NO. A09-2225

State of Minnesota
In Court of Appeals

In the Matter of the Civil Commitment of

Jeremiah Jerome Johnson,

Appellant.

APPELLANT'S BRIEF AND APPENDIX

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QUESTION PRESENTED FOR REVIEW

1. Is Jeremiah Johnson (an enrolled member of the Minnesota Chippewa Tribe and Bois Forte Band, and eligible for enrollment in the Leech Lake Band) subject to Personal and Subject Matter Jurisdiction of the Courts of the State of Minesota for purposes of commitment under Minn. Stat 253B.18 and 253B.185?

PROCEDURAL HISTORY

This Civil Appeal is of a the Decision of the Cass County Court, Ninth Judicial District, Dated October 9 and filed October 12, 2009.

The Court of Case origin was the Cass County Court, Ninth Judicial District. The presiding judge was the Honorable John P. Smith. On February 12, 2009, Mr. Johnson stipulated to commitment as SDP, reserving issues of Personal and Subject Matter Jurisdiction. The Trial Court issued it's order denying Appellant's Motion to dismiss for lack of Personal and Subject Matter Jurisdiction in an Order dated October 9, 2009, and file stamped October 12, 2009.

STATEMENT OF THE CASE

Appellant Jeremiah Johnson is an enrolled member of the Minnesota Chippewa Tribe, and the Bois Forte Band; and eligible for enrollment as a Leech Lake Band Member..[1]

On May 27, 2008, the Minnesota Attorney General's office filed a Petition to commit Mr. Johnson as a Sexually Dangerous Person and as a Sexual Psychopathic Personality pursuant to Minn. Stat 253B.18 and 253B.185

On February 12, 2009, Mr. Johnson stipulated to commitment and an SDP, reserving the issues of Personal and Subject Matter Jurisdiction because of his unique status as an enrolled member the Minnesota Chippewa Tribe and Bois Forte Band, and also that he is eligible for enrollment in the Leech Lake Band

In an order Dated October 9, filed October 12, 2009, the Trial Court dismissed Appellant's motion to dismiss the action, finding Personal and Subject Matter Jurisdiction over Appellant. Mr. Johnson asks the Court of Appeals to reverse the Court's finding of Personal and Subject Matter Jurisdiction over Appellant

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[1] See A-1 atA-2 Findings of Fact.."

STANDARD OF REVIEW

"The questions of Personal And Subject Matter Jurisdiction over an enrolled member of an Indian Tribe, in this case is purely a matter of lawA reviewing court is not bound by and need not give deference to a District Court's decision on a purely legal issue As such, a de novo standard of review is warranted.

ARGUMENT

INDIAN TRIBES ARE SOVEREIGN, AND HAVE THE RIGHT TO MAKE THEIR OWN LAWS AND BE GOVERNED BY THEM

The sovereign status of Indian Tribes has been recognized since the earliest recorded interactions between Europeans and Indian people. The United States was compelled to enter into treaties with the Indians, and to establish government-to-government relationships with Indians because Indians were indigenous people with powers of self-government. The status of Indian tribes in the law is unique, for they are "domestic dependant nations," which exercise inherent sovereignty.[2] The sovereignty of Indian Tribes is not delegated by the Federal government, United States v. Wheeler[3], created by the United States Constitution, or granted by any Federal act, for the powers of Indian Tribes are "inherent powers of a limited

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[2] Cherokee Nation v. Georgia. 8 L.ed. 25 (1831).
[3] United States v. Wheeler, 435 U.S. 313, 328 (1978)

sovereignty which has never been extinguished."[4] Indian tribes function as "distinct independent political communities, retaining their original natural rights[5], exercising powers of self-government over their territories and the persons within those territories.[6]

Even though the exercise of powers of self-government in the area of civil jurisdiction is subject to the plenary control of Congress, *See, e.g.*, 25 U.S.C. Section 476 [Indian Civil Rights Act], none of Congress' actions *created* Indians' power to govern themselves. They are existing at law already.[7] Indian tribes' inherent powers of self-government are retained to the extent "not withdrawn by treaty or statute, or by implication as a necessary result of their independent status."[8] Consequently, Indian Tribes retain civil jurisdiction even over non-Indians on fee land within the boundaries of an Indian reservation.[9]

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[4] Id. at 322, citing F. Cohen, Handbook of Federal Indian Law, 122 (1945). (See also United States v. Lara, 541 U.S. 193, 124 S.Ct. 1628, 158 L.Ed.2d 420, 72 USLW 4277, 04 Cal. Daily Op. Serv. 3331, 2004 Daily Journal D.A.R. 4703, 17 Fla. L. Weekly Fed. S 219, upholding inherent sovereignty of tribes and Duro fix).
[5] Worcester v. Georgia, 31 U.S. (6 Pet) 515, 559 (1832); *See also* Santa Clara Pueblo v. Martinez, 436 U.S. 49, 55 (1978).
[6] United States v. Mazurie, 419 U.S. 544 (1975).
[7] Wheeler, 435 U.S. at 315; National Farmers Union Ins. Co. v. Crow Tribe of Indians, 471 U.S. 845, 845-855 (1985).
[8] Wheeler, 534 U.S. at 323; Oliphant v. Suquamish Indian Tribe, 435 U.S. 197 (1978); *See also*, 55 Interior Dec. 14 (1834).[8] *See also*, Gayle v. Little Six, Inc., Minn. Sup. Ct. Case Number CO-95-133 (October 31, 1996).
[9] Bryan v. Itasca County, 426 U.S. 373 (1976) (holding that states are without civil regulatory jurisdiction over Indian tribes); Montana v. United States, 450 U.S.

Similarly, the civil adjudicative jurisdiction of Indian tribes has not been circumscribed, for tribal courts retain jurisdiction unless that jurisdiction has been affirmatively limited by treaty or statute.[10] Tribal Courts retain jurisdiction over tribal entities, including tribal governments and governmental entities.[11]

544, 566 (1981) (holding that tribes retain civil regulatory jurisdiction over those activities of non-members who enter into consensual relations with the tribe, or where the conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe).

[10] Iowa Mutual Inc. Co. v. LaPlante, 480 U.S. 9, 18 (1987).

[11] Weeks Construction, Inc. v. Oglala Sioux Housing Authority, 797 F. 2d. 668 (8th Cir. 1986) (holding that tribal court had jurisdiction over breach of contract action brought by contractor against tribal housing authority); Burlington Railroad Company v. Crow Tribal Council, 940 F. 2d 1239, 1245 (9th Cir. 1991) (holding that tribal court had jurisdiction over suit by non-Indian entity against Tribal Council); United States ex rel. Kishell v. Turtle Mountain Housing Authority, 816 F. 2d 1273, 1276 (8th Cir. 1987) (holding that tribal court had jurisdiction over action brought by estate of tribal member against housing authority). Tribal courts also retain jurisdiction over members. Williams v. Lee, 358 U.S. 217 (1959) (the jurisdiction of the tribal court is exclusive over claims by any person against Indian arising in Indian country); Fisher v. District Court, 424 U.S. 382 (1976) (tribal court had exclusive jurisdiction over adoption and custody of Indian children). Additionally, tribal courts retain jurisdiction over non-members. LaPlante, 480 U.S. 18 (civil jurisdiction over non-Indians on reservation lands "presumptively lies in the tribal court"); National Farmers Union, 471 U.S. 845 (tribal court had jurisdiction over tort action involving non-Indian); City of Timber Lake v. Cheyenne River Sioux Tribe, 10 F. 3d 554 (8th Cir. 1993), *cert. denied*, 129 L. Ed 2d 861 (1994) (tribal court had jurisdiction over non-Indian operators of liquor establishments on fee lands in cities within reservation); A-1 Contractors v. Strate, 76 F. 3d 930 (8th Cir. 1994) (tribal court had jurisdiction over claim based on automobile accident involving only non-Indian parties which occurred on public roads inside the reservation); Hinshaw v. Mahler, 42 F.3d 1178 (9th Cir. 1994) (tribal court had subject matter jurisdiction over wrongful death claim arising out of an on-reservation accident involving non-members).

Tribal court jurisdiction has not been limited, and it is the inherent sovereign power of the Leech Lake Band of the Minnesota Chippewa Tribe which gives its courts' jurisdiction to adjudicate disputes arising on the Band's lands, whether involving the Band, Band entities, Band members, or non-Indians.[12]

The Leech Lake Tribal code, while not specifically providing for the Civil Commitment of members deemed to be a danger to the community does provide that: "Where an issue that arises which is not addressed by custom or traditional law, the court may apply the laws of any tribe, the federal government, or any state. Application of such law shall not be deemed an adoption of such law or deference to the jurisdiction from which law originates."[13]

EXERCISE OF CIVLL COMMITMENT JURISDICTION OVER MEMBERS OF THE MINNESOTA CHIPPEWA TRIBE, ENROLLED OR ELIGIBLE FOR ENROLLMENT WITH THE LEECH LAKE BAND INFRINGES ON TRIBAL SOVEREIGNTY.

[12] Williams, 358 U.S. 217; LaPlante, 480 U.S. 9.
[13] Appendix A-5, Section 6 c,, Leech Lake ATribal Code.

The infringement doctrine enunciated in Williams v. Lee[14]; and the abstention doctrine enunciated in National Farmers Union Ins. Co. v. Crow Tribe of Indians, 471 U.S. 845 (1985) and Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9 (1987) are two related doctrines of federal Indian law which prevent the exercise of jurisdiction by non-tribal courts where there is a tribal court or other tribal law applying forum with a colorable claim to jurisdiction[15].

The Williams, "infringement doctrine" acts as a bar to the exercise of jurisdiction by non-tribal courts over matters arising in Indian country, for where the non-tribal court action will infringe on the "right of reservation Indians to make their own laws and be ruled by them,"[16] or where the non-tribal court jurisdiction otherwise interferes with the tribe's right to govern itself, such exercise infringes on tribal sovereignty[17], and is precluded by federal law. In such a case, "[i]f state court jurisdiction over Indians or activities on Indian lands would interfere with tribal sovereignty and self-

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[14] Williams v. Lee, 358 U.S. 217 (1959);
[15] See Exhibit A, letter of October 29, 2004 from Chairwoman, Erma J. Vizenor or the White Earth Reservation Tribal Council to Judge of District Court requesting this present civil commitment matter "be dismissed and transferred to the Tribal Court" which "is very active in adjudicating a variety of cases involving civil regulatory issues, and is fully capable of adjudicating a civil commitment proceeding."
[16] Williams, 358 U.S. at 220.
[17] *Id.* at 233

government, the state courts are generally divested of jurisdiction as a matter of federal law."[18]

Therefore, in a case involving a tribal members, the analysis of state court jurisdiction under the infringement doctrine is a prerequisite to any exercise of jurisdiction, unless Congress has expressly consented to the exercise of state court jurisdiction.[19] This is so because "[c]ivil jurisdiction over tribal-related activities on reservation land presumptively lies in tribal courts unless affirmatively limited by a specific provision or by federal statute."[20] Here, Congress had not expressly limited the jurisdiction of the Leech Lake h Band of the Minnesota Chippewa Tribe. Consequently, jurisdiction over the present matter, especially being civil in nature, presumptively lies in the Leech Lake Tribal Court.

White Earth Reservation's and their Tribal Court's determination of its own jurisdiction.

MINNESOTA LAW AND PUBLIC LAW 280 ANALYSIS

[18] LaPlante, 480 U.S. at 15.
[19] *Id.* at 14.
[20] LaPlante, 471 U.S., at 18.

In 1997, the Supreme Court of Minnesota recognized "the right of reservation Indians to make their own laws and be ruled by them."[21] That court noted that

> [a]dditionally, we express our confidence that members of Indian tribes around the state will demand safe driving conditions on their reservations and that the tribes will respond to these demands with basic traffic and driving regulations and reasonable law enforcement mechanisms. We anticipate that tribes without the resources to sustain their own enforcement systems will enter into cooperative agreements with state and local governments to obtain these services. In light of the White Earth Band of Chippewa Indians' recent adoption of a motor vehicle code and existence of police and fire protection agreements between tribes and governmental units, such as the one between the City of Prior Lake and the Shakopee Community, we don not believe these expectations to be unfounded.[22]

The Stone Court clearly stated that "[i]n order for a state law to be fully applicable to a reservation under the authority of Public Law 280, it must be a criminal law."[23] However, the Court also noted that "[t]here is no bright-line rule which separates a criminal law from a civil law."[24] In doing so, the

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[21] Minnesota v Stone, 572 N.W. 2d 725 (Minn. 1997) *citing* White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 142, 100 S. Ct. 2578, 2583, 65 L.Ed. 2d. 665 (citations omitted).
[22] Id.
[23] Id. at 729, *citing* California v Cabazon Band of Indians, 480 U.S. 202, 208 (1987), 107 S. Ct. at 1088.
[24] Id. at 210, 107 S. Ct. at 1089.

Stone declared that "a shorthand test is whether the conduct at issue violates the State's public policy."[25]

Recently, the Busse Court determined that

> [d]riving after cancellation or denial as inimical to public safety is strictly prohibited conduct within the borders of the state of Minnesota.[26] Unlike driving in general, driving after cancellation or denial is not generally allowed.[27] Once a person's license is cancelled or denied on these grounds, driving is prohibited and exceptions for limited licenses are not allowed.[28] Thus, the conduct at issue, driving after cancellation as inimical to public safety, is generally prohibited conduct and under Cabazon/Stone analysis the offense is criminal/prohibitory.[29]

The analysis and conclusions in Busse are must also be properly applied because Busse did not involve *Civil* Forfeiture of a vehicle as part of that prosecution.

In Order of the trial Court, in order to obtain subject matter jurisdiction over this present Civil Commitment matter, the State argued that *Civil* Commitment is *really* criminal/prohibitory. This would violate the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution (and Minnesota Constitution), which guarantees that no person

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[25] Id.
[26] Minn. Stat. § 171.24, subd 5.
[27] Id.
[28] Minn. Stat. § 171.24; Minn. Stat. § 171.30, Subd. 3 (1998); Minn. R. 7503.1800, subs. 1,2.
[29] State v. Busse, 664 N.W. 2d 79 (Minn. 2002).

shall be "subject for the same offense to be twice put in jeopardy." The Double Jeopardy Clause applies only to successive prosecution by the same government.[30]

CIVIL COMMITMENT v. DOUBLE JEOPARDY

The Double Jeopardy Clauses of the United States Constitution and Minnesota Constitution protect criminal defendant(s) from three distinct abuses.[31] Under the Civil Forfeiture analysis "the constitutional prohibitions against double jeopardy will bar either appellant's criminal prosecution only if: (1) the punishment is for the same offense; (2) license revocation and criminal prosecution occur in separate proceedings; and (3) license revocation constitutes punishment."[32]

Similarly in Martin, the Minnesota Appellate Court noted that Respondent argued

> that his commitment under the SDP Act violates double jeopardy and equal protection. The Minnesota Supreme Court addressed both arguments in *In re Linehan*, 557 N.W.2d 171 (Minn.1996), *vacated on other grounds*, 522 U.S. 1011, 118 S.Ct. 596, 139 L.Ed.2d 486 (1997) (*Linehan III*). Protections against double jeopardy are not implicated by the SDP Act,

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[30] Stephen L. Pevar, THE RIGHTS OF INDIANS AND TRIBES: THE AUTHORITATIVE ACLU GUIDE TO INDIAN AND TRIBAL RIGHTS (An American Civil Liberties Union handbook) at 283 (3rd ed. pub 1992 and 2002), *citing* Heath v. Alabama, 474 U.S. 82, 88 (1985); Barkus v. Illinois, 359 U.S. 121 (1959).

[31] U.S.C.A. Const. Amend. 5.

[32] State v Hanson, 543 N.W. 2d 84 (Minn. 1996) *citing* United States v. Halper, 490 U.S. 435, 109 S. Ct. 1892, 1898, 104 L.Ed. 2d 487 (1989).

> because the purpose of commitment under the SDP act is treatment and not punishment. *Id.* at 188. The SDP Act's classification of sexually dangerous persons is justified by "the reasonable connection between a proposed patient's mental disorder and the state's interests in public protection and treatment." *Id.* at 187.[33]

For the state to make this argument, which is supported by the Legislature's intentions, must logically mean that in order to avoid double jeopardy implications Civil Commitment is civil/regulatory and not criminal/prohibitory.

CONCLUSION

"State court jurisdiction over matters involving Indians is governed by federal statute or case law."[34] Moreover, "[t]he [U.S.] Supreme Court has consistently recognized that Indian tribes retain *attributes of sovereignty over both their members and their territory.*"[35] This sovereignty is dependent upon, and subordinate to, only the Federal Government, not the States."[36]

Because the Supreme Court of Minnesota has supported the Minnesota State Legislature's efforts to proscribe the Civil Commitment

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[33] In re Civil Commitment of Martin, 661 N.W.2d 632 (Minn.App., May 20, 2003)(NO. C3-02-2236, CX-03-168) at 641. See also Kansas v. Hendricks, 521 U.S. 346, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997), 521 U.S. at 361-69, 117 S.Ct. 2072.

[34] Gayle v. Little Six, Inc., 555 N.W. 2d 284, 289 (Minn. 1996).

[35] Stone at 728, citing Cabazon at 207. (Emphasis added).

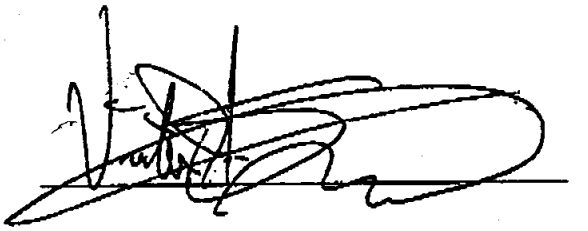
[36] Id.

scheme as being not punishment but remedial to avoid double jeopardy implications, Civil commitment must instead be considered civil/regulatory in nature and therefore the subject matter for this present matter properly be with the Leech Lake Reservation Tribal Court. For this Court to decide otherwise would: 1) defeat the Legislature's intent; 2) ignore the Supreme Court's precedents in Stone and Busse; 3) eliminate an important tool for state law enforcement; and 4) openly declare that the many citizens of Minnesota have been wrongly punished twice for the same offense by the State.

It is conceded that the Court of Appeals reached a contrary conclusion in In Re Commitment of Beaulieu, 737 NW 2d 231 (Min Ct App 2007.) However, it is Appellant's contention that the situation with Beaulieu and Respondent are different. In no small part is the fact that the Leech Lake Tribal Council has enacted laws that would permit the commitment of Appellant, were the appropriate facts presented to the Tribal Court.

WHEREFORE, Petitioner prays the Court of Appeals for an Order Dismissing the present civil commitment matter because the district court lacks the subject matter jurisdiction with regard to the present matter, and lacks personal Jurisdiction over Appellant.

Date: January 11, 2010



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APPENDIX

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STATE OF MINNESOTA | IN DISTRICT COURT

COUNTY OF CASS | NINTH JUDICIAL DISTRICT

In the Matter of the Civil Commitment of:

Jeremiah Nmn Johnson,
Respondent.

File No. 11-PR-08-1240

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-entitled matter came on July 16, 2009, for review hearing before the Honorable John P. Smith of the above-named Court in the City of Walker, County of Cass, State of Minnesota. At this time Respondent made a motion to dismiss for lack of subject matter jurisdiction.

Assistant Attorney General Ryan C. Ellis appeared on behalf of the State of Minnesota. Attorney Victor H. Smith appeared on behalf of the Respondent, Jeremiah Nmn Johnson.

Based upon all the files, records, and proceedings, the Court makes the following:

SUMMARY OF DECISION

The Respondent's motion to dismiss for lack of subject matter jurisdiction is denied.

CONTENTIONS OF THE PARTIES

The Respondent contends that the civil commitment should be dismissed as there is a lack of proper subject matter jurisdiction.

The State contends that proper jurisdiction exists for the Court to hear this matter.

ISSUE

1. Does the Court have proper subject matter jurisdiction to hear this matter?

FINDINGS OF FACTS

1. Mr. Johnson is a member of the Ojibway Nation and is an enrolled Bois Fort Band member.

2. This action was commenced pursuant to a Petition for Civil Commitment, which Petitioner filed in the Cass County District Court on May 27, 2008. Petitioner requested that the Court commit Respondent pursuant to Minn. Stat. § 253B.18 and 253B.185, as a "sexual psychopathic personality" (SPP) under Minn. Stat. §253B.02, subd. 18b (2008), and as a "sexually dangerous person" (SDP) under Minn. Stat. §253B.02 subd. 18c (2008).

3. At the time of the commitment hearing, the parties entered into a stipulation whereby Mr. Johnson agreed to be committed as a SDP, and the Petitioner dismissed the portion of the petition seeking his commitment as a SPP. Dr. Reitman testified in support of the stipulation and testified that Mr. Johnson was competent to enter into the stipulation. Mr. Johnson testified regarding the contents of the stipulation and his agreement to be committed as a SDP.

4. The Order regarding Findings of Fact, Conclusions of Law, and Order Regarding Initial Commitment was signed on April 15, 2009.

PRINCIPLES OF LAW

Generally, Indian tribes retain "sovereignty over both their members and their territory." *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987). However, states may apply state laws to tribal members if congress has expressly so provided. *State v. Stone*, 572 N.W. 2d 725, 728 (Minn. 1997). One such explicit provision can be found in Public Law 280, and codified at 18 U.S.C. § 1162 (2009). Public Law 280 was enacted mainly to combat congress' concerns over "the problem of lawlessness on certain Indian reservations," and also the "absence of adequate tribal institutions for law enforcement." *Bryan v. Itasca County, Minn.*, 426 U.S. 373, 379 (1976). With this in mind, "[i]n Public Law 280, Congress granted Minnesota broad criminal and limited civil jurisdiction over all Indian country within the state, with the exception of the Red Lake Reservation." *Stone*, 572 N.W. 2d at 728.

For a state law to be enforced against a tribal member under the authority of Public Law 280, the law must be determined to be criminal in nature. *Cabazon*, 480 U.S. at 208. The Court in *Cabazon* established that the critical distinction is that of whether a law is criminal/prohibitory or civil/regulatory. *Id.* at 209-10. This distinction was explained as follows:

> if the intent of a state law is generally to prohibit certain conduct, it falls within Pub.L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub.L 280 does not authorize its enforcement on an Indian reservation.

Id.

As there is no bight-line test to determine the distinction between criminal and civil law, the Supreme Court of Minnesota has outlined a two-part test to determine what is criminal/prohibitory and civil/regulatory. *Stone*, 572 N.W. 2d. at 729-30. The first step is to determine the focus of the analysis as either the narrow conduct addressed within the law or the broad conduct. *Id.* at 730. The focus of the test will be the broad conduct "unless the narrow conduct presents substantially different or heightened public policy concerns." *Id.* The second step is to determine whether the conduct is generally permitted subject to exceptions (civil/regulatory), or if it is generally prohibited (criminal/prohibitory). *Id.* In making this distinction in close cases, the Cabazon "shorthand public policy test" can be used to provide more guidance. *Id.*

DISCUSSION

The purpose of the statutes at issue in this matter is to mandate commitment of individuals who are a danger to the public due to their sexually deviant behaviors. The narrowly defined conduct in this instance is that of meeting the requirements of the statute for commitment through past sexual offenses. As sexual offenses upon the public presents "heightened public policy concerns," it is this narrow conduct which should be the focus of the *Stone* test. In evaluating the second part of the test the Court must consider whether the conduct in question is generally prohibited or generally permitted. Sexually deviant behavior is generally prohibited, and thus the civil commitment procedures in question are criminal/prohibitory. As such, the Court has jurisdiction in accordance with Public Law 280.

Following the precedent established by the Supreme Court of Minnesota in *State v. Jones*, which found that sex offender registration is criminal/prohibitory, and that of the Minnesota Court of Appeals' unpublished decision of *In re Commitment of Gilshing*, 2007 WL 2601423 (Minn. App., 2007), in which jurisdiction was found to be proper in a civil commitment of a sexual danger person, civil commitment statutes must be construed to be criminal/prohibitory. Further support for this precedent can be found in decisions outside the state of Minnesota such as in *In re Burgess*, 665 N.W.2d 124 (Wis. 2003). In this case the Wisconsin Supreme Court also found that Public Law 280 allowed for jurisdiction in a civil commitment proceeding involving a Native American as said statute was civil/prohibitory. The public safety issues raised by the civil commitment statutes are far more serious than those involved in the requirement of registration as presented in *State v. Jones*, and no less criminal/prohibitory.

CONCLUSION OF LAW

The Court has subject matter jurisdiction to hear the matter pursuant to Public Law 280.

ORDER

Upon all filings, records, and evidence in these proceedings, and upon the arguments of counsel,

IT IS HEREBY ORDERED:

1. The Respondent's motion to dismiss for lack of subject matter jurisdiction is DENIED.

DATED: October 9, 2009.

JUDGE JOHN P. SMITH
Ninth Judicial District

State of Minnesota, County of Cass
Certified to be a true and correct copy of the original on file and of record in my office.
Dated: 12/16/09
Court Administrator
By: Deputy

Section 6. Law Applicable in Civil Actions.

A. In all civil actions the court shall first apply such written laws of the Band which have been enacted by the Reservation Tribal Council.

B. Where there are no superseding written laws the court shall apply tribal customary and traditional law if such exists. Tribal customary or traditional law shall mean those traditional values and practices of the Leech Lake Ojibwe handed down, through the generations, either orally or through writing. In the event any doubt arises as to the customs and usage's of the Band, the court may request the advice and assistance of elders who are knowledgeable about such matters.

C. Where an issue arises in an action which is not addressed by written laws or custom and traditional law, the court may apply the laws of any tribe, the federal government, or any state. Application of such law shall not be deemed an adoption of such law or deference to the jurisdiction from which that law originates.

D. Concurrent Jurisdiction.

The jurisdiction invoked by this code over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; *provided, however*, this code does not recognize, grant, or cede jurisdiction to any state or other political or governmental entity in which jurisdiction does not otherwise exist in law.

Inclusion of language, definitions, procedure, or other statutory or administrative provisions of the State of Minnesota or other state or federal entities in this code shall not be deemed an adoption of that law by the Band and shall not be deemed an action deferring to state or federal jurisdiction within the Leech Lake Reservation where such state or federal jurisdiction may be concurrent or does not otherwise exist.