A25-0527

STATE OF MINNESOTA

IN COURT OF APPEALS

FILED

August 15, 2025

OFFICE OF APPELLATE COURTS

State of Minnesota,

Respondent,

vs.

Todd Jeremy Thompson,

Appellant.

RESPONDENT'S REPLY BRIEF

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LEGAL ISSUES PRESENTED

I. Whether an enrolled tribal member's cannabis possession with an intent to sell said cannabis to the public is subject to the State's criminal jurisdiction.

The State's response is that this is subject to the State's criminal authority under Public Law 280.

STATEMENT OF THE CASE

On April 17, 2024, the State charged Appellant Todd Jeremy Thompson with first degree cannabis possession for possessing more than two pounds of cannabis flower and cannabis wax in violation of Minnesota Statute section 152.0263, subdivision 1(1). *See* App. Add. 1-8. The Appellant moved to dismiss the case based upon an argument that the matter was civil/regulatory. *See* Add. 9-20. The District Court denied Appellant's motion on March 3, 2025. *See* Add. 35-41. The Appellant sought discretionary review pursuant to Rule 28.02 of the Minnesota Rules of Criminal Procedure. This Appellate Court granted the Appellant's Petition, finding "a decision on the jurisdiction of the state to enforce Minnesota's cannabis possession laws and on the extent of the rights reserved under applicable treaties will have an immediate statewide impact on all Tribes in Minnesota subject to Public Law 280 and on their members." *See State v. Thompson*, No. A25-0527, 2025 WL 1419945, *3 (Minn. App. May 13, 2025).

STATEMENT OF FACTS

The Appellant, Todd Thompson, is an enrolled member of the White Earth Band of Ojibwe, who owns and operates Asema Tobacco & Pipe Shop within the White Earth Reservation within the State of Minnesota, and Mahnomen County. The "shop" is a duly formed limited liability company under the White Earth Limited Liability Code. The "shop" is a licensed tobacco distributor/wholesaler regulated under the White Earth Reservation Tax Code. The Appellant was educated to the laws and regulations necessary to operate his

"shop" on the Reservation and within the State of Minnesota as established by his maintenance of those license requirements. This "shop" is open to the general public. In 2023, the Appellant was alleged to be openly selling cannabis to the general public from his shop. The product for sale included both cannabis flower and cannabis wax products. These products were staged for individual sales and the "shop" included public displays and a scale. On August 2, 2023, White Earth Tribal Police executed a controlled substance search warrant of the Appellant's shop and home. White Earth Tribal Police seized numerous sales related items, cannabis items and cash, totaling: 3,405 grams of cannabis flower, 433 grams of cannabis wax and $2,748 in cash from the "shop" and nothing from the Appellant's home.

Arguments

I. THE LEGALIZATION OF CANNABIS IN MINNESOTA DID NOT NEGATE THE CRIMINAL STATUTE FOR POSSESSION WITH THE INTENT TO SELL, NOR DID IT VACATE THE STATE'S JURISDICTION TO ENFORCE ITS LAWS AGAINST A TRIBAL MEMBERS ON RESERVATION LANDS.

A. Minnesota's jurisdictional authority under Public Law 280 continues to apply to all criminal matters related to cannabis.

The Minnesota Supreme Court has determined that "Constitutional principles of separation of governmental powers forbid the interference of one governmental branch with another within their respective spheres." *Neighborhood Sch. Coal. v. Indep. Sch. Dist. No. 279*, 484 N.W.2d 440, 441 (Minn. App. 1992), *review denied* (Minn. June 30, 1992). A subsequent Minnesota Supreme Court established that Minnesota Courts are to use the

”separation-of-powers” doctrine, which put forth “prudential limits” on a district court’s subject-matter jurisdiction. *Citizens for Rule of Law v. Senate Comm. on Rules & Admin.*, 770 N.W.2d 169, 173 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009). The *Citizens*’ Court concluded that the “separation-of-powers” doctrine [**DOES NOT**] deprive a trial court of subject-matter jurisdiction “in the strictest sense”. *Id*. at 173-74. This left in place the determination of the need for a balancing of interests for the Mahnomen Court.

“Indian tribes retain sovereignty over their members within the boundaries of their reservations and state law is not applicable to Indians within Indian Country without the consent of Congress”. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987) ("Indian Country" as defined in 18 U.S.C. § 1151 (1988) includes "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation." This definition is applicable to questions of both criminal and civil jurisdiction. *California v. Cabazon*, 480 U.S. 202, 207, (1987).

Minnesota established and enacted Public Law 280 based upon the United States Congress’ grant of the requisite jurisdiction to enforce its laws against tribal members See *Citizens*, at 173 (codified at 18 U.S.C. § 1162 and 28 U.S.C. § 1360 (1994))(Section 2 of Public Law 280 gives “states” [Minnesota] broad criminal jurisdiction: over offenses committed by or against Indians in the areas of Indian country, and have the same force and effect within such Indian country as they have elsewhere within the State). The *Cabazon* Court directed that Public Law 280 grants jurisdiction to the “State” [Minnesota herein] to enforce a law against an Indian within an Indian reservation only if the law is

criminal/prohibitory and not civil/regulatory. *Cabazon*, 480 U.S. at 208. The *Cabazon* Court adopted the following test to distinguish between criminal and civil laws for purposes of Public Law 280:

> "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. The shorthand test is whether the conduct at issue violates the State's public policy".

Id. at 209.

Minnesota's Courts have determined that certain applications of public policy require court jurisdiction to be utilized for the enforcement of certain broad policy laws. *See Compare Bray v. Commissioner of Public Safety*, 555 N.W.2d 757 (Minn. App. 1996) (finding implied consent law is criminal/prohibitory because it categorically prohibits driving while intoxicated), *See* also, *State v. Stone*, 572 N.W.2d 725 (Minn. 1997).

Based upon that application, the Minnesota Supreme Court in *State v. Stone*, created a two-step approach for the application of the *Cabazon* test. The *Stone* Court stated that "the broad conduct of the law will be the focus of the test unless the narrow conduct presents substantially different or heightened public policy concerns compared to those underlying the broad conduct". *Id*. The *Stone* Court's second step requires the determination of the question: is criminal or civil:

> If the conduct is generally permitted, subject to exceptions, the law is civil/regulatory. If the conduct is generally prohibited, the law is criminal/prohibitory.

Id. The "shorthand public policy test" is to conclude that "a law will be classified as criminal under Public Law 280 if a violation of the law also constitutes a breach of the state's public criminal policy". *Id*. To clarify this approach, some of the nonexclusive factors to consider, include:

> (1) The extent to which the activity directly threatens physical harm to persons or property or invades the rights of others; (2) the extent to which the law allows for exceptions and exemptions; (3) the blameworthiness of the actor; (4) the nature and severity of the potential penalties for a violation of the law.

Id. The rationale for this consideration is: public policy mandated to combat driving under the influence "is substantially heightened in comparison to the general scheme of driving laws, in that their violation creates a greater risk of direct injury to persons and property on the roadways." *Stone*, 572 N.W.2d at 731. (including the nature and severity of potential penalties for violation of the law in consideration of whether activity violates criminal public policy).

Even if this Court were to view the matter in light of the Appellant's argument that it is civil in nature, the Court in *In re Commitment of Beaulieu*, 737 N.W.2d 231, 235 (Minn. App. 2007) put forth that "[i]t is undeniable that the state has a compelling interest in protecting the health and safety of the public, including persons both on and off tribal land, from dangerous and repeat sex offenders." *Beaulieu*, 737 N.W.2d at 240. This civil case is

pointed out within this Appeal, because the Appellant herein was openly selling to the general public, putting all persons on and off tribal land in danger. Not only was the Appellant selling a known illegal product [cannabis wax], but the Appellant was openly selling all of the seized product within his "shop" to the general public.

Mahnomen County has the proper jurisdiction to enforce the original charges brought against the Appellant for first degree possession of a controlled substance with the intent to sell. Cannabis was and is still a controlled substance, with specific elements and levels of penalties for violations. Minnesota's Public policy mandates strict and broad regulations pertaining to possession, including type and quantity of cannabis by all of its citizens including tribal members. Both the criminal code and the newly enacted cannabis laws strictly regulate the use, possession and sale of cannabis as the product has the potential to directly threaten the general public. Therefore, Mahnomen County had proper subject matter jurisdiction.

B. The Appellant's conduct was not permitted under the law, including the new Cannabis Legislation, and is the very conduct that the State of Minnesota seeks to prohibit as a matter of law.

Minnesota courts under the *Stone* Court direction do have jurisdiction over prohibited conduct when that conduct is inherently dangerous to the general public. *See State v. Couture*, 587 N.W.2d 849 (Minn. App. 1999) (referencing laws penalizing driving while under the influence as a means to prohibit such conduct).

In *State v. Busse*, the Minnesota Supreme Court applied the *Stone* test to the law related to an enrolled member being charged with cancellation as inimical to public safety

and concluded that it was criminal/prohibitory and therefore enforceable pursuant to Public Law 280. *State v. Busse*, 644 N.W.2d 79, 84-88 (Minn. 2002). In an additional case example, in *State v. Jones*, an enrolled member was charged with failing to register as a predatory offender and concluded that it was criminal/prohibitory and therefore enforceable under Public Law 280. *State v. Jones*, 729 N.W.2d 1, 2, 12 (Minn. 2007).

Herein, the Appellant is an enrolled member of the White Earth Band of Chippewa Indians. The Appellant operates a licensed and regulated store, as available to the general public. This "shop" is within the boundaries of the White Earth Reservation, but again, is open to the public. The Appellant has a valid and regulated Tribal license to sell tobacco. The Appellant is educated enough to understand the laws and regulations to open and operate an L.L.C. and to sell tobacco to the general public. The Appellant has a sufficient practical education to understand the newly enacted Minnesota marijuana laws require licensure and regulations as he didn't make his cannabis product available to the general public until after the cannabis legislation was enacted. The Appellant's factual argument is that he was compliant with his business and tobacco licenses, but argues that he would have no such obligation for his possession and sale of cannabis. The Appellant's argument ignores the availability of his shop to the general public. It further ignores that some of his product was cannabis wax which was not legal under the regulations. The Appellant's seized items were not within those permitted by the newly enacted Cannabis Laws. To further contradict the Appellant's argument, none of the cannabis products were seized at his home. The Appellant's actions and products were exactly those prohibited as inherently dangerous.

The criminal laws followed by Mahnomen County under the State of Minnesota establish that the prosecution of criminal matters include possession with the intent to sell under Minn.Stat. § 152. This includes enhanced penalties, classifications and detailed statutory definitions. The Appellant's possession, location and open sale to the general public were not about personal use, ceremonial use, or even medicinal use. The types of cannabis were those that are prohibited. The Appellant knew the laws related to regulation and operation of his business. All items seized were displayed for sale. The Appellant openly displayed and sold this controlled substance to the general public. Even if the Appellant were to attempt an argument that this was regulatory and civil, the Appellant's products were still strictly prohibited under the law.

The Appellant's conduct was prohibited as a matter of criminal law. The charged Minnesota Statute was not negated by the new cannabis laws and regulations as it applies to tribal lands or tribal members. Public Law 280 is appropriate to protect the safety of the public on and off the tribal lands. The State of Minnesota properly charged the Appellant in State Court.

CONCLUSION

For the foregoing reasons, Respondent Mahnomen County asks this Court to uphold the District Court's decision in this matter.

Respectfully Submitted,

Dated: 8-15-2025

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