

STATE OF MINNESOTA  
COUNTY OF CROW WING

State of Minnesota,

Plaintiff,

**ORDER AND RULE 28.03  
CERTIFICATION OF PROCEEDINGS**

v.

James Warren Northrup,  
Todd Jeremy Thompson,

Court File No. 18-CR-16-19  
Court File No. 18-CR-16-24

Defendants.

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The above-entitled matters came on for a Contested Omnibus Hearing at the Crow Wing County Judicial Center in Brainerd, Minnesota, on November 8, 2016, before the Honorable Kristine R. DeMay, Judge of District Court, Ninth Judicial District. Appearances were as follows:

Don Ryan, Crow Wing County Attorney, appeared on behalf of the State of Minnesota.

Frank Bibeau, Attorney at Law, and Joseph Plumer, Attorney at Law, appeared with and on behalf of Defendants, James Warren Northrup and Todd Jeremy Thompson.

The Court received **Exhibit 1** thru **Exhibit 40** into evidence for purposes of this proceeding. At the conclusion of the hearing, the parties were provided an opportunity to submit written arguments on the matter. Mr. Bibeau and Mr. Plumer were provided until December 2, 2016, and Mr. Ryan was then provided until December 16, 2016, to file a response. The matter was taken under advisement on December 19, 2016. On January 3, 2017, the Court received additional filings from defense counsel. The State objected to the Court's consideration of the additional material as untimely.

As background, on or about August 28, 2015, Minnesota Conservation Officers observed two individuals in a canoe on Gull Lake in the County of Crow Wing, State of Minnesota. The two individuals were identified as Todd Jeremy Thompson and James Warren Northrup, Defendants herein. Officers observed Thompson open a blue tote and start placing a gill net into Gull Lake as Northrup paddled the canoe. After the net was placed into the lake, the two paddled to shore.

The Conservation Officers pulled their patrol boat up next to the canoe, identified themselves, and directed the individuals to stop the canoe. Thompson and Northrup refused to stop, paddled to shore, exited their canoe, and disappeared into a crowd of people. The canoe was quickly loaded onto a truck by other individuals. Officers observed that the canoe did not display proper registration and did not contain any personal flotation devices. The Conservation Officers went to shore but were unable to locate the suspects. The Officers then proceeded to check the gill net in the lake. No identification information or proper licensing data was displayed on the net. Officers removed the net and returned to the landing a short time later. While at the landing, a group of individuals confronted the Officers. Thompson and Northrup were amongst these individuals and admitted to setting the gill net in the lake without a proper license or permit from the State of Minnesota to do so. Thompson and Northrup claimed to have federal treaty rights to place the net in Gull Lake. Both individuals were charged with the following:

Count I: Fish and Game-Take Fish with Nets, Traps, Trot Lines or Snares in violation of Minnesota Statute Sec. 97C.325, subd. (a)(3).

Count II: Fish and Game-Net Fish w/o License and Angling License in violation of Minnesota Statute Sec. 97C.301, subd. 4.

Count III: Watercraft-Fail to Affix Valid Registration Sticker in violation of Minnesota Statute Sec. 86B.301, subd. 1(3).

Count IV: Watercraft-Personal Floatation or Lifesaving Devices Required in violation of Minnesota Statute Sec. 86B.501, subd. 1.

On March 10, 2016, Defendants filed a Motion to Dismiss for Lack of Jurisdiction requesting that the charges be dismissed because:

1. The State of Minnesota lacks jurisdiction under Public Law 280;
2. The State natural resource statutes and charges filed against Defendants violate both federal statutes;
3. The Defendants are enrolled members of the Minnesota Chippewa Tribe and, thus, enjoy individual usufructuary property rights through a series of treaties.
4. The site of the usufructuary activity was within the *Indian Country* territory ceded to the United States under treaty with the Chippewa of the Mississippi, Pillager and Winnibigoshish in 1855.
5. That the site of the usufructuary activity where the citation was issued was within the exterior boundaries of Gull Lake reservation as provided for in the 1855 Treaty with the Chippewa.

The parties provided the Court with great detail and historical context of treaties entered into between the government and the Chippewa. Upon review of the exhibits and arguments of counsel, this Court finds that the issues presented are questions that are important and doubtful and will have statewide impact. Defendants have consented to the certification.

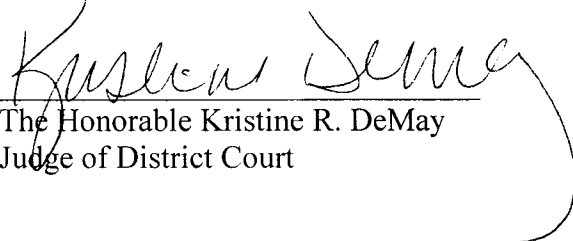
Based upon the files and records herein, the evidence adduced at the hearing, the arguments of counsel and applicable law, the Court makes the following:

**ORDER**

1. That upon Defendants' motions to dismiss and, pursuant to Rule 28.03, Minnesota Rules of Criminal Procedure, this Court does certify to the Court of Appeals as important and doubtful questions with potential statewide impact, as follows:
  - a. Whether the State of Minnesota has subject matter jurisdiction over the offenses charged, and
  - b. Whether applicable treaties exist to offer Defendants protection from state infringement and regulation in the area at issue as pertaining to the charged conduct.
2. That all proceedings in District Court are hereby stayed.
3. That the State must furnish a copy of the certification to the Minnesota Attorney General.

BY THE COURT:

Dated: 1-18-17

  
The Honorable Kristine R. DeMay  
Judge of District Court