Re: *State of Minnesota v. Derek Chauvin*
Court File No. 27-CR-20-12646

Dear Judge Cahill:

I write in response to Defendant's three motions for attorney fees and costs for the state's pretrial appeals, which he filed on August 20, 2021. The State does not have any objection to the motion seeking \$5,000 in fees for the pretrial appeal of the State's motion to reconsider, Appeal No. A21-0133.

Defendant has filed two motions regarding the State's appeal of the court's order regarding the third-degree murder charge, Appeal No. A21-0201. The first motion seeks \$5,000 in fees for work done while the appeal was in the Court of Appeals and the second motion seeks \$4,031.25 for work done on a petition for review to the Minnesota Supreme Court.

With respect to those two motions, the State requests that Counsel clarify one minor entry in the attached time records. The time records attached to both motions include time spent to "review CAO order" on March 5, 2021. It is unclear whether these entries represent two different time periods for reviewing the court of appeals order or if they are a duplication. The State requests that Counsel indicate whether these are two separate time periods or are duplicate time periods and one of the total time periods for March 5, 2021 should be reduced. Otherwise, the State does not object to the motion seeking \$5,000 for the work done in the Court of Appeals.

The State does object to the motion seeking attorney fees for preparation of the petition for review in the Supreme Court. Such fees are neither permitted by statute or rule.

Minn. Stat. § 611.27, subd. 16(a), by its plain language, only allows reasonable attorney fees and costs in an appeal to the Court of Appeals. In support of his motion for attorney fees for preparing the petition for review, Defendant cites Minn. R. Crim. P. 29.04, subd. 10. However, the requirement for attorney fees in an appeal is a substantive matter that is controlled by statute, not by court rule. *See State v. Johnson*, 514 N.W.2d 551, 554 (Minn. 1994). Substantive matters

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are those that create rights between the parties. *Id.* Whether a defendant in a state’s pretrial appeal has the *right* to recover attorney fees is a substantive matter. Therefore, the statute controls and does not authorize fees for any filings in the Minnesota Supreme Court.

Even if Minn. R. Crim. P. 29.04, subd. 10 governs, the rule only allows attorney fees and costs when the case is before the Supreme Court because the prosecutor appealed the court of appeals decision. Rule 29.04, subd. 10(3) (“Reasonable attorney fees and costs incurred must be allowed to the defendant on an appeal to the supreme court *by the prosecutor . . .*”) (emphasis supplied). Here, the prosecutor did not appeal the decision of the Court of Appeals to the Supreme Court. Defendant decided to prepare and file a petition for review, and the statute and rule do not provide for attorney fees and costs for that decision.

Sincerely,

/s/ Matthew Frank

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cc: Eric Nelson, Attorney For Defendant