

No. A07-496

STATE OF MINNESOTA

IN COURT OF APPEALS

In the Matter of the Civil Commitment of

John Louis Beaulieu III.

APPELLANT'S BRIEF AND APPENDIX

TIMOTHY FAVER
Beltrami County Attorney

MARGARET J. DOW
Atty. Reg. No. 0215867

ANGELA HELSETH KIESE
Assistant Attorney General
Atty. Reg. No. 0219873

P.O. Box 1093
Bemidji, Minnesota 56601-1093

ATTORNEY FOR RESPONDENT

SEAN MCCARTHY
Assistant Attorney General
Atty. Reg. No. 0262742

445 Minnesota Street, Suite 1800
St. Paul, Minnesota 55101-2134
(651) 296-6726 (Voice)
(651) 282-2525 (TTY)

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
LEGAL ISSUES	1
STATEMENT OF THE CASE	1
STATEMENT OF FACTS.....	3
I. SEXUAL OFFENSES	3
II. BEAULIEU'S SEX OFFENDER TREATMENT AND PLACEMENT HISTORY.....	5
III. TRIAL TESTIMONY.....	7
ARGUMENT	9
I. STANDARD OF REVIEW	9
II. THE COMMITMENT REQUIREMENTS OF THE SDP LAW	9
III. THE DISTRICT COURT ERRED IN CONCLUDING THAT IT LACKED PERSONAL AND SUBJECT MATTER JURISDICTION TO CIVILLY COMMIT RESPONDENT AS A SEXUALLY DANGEROUS PERSON.	10
A. The Beltrami County Court Had Personal Jurisdiction Over Beaulieu When It Civilly Committed Him.....	11
B. The State Had Jurisdiction Over Beaulieu Because His Criminal Conduct And Subsequent Incarceration Resulted in Him Lawfully Leaving The Reservation.	13
C. The State's Jurisdiction Over Beaulieu Was Not Preempted By The Federal Government Or The Tribe, And The State's Interest In Jurisdiction Over Beaulieu Is Compelling.....	18
D. The State Has Jurisdiction Over Beaulieu Based On The "Exceptional Circumstances: Of Protecting The Public From Sexually Dangerous Persons	27

CONCLUSION..... 33

APPENDIX.....AA

TABLE OF AUTHORITIES

	Page
FEDERAL CASES	
<i>Addington v. Texas</i> , 441 U.S. 418 (1979)	19
<i>Bryan v. Itasca</i> , 426 U.S. 373 (1976)	16
<i>California v. Cabazon Band of Mission Indians</i> , 480 U.S. 202 (1987)	passim
<i>Duro v. Reina</i> , 495 U.S. 676 (1990)	15, 16
<i>Johnson v. McIntosh</i> , 8 Wheat. 543 (1823)	15
<i>McClanahan v. Arizona State Tax Comm'n</i> , 411 U.S. 164 (1973)	15, 16, 17
<i>Mescalero Apache Tribe v. Jones</i> , 411 U.S. 145 (1973)	1, 16, 17
<i>Moe v. Salish & Kootenai Tribes</i> , 425 U.S. 4633 (1976)	29
<i>Nevada v. Hicks</i> , 533 U.S. 353 (2001)	30
<i>New Mexico v. Mescalero Apache Tribe</i> , 462 U.S. 324 (1983)	passim
<i>Oliphant v. Suquamish Indian Tribe</i> , 435 U.S. 191 (1978)	15
<i>Puyallup Tribe, Inc. v. Dept. of Game</i> , 433 U.S. 165 (1977)	29, 30

<i>Rice v. Rehner</i> , 463 U. S. 713 (1983).....	passim
<i>St. Germaine v. Circuit Court for Vilas County</i> , 938 F.2d 75 (7th Cir. 1991).....	31
<i>Washington v. Confederated Tribes of Colville Indian Reservation</i> , 447 U.S. 134 (1980).....	29, 30
<i>White Mountain Apache Tribe v. Bracker</i> , 448 U.S. 136 (1980).....	passim

MINNESOTA STATE CASES

<i>Bailey v. State</i> , 409 N.W.2d 33 (Minn. Ct. App. 1987).....	17
<i>Desjarlait v. Desjarlait</i> , 379 N.W.2d 139 (Minn. Ct. App. 1986).....	23
<i>In re Blodgett</i> , 510 N.W.2d 910 (Minn. 1994).....	19
<i>In re Bowers</i> , 456 N.W.2d 734 (Minn. Ct. App. 1990).....	11
<i>In re Ivey</i> , 687 N.W.2d 666 (Minn. Ct. App. 2004).....	1, 11, 12
<i>In re Linehan</i> , 557 N.W.2d 171 (1996).....	19
<i>In re Linehan</i> , 594 N.W.2d 867 (Minn. 1999).....	10
<i>Jefferson v. Commissioner of Revenue</i> , 631 N.W.2d 391 (Minn. 2001).....	17
<i>Red Lake Band of Chippewa Indians v. State</i> , 248 N.W.2d 722 (1976).....	17, 19
<i>State v. Busse</i> , 644 N.W.2d 79 (Minn. 2002).....	9

<i>State v. Jones</i> , 729 N.W.2d 1 (Minn. 2007).....	passim
<i>State v. R.M.H.</i> , 617 N.W.2d 55 (Minn. 2000).....	9, 20
<i>State v. Red Lake DFL Committee</i> , 303 N.W.2d 54 (Minn. 1981).....	17
<i>State v. Robinson</i> , 572 N.W.2d 720 (Minn. 1997).....	14
<i>State v. Rossbach</i> , 288 N.W.2d 714 (Minn. 1980).....	17
<i>State ex rel. Anderson v. U.S. Veterans Hospital</i> , 128 N.W.2d 710 (Minn. 1964).....	1, 11
<i>Wick v. Wick</i> , 670 N.W.2d 599 (Minn. Ct. App. 2003)	11
OTHER STATES' CASES	
<i>Commitment of Burgess</i> , 665 N.W.2d 124 (Wis. 2003), <i>cert. denied by</i> <i>Burgess v. Wisconsin</i> , 124 S.Ct. 1713 (2004).....	31
FEDERAL STATUTES	
18 U.S.C. § 1151 (1988)	14
18 U.S.C. § 4248 (2006)	22
67 Stat. 588 (1953).....	16
Pub. L. No. 83-280	16
STATE STATUTES AND RULES	
Minn. Stat. § 243.166	12
Minn. Stat. § 243.166, subd. 1b	4

Minn. Stat. § 253B.18, subd. 1.....	10
Minn. Stat. § 253B.18, subd. 2.....	2
Minn. Stat. § 253B.18, subd. 3.....	2
Minn. Stat. § 253B.18c.....	10
Minn. Stat. § 253B.185	9
Minn. Stat. § 253B.185, subd. 1.....	9, 10
Minn. Stat. § 253B.02, subd. 18c.....	10
Minn. Stat. § 253B.212	23
Minn. Stat. ch. 256G	7
Minn. Stat. §§ 256G.02	7
Minn. Stat. §§ 256G.04.....	7
Rule 60.02(c).....	3
Rule 60.02(d).....	3

LEGAL ISSUES

1. Did the trial court have personal jurisdiction over the respondent, an enrolled member of the Red Lake Indian Reservation, for purposes of his civil commitment as a sexually dangerous person?

The trial court ruled in the negative.

In re Ivey, 687 N.W.2d 666 (Minn. Ct. App. 2004)
State ex rel. Anderson v. U.S. Veterans Hospital,
128 N.W.2d 710 (Minn. 1964)

2. Did the trial court have subject matter jurisdiction over the respondent, an enrolled member of the Red Lake Indian Reservation, for purposes of civil commitment as a sexually dangerous person?

The trial court ruled in the negative.

State v. Jones, 729 N.W.2d 1 (Minn. 2007)
Mescalero v. Jones, 411 U.S. 145 (1973)
Rice v. Rehner, 463 U. S. 713 (1983)

STATEMENT OF THE CASE

Appellant Beltrami County appeals from an order of the Beltrami County District Court finding that the State did not have either personal or subject matter jurisdiction over the respondent, John Louis Beaulieu III (“Beaulieu”) when it committed him as a sexually dangerous person (“SDP”) in 2005.

On November 3, 2004, Beltrami County filed a petition seeking to commit Beaulieu as an SDP and a sexual psychopathic personality (“SPP”). After the petition was filed, the district court issued an Apprehend and Hold Order, and Respondent was transferred to the Beltrami County Jail to serve the balance of his federal sentence. The district court later issued a continued hold order that Beaulieu be held pending a

determination on the commitment petition. He was then held at the Beltrami County Jail until the court ruled after his initial commitment hearing in March 2005.

Pursuant to the commitment statute, the trial court appointed two Ph.D. psychologists as court examiners. Dr. James Gilbertson was the first examiner, and Dr. James Alsdurf was the second examiner, chosen by Respondent. The two court-appointed psychologists conducted their examinations and submitted written reports. Dr. Gilbertson supported commitment of Beaulieu as an SDP, and Dr. Alsdurf supported commitment of Beaulieu as both an SDP and an SPP.

The case was tried in Beltrami County District Court, before the Honorable Paul Benshoof in March 2005. On March 15, 2005, the trial court filed its Findings of Fact, Conclusions of Law, and Order for Initial Commitment. Appellant's Appendix (AA) 1. The court committed Appellant to the Minnesota Sex Offender Program (MSOP) at St. Peter and Moose Lake, Minnesota as an SDP. *Id.*

Under Minn. Stat. § 253B.18, subd. 2 (2006), the court's commitment order was an "initial" commitment. The statute requires MSOP to submit a treatment report, and the court must then hold a review hearing to decide whether to make the commitment final. *Id.*, subds. 2, 3. After Beaulieu's initial commitment, MSOP conducted an evaluation and submitted its treatment report supporting Beaulieu's continued commitment to the trial court.

Following a review hearing on June 14, 2005, pursuant to Minn. Stat. § 253B.18, subd. 2 (2006), at which MSOP staff testified, the trial court made Appellant's

commitment indeterminate by order dated June 14, 2005. AA 11. Beaulieu did not appeal any part of his commitment.

In January 2007, Beaulieu challenged the validity of his original commitment, in a “Motion for Relief from Judgment” pursuant to Rule 60.02(c) and (d). AA 13. On March 2, 2007, the district court granted Respondent’s motion, finding that it did not have personal or subject matter jurisdiction over Beaulieu when it issued the 2005 commitment orders based on principles of Indian sovereignty relying partially on the fact that Beaulieu had not voluntarily subjected himself to the trial court’s jurisdiction. *Id.* In doing so, the trial court stated, “It is not without a great deal of consternation that I reach this decision. The evidence produced at Respondent’s commitment hearing proved convincingly that Respondent is a sexually dangerous person. He almost certainly will offend again, and when he does, his victim(s) will almost certainly be a child or children, the most vulnerable in our society.” AA 26. Beltrami County now appeals from that Order.

STATEMENT OF FACTS

I. SEXUAL OFFENSES

Born in November 1984, Beaulieu is now 22 years of age. The facts found by the trial court, along with other undisputed evidence, show that Beaulieu is an extremely dangerous person due to his numerous sexual offenses against many young victims, his sexual acting out while in various placements, and fantasies of acting out sexually again if released. The facts relating to Respondent’s sexual offenses and dangerousness are

described in more detail in the trial court's March 2005 findings and in its March 2, 2007 Order. Those facts are only summarized here.

Beaulieu was convicted of one count of Aggravated Sexual Abuse of a child in federal court in 1999. AA 1. He is required to register as a predatory offender with the Minnesota Bureau of Criminal Apprehension ("BCA") based on his federal conviction. Minn. Stat. § 243.166, subd. 1b (2006); Ex. 2C (various documents).

The underlying offenses to Beaulieu's conviction occurred between November 1996 and April 1999. AA 1. Two minor victims were identified. *Id.* At the time of the offenses against the minor victims, Beaulieu was between 12 and 14 years of age. *Id.* One of Respondent's victims was his nephew, GLB. AA 2. Respondent forced GLB to have anal sex "about nine times." *Id.*

Another victim was five-year-old QDB. *Id.* When Respondent was 14 years of age, he sexually abused QDB at least five times, grabbing QDB's penis. *Id.* Respondent admitted that he pushed his victims around and threatened them. *Id.* Respondent later admitted that he fondled and had oral sex with these victims and sexually abused each of them at least 23 times. AA 3.

Following Respondent's removal from his home after authorities discovered Respondent's sexual offenses, Respondent was evaluated by a psychologist at the White Earth Health Center. AA 2. During the evaluation, Respondent admitted to abusing 42 different boys. *Id.* During his civil commitment trial, Respondent admitted that he had molested 10 boys, but denied molesting 42. *Id.* He stated that 42 reflected the number of times he molested his victims. *Id.*

During another psychological evaluation in September 1999, Respondent admitted to having fantasies of being sexual with prepubescent boys and of sadistic desires. *Id.* The psychologist concluded that Respondent had serious and pervasive sexual conditions. *Id.*

While in treatment at the Adolescent Sexual Adjustment Program in Huron, South Dakota ("ASAP"), Respondent described his sexual abuse of a five-year-old boy, CR, when Respondent was 13 years of age. AA 3. Respondent reported that he held CR down, grabbed CR's head, and pushed CR's face onto Respondent's penis. *Id.* CR cried during the sexual abuse. *Id.* Respondent also sexually abused CR's brother. *Id.* Respondent told CR that he would "beat the hell out of him" if CR told anyone of the sexual abuse. *Id.*

Respondent also disclosed oral intercourse with a seven or eight-year-old boy, D; sexually abusing a boy, AE, at least five times; and fondling two boys, ages 18 and 16, when he was at Juvenile Service Center. *Id.*

When Respondent was released from treatment at ASAP, ASAP staff opined that Respondent's "sexual safety would be judged to be within the dangerous range given his diagnosis of pedophilia and his current medication of testosterone replacement therapy for his Klinefelter's syndrome." AA 5.

II. BEAULIEU'S SEX OFFENDER TREATMENT AND PLACEMENT HISTORY.

After his release from ASAP, Respondent was placed in the Leo Hoffman Center in St. Peter, Minnesota. *Id.* He resided there from May 2002 through November 2003. *Id.* While there, Respondent threatened staff members, forcing one staff member into an

office and threatening her, and forcing another staff member into a corner and threatening to kill her. AA 4-5. Respondent pled guilty to Terroristic Threats for that incident. AA 5. Upon his discharge, Leo Hoffman staff noted that Respondent would continue to need a supervised living environment and sex specific care services. AA 5-6.

Respondent was then placed at REM-Lyndale Group Home with supportive therapeutic services through the Safety Center Sex Offender Treatment Program. AA 6. Despite that highly structured environment, Respondent continued to act out sexually with and upon peers. *Id.*

While in placement at REM-Lyndale, Respondent disclosed 42 total victims, including 26 contact victims (the remaining cases consisting of exposing and voyeurism). AA 2. The number of victims reported did not include sexual contact with peers at various school and treatment settings, and Respondent admitted to “many incidents of sexually inappropriate behaviors with other boys at prior placements, including peeping in showers and watching others dress.” AA 3-4. In Spring 2004, Respondent admitted “having dreams of molesting nieces and nephews” and having “sexual attractions to peers on a daily basis.” AA 4.

Respondent also exhibited several anger outbursts towards female staff involving threats while at REM-Lyndale. AA 5. Respondent was discharged from the program after REM-Lyndale staff no longer felt comfortable with the responsibility that came with Respondent participating in their program. AA 6. REM-Lyndale recommended to Respondent’s federal probation officer that Respondent be considered for civil commitment. *Id.*

The federal court revoked Respondent's conditional release, and he was placed at Lake Regions Law Enforcement Center, Ramsey County Jail in Devils Lake, North Dakota. *Id.* He was there until he was transferred to the Beltrami County Jail on the civil commitment Apprehend and Hold Order to serve the remainder of his federal sentence and participate in the civil commitment hearing in this case.¹ *Id.*

III. TRIAL TESTIMONY

At the time of the March 2005 civil commitment trial, the court-appointed examiners, Drs. James Gilbertson and James Alsdurf, diagnosed Respondent with Dysthymia; Sexual Paraphilia, not otherwise specified (NOS); Impulse Control Disorder, NOS; Personality Disorder, NOS, with Cluster B traits: antisocial, borderline, and narcissistic; and Mild to Borderline Intellectual Functioning. AA 7. Both doctors testified that Beaulieu met all of the criteria for commitment under the SDP statute. AA 7-8; Trial Transcript (T.) 9-17, 65-59. Dr. Gilbertson explained that Beaulieu is highly likely to re-offend sexually and that he needs intensive, long-term, residential treatment in a secure setting in order to be afforded the opportunity to gain sufficient control of his sexual behaviors so that his risk of re-offending is sufficiently lowered. T. 9-17.

¹ Beaulieu had obtained case management services from Beltrami County Human Services while on federal supervision and had remained on "exempt" status for purposes of determining county of financial responsibility under Minn. Stat. ch. 256G from that time until the civil commitment petition was filed in November 2004. Minn. Stat. §§ 256G.02 and 256G.04

At trial, Beaulieu testified that if not committed, he planned to initially live with his parents on the Red Lake Reservation but planned to receive outpatient sex offender treatment in Bemidji, off of the reservation, and also planned to go to school and work off of the reservation. T. 129-134.

Based on the evidence at trial, the commitment court found that Respondent had engaged in a course of harmful sexual conduct, as evidenced by his many acts of molestation against children, and that his sexually harmful behavior created a substantial likelihood of serious physical or emotional harm to his victims. AA 7. The commitment court also found that Respondent had significant dysfunction in the area of sexual and emotional control and that his diagnoses prevented him from adequately controlling his sexual impulses. *Id.*

In addition, the commitment court found that Respondent was highly likely to engage in future acts of harmful sexual conduct. AA 8. The court concluded, "The State has proved by clear and convincing evidence that Respondent meets all the statutory elements of a Sexually Dangerous Person." *Id.*

The commitment court found that it was not reasonable to expect that Respondent's family could watch over him 24 hours a day, as he suggested they would do. *Id.* The court noted that Respondent's many episodes of molestation occurred when he lived at home. *Id.* In addition, Respondent told providers that his mother knew of his acts of molestation and did nothing to stop him. *Id.* The court concluded, "Returning him home at this point would almost certainly result in his having many opportunities to molest children." *Id.* After considering various less restrictive alternatives, the

commitment court found Respondent in need of “an inpatient residential sex offender treatment program that will allow confrontation, treatment and the presence of a therapeutic milieu twenty-four hours a day” and committed him to MSOP. AA 9.

IV. REVIEW HEARING REPORT AND TESTIMONY

After Beaulieu’s initial commitment, MSOP submitted a treatment report to the court dated May 2, 2005. *See* Treatment Report to the Court. The treatment report supported Beaulieu’s continued commitment under the SDP law. *Id.* The report listed a number of factors regarding why Beaulieu is highly likely to re-offend sexually. *Id.* The report noted that Beaulieu needs intensive, inpatient sex offender treatment programming and recommended his placement at MSOP, noting that a less restrictive treatment program is not available consistent with his treatment needs and the needs of public safety. *Id.* Based on the evidence at the review hearing, the trial court indeterminately committed Beaulieu. AA 11. Beaulieu remains in at MSOP at this time.

ARGUMENT

I. STANDARD OF REVIEW

On appeal, issues of jurisdiction are reviewed *de novo*. *See State v. R.M.H.*, 617 N.W.2d 55, 58 (Minn. 2000). In reviewing a case in which the facts are not disputed and the issue presented is purely a question of law, as here, this Court gives no deference to the courts below. *See State v. Busse*, 644 N.W.2d 79, 82 (Minn. 2002).

II. THE COMMITMENT REQUIREMENTS OF THE SDP LAW

Minn. Stat. § 253B.185 provides for a county attorney, if satisfied that good cause exists, to file SDP and SPP civil commitment petitions. Minn. Stat. § 253B.185, subd. 1

(2006). To commit an individual as an SDP, the Petitioner must prove the requirements for commitment by clear and convincing evidence. Minn. Stat. §§ 253B.185, subd. 1 (2006) and 253B.18, subd. 1 (2006).

The SDP law defines an SDP as follows:

- (a) A “sexually dangerous person” means a person who:
 - (1) has engaged in a course of harmful sexual conduct as defined in subdivision 7a;
 - (2) has manifested a sexual, personality, or other mental disorder or dysfunction; and
 - (3) as a result, is likely to engage in acts of harmful sexual conduct as defined in subdivision 7a.

253B.02, subd. 18c (2006).

The SDP law also provides: “For purposes of this provision, it is not necessary to prove that the person has an inability to control the person’s sexual impulses.” *Id.* at subd. 18c(b). However, in *In re Linehan*, 594 N.W.2d 867 (Minn. 1999), the Minnesota Supreme Court required that for an SDP commitment, the person must lack adequate control of his sexual impulses. Furthermore, in *Linehan*, 557 N.W.2d at 180, the Minnesota Supreme Court held that for purposes of SDP commitment “likely” means “highly likely. All of the SDP requirements were met in this case when the court committed Beaulieu.

III. THE DISTRICT COURT ERRED IN CONCLUDING THAT IT LACKED PERSONAL AND SUBJECT MATTER JURISDICTION TO CIVILLY COMMIT RESPONDENT AS A SEXUALLY DANGEROUS PERSON.

The Beltrami County Court had personal jurisdiction over Beaulieu and subject matter jurisdiction over the commitment petition when it civilly committed Beaulieu as

an SDP. It has long been established that courts have subject matter jurisdiction over properly filed civil commitment proceedings by virtue of our constitution. *In re Ivey*, 687 N.W.2d 666, 669 (Minn. Ct. App. 2004)(citing *State ex rel. Anderson v. U.S. Veterans Hospital*, 128 N.W.2d 710, 715 (Minn. 1964)). Subject matter and personal jurisdiction in a civil commitment case depend on the filing of a petition, notice, and an opportunity to be heard and contest the order for commitment. *Anderson* at 716-17; *In re Bowers*, 456 N.W.2d 734, 737 (Minn. Ct. App. 1990).

A. The Beltrami County Court Had Personal Jurisdiction Over Beaulieu When It Civilly Committed Him.

“In general, personal jurisdiction has two elements: First, there must be an adequate connection between the defendant and the state, known as a basis for the exercise of personal jurisdiction by the district court. *Ivey*, 687 N.W.2d at 670 (citing *Wick v. Wick*, 670 N.W.2d 599, 603 (Minn. Ct. App. 2003)). Second, the plaintiff must invoke the jurisdiction of the court using a “process” that is consistent with due process requirements and the Minnesota Rules of Civil Procedure that govern the commencement of civil actions. *Id.* Due process requires that a defendant receive notice of a civil action and an opportunity to be heard. *Wick*, 670 N.W.2d at 603. This requirement is satisfied if the plaintiff complies with an officially prescribed process for invoking the district court’s jurisdiction that, when followed, is reasonably likely to provide the defendant with actual notice of the action. *Id.*

There was an adequate connection between Beaulieu and the State for personal jurisdiction in this case. Although Beaulieu was being supervised by federal authorities

at the time that the civil commitment petition was filed in this case, he had a lengthy history in Beltrami County, both on and off of the Red Lake Reservation and was on supervised release status in various places throughout the State of Minnesota while on federal supervision, including in community placements. In addition, he was and remains required to register with the State as a predatory offender under Minn. Stat. § 243.166.

In its memorandum in support of its jurisdiction order, the trial court cites the *Ivey* case for the proposition that an adequate connection between the subject of a commitment petition and the state can be established only if the subject is incarcerated or under the supervision of the Minnesota Department of Corrections. AA 19. Although *Ivey* was under the supervision of the department of corrections when the petition in that case was filed, the *Ivey* case does not *limit* personal jurisdiction in SDP and SPP cases to those circumstances. Instead, it finds an adequate connection for purposes of personal jurisdiction under the facts of *that* case. In fact, the *Ivey* court found that “irregularities in the establishment of personal jurisdiction do not negate the assumption of personal jurisdiction” and discussed a variety of cases where personal jurisdiction over parties was proper even where persons were brought before the court by unlawful force, duress, or fraud, as long as due process was provided. *Ivey*, 687 N.W.2d at 670-671.

In this case, Beaulieu’s release plans included not only living with his parents on the reservation, but also outpatient sex offender treatment, school, and employment *off* of the reservation. Knowing of Beaulieu’s planned return to Minnesota, Beltrami County initiated commitment proceedings based on “good cause” for those proceedings. Due to Beaulieu’s long criminal history, incarceration, placement, and supervision, in

Minnesota, including his continuing obligation to register as a predatory offender with the Minnesota BCA, Beaulieu had a sufficient nexus to Minnesota for the Beltrami County court to exercise personal jurisdiction over him.

Beltrami County also invoked the jurisdiction of the court using a process that was consistent with due process requirements and the Minnesota Rules of Civil Procedure that govern the commencement of civil actions. As was the case in *Ivey*, the petition here was properly filed, and Beaulieu received proper notice that Beltrami County was asking the trial court to commit him as an SDP and an SPP, with over three months notice from the time he received the petition until the final commitment hearing. Beaulieu received *more* notice of the petition than Ivey had received, receiving notice before he was in Beltrami County's custody and far before the substantive issues of whether he should be committed as SDP were litigated.

In addition, Beaulieu had an opportunity to be heard on the commitment petition during the civil commitment hearing at which he testified and was represented by counsel. Beaulieu's contacts with the off-reservation community while he lived on the reservation, his residence off of the reservation while under federal supervision, his release plans, and case law support a finding that the Beltrami County Court had personal jurisdiction over Beaulieu for the civil commitment proceedings.

B. The State Had Jurisdiction Over Beaulieu Because His Criminal Conduct And Subsequent Incarceration Resulted in Him Lawfully Leaving The Reservation.

The district court properly civilly committed Beaulieu because he is a sexually dangerous person who left the reservation and was off of the reservation when he was

civilly committed and for several years prior to that time. The Minnesota Supreme Court has recognized the general rule that because Indian tribes retain aspects of their inherent powers of self-government over their members within the boundaries of their reservations, state law is generally not applicable to Indians within Indian Country without the consent of Congress. See *State v. Robinson*, 572 N.W.2d 720, 722 (Minn. 1997)(citing *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987))² (citation omitted). The Supreme Court recognized in *Cabazon*, however, that its “cases ... have not established an inflexible *per se* rule precluding state jurisdiction over tribes and tribal members in the absence of express congressional consent.” *Id.* at 214-15.

The Supreme Court has instead evaluated such claims of state jurisdiction under a preemption-style analysis. See *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142-43 (1980) (holding that Arizona was preempted from taxing non-Indian timber businesses operating on Indian reservations when the federal government’s regulation of the harvesting of Indian timber was comprehensive). “State jurisdiction is pre-empted ... if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority.” *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983) (citations omitted).

² “Indian Country” is defined in 18 U.S.C. § 1151 (1988) and 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.” The Supreme Court has explained that this definition is applicable to questions of both criminal and civil jurisdiction. See *Cabazon*, 480 U.S. at 207 n. 5.

The general rule against state jurisdiction over tribal members on the reservation is premised upon and recognizes the fact that, “the various Indian tribes were once independent and sovereign nations.” *McClanahan v. Arizona State Tax Comm’n*, 411 U.S. 164, 172 (1973). Incorporation of Indian tribes into United States territory, by the combination of conquest, treaty, and assimilation, has, however, diminished their sovereign powers. “Upon incorporation into the territory of the United States, the Indian tribes thereby come under the territorial sovereignty of the United States and their exercise of separate power is constrained so as not to conflict with the interests of this overriding sovereignty.” *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 209 (1978). Tribal rights of complete sovereignty, as independent nations, are necessarily diminished. *See Johnson v. McIntosh*, 8 Wheat. 543, 574 (1823).

It is this dependent status of Indian tribes -- as entities which are entirely subject to the plenary power of Congress -- which best explains the historical curtailment of tribal powers from the full geography-based sovereignty which they enjoyed prior to conquest by the United States, to the limited membership-based sovereignty that tribes now possess. “A basic attribute of full territorial sovereignty is the power to enforce laws against all who come within the sovereign’s territory, whether citizens or aliens.” *Duro v. Reina*, 495 U.S. 676, 685 (1990). Because of the unique status of Indian tribes as domestic dependent sovereigns located wholly within the boundaries of both the plenary sovereign, the United States, as well as other legitimate sovereigns, e.g., the individual states, tribes retain only those aspects of sovereignty which are necessary to control their

internal tribal relations and to preserve unique tribal customs and social order. *Id.* at 685-86.

In *Bryan v. Itasca*, 426 U.S. 373, 376 (1976), the Supreme Court noted that, in light of the preemption principles from which it was derived, the general rule prohibiting state jurisdiction over tribal members on the reservation would not necessarily apply to “tribal Indians who have left or never inhabited federally established reservations, or Indians ‘who do not possess the usual accoutrements of tribal self-government.’” *Id.* at 376 (quoting *McClanahan*, 411 U.S. at 167-168 (emphasis added); see also *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-149 (1973)).

There are two main avenues by which a state may acquire jurisdiction over Indians on reservations. First, Congress can expressly delegate jurisdiction to states. See *Cabazon*, 480 U.S. at 207. Second, a state may exercise jurisdiction in certain situations where neither the federal government nor the tribe have occupied the field of law. See *id.* at 215. Through Public Law 280, Congress granted Minnesota jurisdiction over criminal cases and some civil cases with respect to most Minnesota reservations. See Pub. L. No. 83-280, 67 Stat. 588 (1953) (codified at 18 U.S.C. § 1162(a) (1994)). However, Public Law 280 specifically exempted the Red Lake Indian Reservation from its application. *Id.*

Notwithstanding the Red Lake Nation’s exemption from Public Law 280, a preemption analysis is unnecessary in this case because tribal activities conducted outside the reservation present different considerations. *Mescalero v. Jones*, 411 U.S. at 148. “State authority over Indians is yet more extensive over activities . . . not on any reservation.” *Id.* Absent express federal law to the contrary, Indians going beyond

reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State. *Id.* The Minnesota Supreme Court has found state subject matter jurisdiction over tribal members who reside within the state but not on the reservation. *Jefferson v. Commissioner of Revenue*, 631 N.W.2d 391, 396 (Minn. 2001). *See also Red Lake Band of Chippewa Indians v. State*, 248 N.W.2d 722, 726-27 (1976) (state has authority to require persons subject to Red Lake Band jurisdiction to the authority of the State of Minnesota with respect to activities occurring outside of the territorial boundaries of the reservation); *State v. Rossbach*, 288 N.W.2d 714 (Minn. 1980)(state had jurisdiction where a shot was fired from on the reservation off of the reservation); *State v. Red Lake DFL Committee*, 303 N.W.2d 54 (Minn. 1981) and *Bailey v. State*, 409 N.W.2d 33 (Minn. Ct. App. 1987)(state had jurisdiction where activities originated within reservation boundaries but extended beyond and affected persons outside of the reservation).

Like the individual Indians contemplated by the Supreme Court in *Bryan*, Beaulieu is a tribal member whose own conduct and subsequent criminal conviction resulted in him lawfully leaving his reservation of membership and instead residing at a number of other non-reservation locations, including locations entirely out of the state of Minnesota. By leaving his reservation of enrollment, Beaulieu left the legitimate sphere of influence of his tribe's government. Accordingly, he left behind all "accoutrements of tribal self-government" which might normally surround him and bar state jurisdiction. *McClanahan* 411 U.S. at 167-168. Accordingly, his lawful presence outside of the

reservation is a basis, in and of itself, for state jurisdiction under the sexually dangerous person commitment laws.

In this case, although Beaulieu's initial sex offenses for which he was prosecuted occurred exclusively on the Red Lake reservation, he repeatedly acted out sexually and violently off of the reservation in his various placements, including in community placements. This is part of what makes him a sexually dangerous person. Although Beaulieu was not "voluntarily" off of the reservation, because he was under federal supervision, when he acted out sexually in these placements, he was legally off of the reservation. Moreover, he acted out sexually of his own volition and not through any coercion by the supervising authorities.

Although Beaulieu's harmful sexual conduct occurred primarily on the reservation, the factors that make him a sexually dangerous person are part of him and follow him both on and off of the reservation. The State is not attempting to control Beaulieu's conduct on the reservation but is trying to avoid his harmful sexual conduct both on and off of the reservation. Obviously, the State cannot require or assure that Beaulieu would remain only on the reservation if not civilly committed.

C. The State's Jurisdiction Over Beaulieu Was Not Preempted By The Federal Government Or The Tribe, And The State's Interest In Jurisdiction Over Beaulieu Is Compelling.

In addition to having jurisdiction over Beaulieu based on the fact that he was off of the reservation at the time that he was civilly committed and had been for several years, the State has jurisdiction to civilly commit Beaulieu because the State's action was not preempted by the federal government or the tribe, and the State has a compelling

interest in attempting to treat and to protect the public from sexually dangerous persons. “Under its police powers, the state has a compelling interest in protecting the public from sexual assault.” *In re Linehan*, 557 N.W.2d 171, 181 (1996) (citing *In re Blodgett*, 510 N.W.2d 910, 916 (Minn. 1994)). There is also a compelling interest in the care and treatment of the mentally disordered. *Id.* (citing *Addington v. Texas*, 441 U.S. 418 (1979)). Even without an express delegation of jurisdiction from Congress like Public Law 280, states like Minnesota may still exercise jurisdiction when they are not preempted from acting, and the circumstances of the case create compelling reasons to allow state jurisdiction.

Much like the analysis from *Cabazon* in considering whether a state has been delegated jurisdiction under Public Law 280, implicit in the Supreme Court’s preemption analysis is a balancing of interests and costs. *See, e.g., Bracker*, 448 U.S. at 142-43. “State jurisdiction is pre-empted ... if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority.” *New Mexico v. Mescalero*, 462 U.S. at 334 (citations omitted).

The Minnesota Supreme Court has used a similar analysis in cases involving assertion of a right by the State against a member of the Red Lake Band, indicating that the State should not, in the absence of some compelling state interest, impose burdens upon persons subject to the governing authority of the Red Lake Band when such burdens will undermine the band’s efforts to achieve self-government. *Red Lake Band v. State*, 248 N.W.2d at 726.

Although *Bracker* and *New Mexico v. Mescalero* involved regulation of non-Indians on reservations, this preemption analysis is also applicable to state regulation of Indians on reservations. In *Cabazon*, California attempted to regulate tribal Bingo enterprises. See *Cabazon*, 480 U.S. at 205. When the Supreme Court concluded that California law was preempted by federal regulation and tribal interests, it engaged in the same preemption analysis as in *Bracker* and *New Mexico v. Mescalero*. See *id.* at 214-21.

The Supreme Court analysis in *Rice v. Rehner*, 463 U.S. 713 (1983), is also instructive here. In *Rice*, the State of California sought to require an Indian liquor retailer operating on an Indian reservation to obtain a state liquor license in order to sell liquor for off-premises consumption. *Id.* at 715. The *Rice* Court engaged in a three-part analysis, examining first, whether there was a tradition of tribal sovereignty in the area; second, examining federal regulation in the area; and finally, evaluating the state interest implicated. Because there was no tradition of tribal authority, the federal government had not preempted state authority, and off-premises alcohol sales implicated a substantial state interest with impact beyond the reservation, the Court held that California could require Rehner to obtain a state liquor license. *Id.* at 725.

The analysis discussed above is appropriate in assessing state jurisdiction as it relates to the civil commitment of Beaulieu, a Red Lake Indian Reservation member. See *State v. R.M.H.*, 617 N.W.2d 55, 60-61 (Minn. 2000). Central to the issue before the Court in this case is the compatibility of the distinct notions of public safety through the enforcement of state laws designed to effectuate that end, on the one hand, and the recognition that Indian tribes have retained attributes of sovereignty, on the other. It is

insufficient to say that the interests of the tribe and the interests of the state are necessarily in conflict. Indeed, the inverse may be true.

In considering whether state regulation interferes with tribal sovereignty, it is important to consider that this is not an action by or involving the Red Earth Band. In several cases in the preemption area where the court noted sovereignty rights were important, tribes had brought declaratory actions to prevent the application of state laws. *See, e.g., New Mexico v. Mescalero*, 462 U.S. at 329, *Cabazon*, 480 U.S. at 206. Indeed, in *Bracker*, the tribe intervened in a suit by the non-Indian business and agreed to reimburse the business for any tax liability incurred. *See Bracker*, 448 U.S. at 140. By contrast, Beaulieu here seeks to assert *for* the tribe an interest in self-government as a defense to an individual civil commitment.

The State may act to civilly commit sexually dangerous persons who are Red Lake Tribe Reservation Members because its interest in protecting the public and treating sex offenders is strong, and neither the federal government nor the tribe has acted to occupy the area in question. Applying the preemption analysis to the case at bar shows that Minnesota may civilly commit Indian reservation members as sexually dangerous persons.

The first step in a pre-emption analysis is to look at the federal government's involvement in the area. An evaluation of the federal government's involvement in committing sexually dangerous persons who are Red Lake Reservation members reveals that the federal government has not occupied the area. Since Beaulieu's time under federal supervision ended, Congress has passed legislation providing for the civil

commitment of certain sexual offenders in federal custody and/or under federal supervision, indicating a federal interest in protecting the public from repeat sex offenders. 18 U.S.C. § 4248 (2006). However, this law was not in place at the time that Beaulieu was in federal custody or under federal supervision and could not be applied to him now, because he is no longer under federal jurisdiction. Because the federal law is limited in scope to federal prisoners or offenders under federal supervision, it does not preempt state jurisdiction here.

The next step in conducting a thorough preemption analysis is an inquiry into whether the tribe has occupied the area in question. In conducting this inquiry, courts must be informed by “the tradition of Indian sovereignty over the reservation and tribal members.” *Bracker*, 448 U.S. at 143. This method of considering tribal action as a backdrop to evaluating tribal action was reinforced in *Rice*, 463 U.S. 713. In *Rice*, the Supreme Court held that California could require an Indian liquor retailer operating on a reservation to obtain a state liquor license to sell liquor for off-premises consumption, noting that “tradition simply has not recognized a sovereign immunity or inherent authority in favor of liquor regulations by Indians.” *Id.* at 722.

Applying the same analysis to the case at bar reveals that the State of Minnesota had jurisdiction to civilly commit Beaulieu as a sexually dangerous person. First, the Red Lake band has no tradition of sovereignty in this area. The Red Lake band has never exercised any authority to commit sexually dangerous persons. The Red Lake Commitment Code addresses *only* the civil commitment of chemically dependent, mentally ill, and mentally retarded persons. AA 30. The Red Lake Tribe has not passed

any law regarding the civil commitment of sexually dangerous persons, and they do not fall under the Red Lake Code. *Compare Desjarlait v. Desjarlait*, 379 N.W.2d 139 (Minn. Ct. App. 1986)(state had jurisdiction where the Red Lake Code did not cover custody proceedings in the dissolution context).

In its opinion, the trial court cites Minn. Stat. § 253B.212, which provides for the Commissioner of Human Services to contract with and receive payment from the Indian Health Service of the United States Department of Health and Human Services, for the proposition that the Red Lake tribe has the ability to civilly commit its members as sexually dangerous persons. Minn. Stat. § 253B.212 (2006). However, that section does not address sexually dangerous person commitments. *Id.* Rather, that section specifically addresses commitments related to mental illness, developmental disability, or chemical dependency, issues also addressed by the Red Lake Tribal Code. *Id.*

Because the Red Lake Band does not have an SDP civil commitment law and does not have an inpatient sex offender treatment facility, and MSOP is the only secure sex offender treatment facility in Minnesota outside of the Department of Corrections, commitment to MSOP does not undermine the band's efforts to achieve self-government. Rather, it helps to protect band members from sexually dangerous persons and attempts to treat them without cost to the Band.

Moreover, the Supreme Court's tribal sovereignty concerns are not present in the case at bar; specifically, the concern that concurrent jurisdiction would eliminate the ability of a tribe to regulate is not implicated. *See New Mexico v. Mescalero*, 462 U.S. at 338. The tribal sovereignty concerns only arise where there is a "comprehensive

scheme” of tribal regulation, as in *New Mexico v. Mescalero*. Such is not the case here, as the Red Lake Band has not exercised its tribal sovereignty in the field of sexually dangerous persons. The tribal code related to other types of commitments falls far short of constituting a comprehensive scheme of regulation related to sexually dangerous persons. Not only is no civil commitment process in place for sexually dangerous persons but no secure sex offender treatment program exists on the Red Lake Reservation.

Continuing with the preemption analysis, it is critical to note that it has been consistently applied with an eye towards protecting tribal self-determination and economic development. In denying the state jurisdiction to regulate Bingo games on the reservation, the *Cabazon* court noted that these goals “are not within reach if the tribes cannot raise revenues and provide for employment of their members.” *Cabazon* 480 U.S. at 219. In *Bracker* and *New Mexico v. Mescalero* the Court expressed a similar concern for preserving the opportunity for economic development for the tribe. *See Bracker*, 448 U.S. at 149 (allowing state to tax logging businesses on the reservation would jeopardize the federal policy toward advancing Indian economic self sufficiency); *New Mexico v. Mescalero*, 462 U.S. at 341 (allowing state to enforce hunting and fishing regulations on the reservation would hinder tribe’s economic development in enforcing its own hunting and fishing regulations).

In the case at hand, by contrast, there is nothing that even indirectly suggests that allowing the State to commit sexually dangerous persons who are Red Lake Tribe members, absent any tribal system for the civil commitment and treatment of sexually

dangerous persons, would have any adverse effect on the tribe's ability to attain economic self sufficiency. Indeed, if the tribe is affected economically by these laws, it would be to the tribe's advantage to not have to pay the significant expense of developing a secure inpatient sex offender program for sexually dangerous persons on the reservation.

The final step in conducting the preemption analysis is determining the extent of the State's interest in applying the particular laws at issue on the reservation. The State of Minnesota's interests in protecting the public from, and attempting to provide treatment to, sexually dangerous persons, in the absence of any tribal civil commitment system for sexually dangerous persons is significant. As described in the argument below, the State's interest rises to the level of "exceptional circumstances" addressed in *Cabazon* and discussed in argument D below. Indeed, the situation exists as a public safety vacuum which demands use of the state's SDP/SPP civil commitment process and system.

This portion of the analysis should also include an inquiry into potential off-reservation effects in the absence of state jurisdiction. As the Supreme Court stated, "[a] state's regulatory interest will be particularly substantial if the state can point to off-reservation effects that necessitate state intervention." *New Mexico v. Mescalero*, 462 U.S. at 336. The Court has taken a pragmatic approach to evaluating "spillover" effects in these cases. In *Rice*, the Court found that liquor sold by an unlicensed Indian retailer on the reservation could "easily find its way out of the reservation and into the hands of those whom, for whatever reason, the state does not wish to possess alcoholic beverages

...” *Rice*, 436 U.S. at 724. Compare *New Mexico v. Mescalero*, 462 U.S. at 342-43 (state could point to no legitimate off-reservation effect of allowing the tribe to enforce its own hunting and fishing regulations).

As described above, although Beaulieu’s initial sex offenses for which he was prosecuted occurred exclusively on the Red Lake reservation, he repeatedly acted out sexually off of the reservation in his various placements, including in community placements. The factors that make Beaulieu a sexually dangerous person are part of him and follow him both on and off of the reservation.

In the instant case, both the on-reservation and off-reservation effects of not civilly committing person such as Beaulieu are potentially dramatic. A finding of no state jurisdiction to civilly commit such sexually dangerous persons would have an adverse effect on everyone, Band member or not, who wishes for themselves or their loved ones to be safe from sexual victimization. This includes individuals who live off the reservation and near the reservation or who live in areas to which Beaulieu will travel or live when not on the reservation.

The laws at issue in this case are of high public value to the State of Minnesota and to all who live in all parts of the state. The public safety ramifications of not enforcing these laws against members of a large Indian reservation, where no other means of enforcement exists, are very real. These are indeed public safety interests of exceptional importance. The interest of the State involved in the enforcement of these laws, together with the lack of federal and tribal regulations, as well as the lack of tribal

tradition in the area, collectively show that the State of Minnesota may civilly commit Beaulieu as a sexually dangerous person.

D. The State Has Jurisdiction Over Beaulieu Based On The “Exceptional Circumstances” Of Protecting The Public From Sexually Dangerous Persons.

The outcome described above is consistent with the Minnesota Supreme Court’s recent decision in *State v. Jones*, 729 N.W.2d 1 (Minn. 2007). That case involved Minnesota’s Predatory Offender Registration law and a Public Law 280 analysis. *Id.* As part of that analysis, the *Jones* court noted the heightened public policy concerns related to registered predatory offenders stating, “[i]t is difficult to dispute that predatory offenders pose a threat to public safety.” *Id.* at 8. Sexually dangerous offenders who are civilly committed like Beaulieu comprise only a fraction of registered offenders and are considered the most dangerous offenders. They present an even greater risk to the community than registered predatory offenders.

The *Jones* decision highlights the compelling state interest in protecting the public from sexually dangerous persons. In addition, Justice G. Barry Anderson’s concurring opinion is particularly significant here because it illustrates an additional lawful theory under which the state may apply its commitment law to a Red Lake Tribal member found to be a sexually dangerous person, even in the absence of express federal authorization. The concurring opinion noted that the United States Supreme Court has not established a *per se* rule precluding state jurisdiction over tribes and tribal members absent express Congressional consent. *See Jones*, 729 N.W.2d at 12 (citing *Cabazon*, 480 U.S. at 214-15). “[A] state may assert jurisdiction over the on-reservation activities of tribal

members,” even without explicit authorization under Public Law 280 or other federal law, so long as “exceptional circumstances” are present to justify state jurisdiction. *Cabazon*, 480 U.S. at 215 (quoting *New Mexico v. Mescalero*, 462 U.S. at 331-32).

In light of this authority, even assuming that Beaulieu had never left the Red Lake Indian Reservation, the compelling public safety concerns present in the case of a tribal member found to be a sexually dangerous person clearly constitute “exceptional circumstances” sufficient to justify Minnesota’s application of its SDP commitment law to Respondent. In *Jones*, the Court balanced the federal, state, and tribal interests at stake and found the state’s need to know the whereabouts of convicted predatory offenders “exceptional.” *Jones*, 729 N.W.2d at 13-14. Here, just like the compelling state need to maintain accurate address registration records of predatory sex offenders in *Jones*, the State’s need to protect the public from sexually dangerous persons is also “exceptional.”

In balancing the various federal, tribal, and state interests present in *Jones*, the Court found the federal interest low, because federal law requires states to pass predatory offender registration laws. *Id.* Here, the federal interest is also low because current federal law, just like the state commitment law at issue, also requires that demonstrated sexually dangerous persons be committed for treatment in order to protect the public at large. This shows the federal interest in protecting the public from sexually dangerous offenders, but the interest is low related to Minnesota’s civil commitment law because the federal law only applies to a limited group of federal offenders.

Additionally, the *Jones* Court found no governmental or economic burden to the tribe. *Id.* In a like manner, Respondent’s civil commitment in the instant case does not

burden the tribe. Rather, it provides a service to the tribe and the public by providing sex offender treatment to Beaulieu and protecting the public. Just as in *Jones*, the state's interest in protecting the public from sexually dangerous persons is so high, and the threat to tribal sovereignty so low, as to constitute an exceptional circumstance under Supreme Court precedent. *See id.* at 13-14.

The United States Supreme Court has allowed on-reservation regulation by states, even absent express Congressional authorization in other contexts. For example, in *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 155 (1980), and *Moe v. Salish & Kootenai Tribes*, 425 U.S. 463, 483 (1976), the Supreme Court held that states can tax on-reservation sales of cigarettes to nonmembers because the state interest in collecting such taxes was sufficiently high so as to justify application of state law on the reservation, even though the tax would put the tribe at a competitive disadvantage to surrounding retailers and would impose an administrative burden on tribal smokeshops. 447 U.S. at 156-59. Similarly, in *Rice*, 463 U.S. at 720, the Supreme Court held that the state interest in collecting taxes relating to the on-reservation sale of liquor to non-members was sufficiently high so as to justify state jurisdiction. In *Rice*, the Supreme Court noted that Indian tribes lacked "a tradition of self-government in the area of liquor regulation" and that Congress did not intend to preempt states from regulating the sale of liquor. *Id.* at 731. Furthermore, in *Puyallup Tribe, Inc. v. Dept. of Game*, 433 U.S. 165, 174-75 (1977), the Supreme Court held that a state can also regulate fishing by tribal members on a river when the treaty granting the right to fish indicates

that the right is to be exercised “in common with all citizens of the Territory” and when the tribe has alienated the river in fee simple absolute. *Id.*

After examining the cases discussed above, the Court in *Jones* noted that:

Following the example of *Colville*, *Moe*, *Rice*, and *Puyallup*, we must weigh the federal, state, and tribal interests at stake in the particular case before us to determine whether the state can regulate. Whatever principles might be gleaned from these cases, the state’s need to know the whereabouts of convicted kidnappers on Indian reservations qualifies as “exceptional” in comparison....

The state’s interest in keeping track of convicted kidnappers is at least as high as its interest in collecting cigarette and liquor taxes from on-reservation sales or in regulating fishing on tribal waters.

Jones, 729 N.W.2d at 13-14.

Here, just as in *Jones*, the present state interest in protecting the public from sexually dangerous persons is at least as high as its interest in collecting cigarette and liquor taxes from on-reservation cigarette and liquor sales taxes, or on-reservation fishing regulation.

The *Jones* concurring opinion further noted that its rationale favoring state jurisdiction is bolstered by a more recent decision of the United States Supreme Court, *Nevada v. Hicks*, 533 U.S. 353, 361-62 (2001), which held that, “[w]hen . . . state interests outside the reservation are implicated, States may regulate the activities even of tribe members on tribal land.” *Id.* at 362 (citing *Colville*, 447 U.S. at 151). The *Jones* concurring opinion goes on to say that:

Cabazon makes clear that states can sometimes regulate tribal members on their reservation, and *Hicks* makes clear that the Court is increasingly willing to allow state regulation on-reservation where important state interests are implicated. As the law stands, it falls to us to determine with a

fact-based inquiry when the state can regulate. Performing this inquiry, it seems clear that if the state can ever reach the on-reservation conduct of tribal members (and it can), it can do so here.

Jones, 729 N.W.2d at 14.

Given the demonstrated future propensity to harm others that is required when a court finds someone to be a sexually dangerous person, there is an even more compelling state interest in the instant case than was present in *Jones* itself, and therefore, the trial court's erroneous decision finding no state jurisdiction should be reversed.

This outcome is also consistent with the similar recent decision of the Wisconsin Supreme Court in a civil commitment context, holding that, “[t]he commission of sexually violent offenses is not permitted conduct that is regulated by the State; rather, it is prohibited conduct that is “inimical to the health and safety of its citizens.” *In re the Commitment of Burgess*, 665 N.W.2d 124, 132 (Wis. 2003), *cert. denied by Burgess v. Wisconsin*, 124 S.Ct. 1713 (2004) (internal citations omitted). Although the *Burgess* decision involved a Public Law 280 Indian tribe, many of the same principles apply here. In the *Burgess* case, the tribe declined jurisdiction because it was not in a position to hear the case where it had no laws or ordinances calling for the indefinite commitment of sexually violent persons. Similarly, the Red Lake Tribe was not in a position to hear Beaulieu's case where it has no laws related to the civil commitment of sexually dangerous persons.

It is important to note that the State “does not seek to do something on the reservation to Indians that it does not do everywhere in the state to all offenders.” *St. Germaine v. Circuit Court for Vilas County*, 938 F.2d 75, 77 (7th Cir. 1991). Minnesota

simply seeks to safeguard the lives of all persons within its borders, including non-Indians and tribal members alike. The State's strong policy against sexual offenses would be seriously eroded if the State were prevented from civilly committing tribal members who have engaged in sexual misconduct off of the reservation and are a threat to the safety of reservation and non-reservation members alike. Accordingly, the ruling below must be reversed.

The district court's ruling in this case would allow dangerous sex offenders who would otherwise be subject to civil commitment to instead flee to their reservation and avoid civil commitment for the protection of the public. The district court erred in reaching its decision without considering the United States Supreme Court analysis described above. Established federal law resonates *in favor* of state jurisdiction for the civil commitment of sexually dangerous persons who are also Red Lake Band members.

CONCLUSION

Indians who are sexually dangerous persons, like all sexually dangerous persons, raise heightened public safety concerns and provide exceptional circumstances warranting jurisdiction over them for civil commitment purposes. For all of the foregoing reasons, Appellant respectfully requests that this Court reverse the decision of the court below.

Dated: April 23, 2006

Respectfully submitted,

TIMOTHY FAVER
Beltrami County Attorney



 ANGELA HELSETH KIESE
Assistant Attorney General
Atty. Reg. No. 0219873

SEAN MCCARTHY
Assistant Attorney General
Atty. Reg. No. 0262742

445 Minnesota Street, Suite 1800
St. Paul, Minnesota 55101-2134
(651) 296-6726 (Voice)
(651) 282-2525 (TTY)

ATTORNEYS FOR APPELLANT

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).