

**STATE OF MINNESOTA**  
**IN COURT OF APPEALS**

---

**CASE NO. A21-0133**

State of Minnesota,

Appellant,

v.

Derek Michael Chauvin,

Respondent.

**RESPONDENT'S  
MOTION TO DISMISS  
INTERLOCUTORY APPEAL**

---

Respondent, Derek Michael Chauvin, by and through undersigned counsel, Eric J. Nelson, Halberg Criminal Defense, hereby moves this Court to dismiss Appellant's interlocutory appeal as untimely and improper.

Rule 28.04 of the Minnesota Rules of Criminal Procedure governs appeals by the prosecutor, including appeals from pretrial orders. Appellant filed this appeal on January 28, 2021. Appellant's Notice of Appeal and Statement of the Case purport to appeal a pretrial order that was filed on January 11, 2021, and the district court's January 21, 2021, order denying the State's motion to reconsider its January 11, 2021, pretrial order.

The language of Rule 28.04 plainly states that appeal of a pretrial order "must be taken *within 5 days* after the defense, or the court administrator under Rule 33.03, serves notice of entry of the order to be appealed." Minn. R. Crim. P. 28.04, subd. 2(8) (emphasis added). Appellant's appeal was filed 17 days after the Court's January 11, 2021, order. Nowhere in its Statement of the Case or Notice of Appeal does Appellant claim that it did

not receive notice of filing of the order. The State's appeal as to the January 11, 2021, order must, therefore, be dismissed as untimely under Minn. R. 28.04.

With respect to the January 21, 2021, order, the State's appeal was also, arguably untimely. The State received notice of filing through Hennepin County's EFS system when the order was filed—or 7 days before Appellant filed its appeal. More importantly, with respect to the January 21, 2021, order, because it was an order addressing the State's motion for reconsideration of the district court's January 11 order, the time for appealing the January 11 order was not tolled. "A motion for reconsideration does not toll any time periods or deadlines, including the time to appeal." *Northern Star Intern. Trucks, Inc. v. Navistar, Inc.*, 837 N.W.2d 320, 323 (Minn. App. 2013); *see also Limongelli v. GAN Nat'l Ins. Co.*, 590 N.W.2d 167, 168 (Minn. App. 1999); *In re Welfare of S.M.E.*, 725 N.W.2d 740, 743 (Minn. 2007).

Even if the motion for reconsideration could, arguably, extend the time to appeal from the district court's earlier order, Minnesota law makes clear that such motion to reconsider must have been filed within the time limit for filing a notice of appeal. *S.M.E.*, 725 N.W.2d at 743; *State v. Wollan*, 303 N.W.2d 253, 254-55 (Minn. 1981) ("The general rule is that if one files a motion for rehearing or a similar motion after the time limit for filing notice of appeal has expired, then the filing of the motion does not extend the time within which to appeal"). Here, Appellant filed its motion to reconsider 8 days after the district court filed its January 11, 2021, order. The State's interlocutory appeal is, therefore, untimely.

Based on the foregoing, Respondent respectfully requests that this Court dismiss Appellant's appeal as untimely and improper.

Respectfully submitted,

Dated: January 29, 2021

/s/ Eric J. Nelson  
Eric J. Nelson  
Attorney License No. 308808  
Halberg Criminal Defense  
7900 Xerxes Ave. S., Ste. 1700  
Bloomington, MN 55431  
612-333-3673