

FILED

October 19, 2017

STATE OF MINNESOTA

IN COURT OF APPEALS

~~OFFICE OF~~
APPELLATE COURTS

Dist. Court File No. 15-CR-16-413
Clearwater County
Ninth Judicial District

STATE OF MINNESOTA,

Appellant.

vs.

**STATEMENT OF THE CASE
OF APPELLANT
CLEARWATER COUNTY
DISTRICT COURT**

ANNETTE MARIE KLAPSTEIN,

Respondent.

Ct. of Appeals File No. _____

District Court Order Filed:
October 15, 2017.

1. Court of agency of case origination and name of presiding judge or hearing officer.

Clearwater County District Court, Robert Tiffany, Judge, Ninth Judicial District, Judge of the District Court.

2. Jurisdictional statement.

- a. Statute, rule or other authority authorizing appeal: Minn. R. Crim. P. 28.04 subd. 1(1).
- b. Date of entry of judgment or date of service of notice of filing of order from which appeal is taken: October 15, 2017
- c. Authority fixing time limit for filing notice of appeal (specify applicable rule or statute): Minn. R. Crim. P. 28.04, subd. 2(8), requiring that the appeal must be taken 5 days after the defense or the court administrator under Rule 33.03 serves notice of the entry of the order to be appealed from on the prosecutor; also Rule 34.01, computation of time, excluding the day of the act from which the designated period runs, and when a period of time prescribed is seven days or less, excluding intermediate Saturdays, Sundays, and legal holidays.

- d. Date of filing any motion that tolls appeal time: N/A
- e. Date of filing of order deciding tolling motion and date of service of notice of filing: N/A
- f. Does the judgment or order dispose of all claims by and against all parties? No.

If no: Did the district court order entry of a final partial judgment for immediate appeal pursuant to MINN. R. CIV. APP. P. 104.01? Yes ()
No (X) or

If yes, provide date of order: N/A

- g. Has a sentence been imposed or imposition of a sentence stayed? No.
 - 1. If no, statute or rule authorizing interlocutory appeal: Minn. R. Crim. P. 28.04, subd. 1(1)

3. State type of litigation and designate any statutes at issue.

Court of Appeals Subject Matter Index Number: 10.a., Criminal-Police Practices-Administration of Exclusionary Rule, and 10.b., Pretrial Procedures-Omnibus hearing.

4. Issues litigated and result below.

This is an appeal from the District Court's granting of the Respondent's Motion to allow her to present evidence of the Defense of Necessity at trial. The State of Minnesota objected to the Respondent's motion. The District Court then held an evidentiary hearing to hear testimony concerning what evidence would be offered regarding a potential necessity defense.

The Respondent is alleged to have trespassed on private land and interfered with a public utility, namely an Enbridge Pipeline facility in rural Clearwater

County. Furthermore, she is alleged to have intentionally damaged property belonging to Enbridge. Respondent testified at the evidentiary hearing that she did the alleged acts; however, she along with her co-defendants, presented testimony that her actions were necessary to help prevent climate change. The defense of necessity is an affirmative defense, it has three elements, *see State v. Rein*, 477 N.W.2d 716, 717 (Minn. Ct. App. 1991), all of which must be proven in order for it to be found:

- (1) there is no legal alternative to breaking the law,
- (2) the harm to be prevented is imminent, and
- (3) there is a direct, causal connection between breaking the law and preventing the harm.

Furthermore, the defense “applies only in emergency situations where the peril is instant, overwhelming, and leaves no alternative but the conduct in question.” *State v. Johnson*, 289 Minn. 196, 199, 183 N.W.2d 541, 543 (1971). The Respondent testified at the evidentiary hearing that she did not observe an emergency which constituted imminent harm.

5. Critical Impact Statement.

The District Court’s order critically impacts the State’s prosecution because it erroneously allows the Respondent to present the Defense of Necessity to the Jury. The District Court’s ruling effectively shifts the trial from one of alleged criminal activity to a trial on whether or not climate change is happening. Which

would go against both the substance and spirit of Minnesota Rules of Evidence 403, which states, in part, that “evidence may be excluded if its probative value is substantially outweighed by the danger of ...confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time...” Furthermore, the State cannot appeal this issue after jeopardy attaches, or post-trial.

6. List specific issues proposed to be appealed.

- a. Under the facts of *this* case, should the Respondent be allowed to present evidence at trial regarding the Defense of Necessity?

7. Related appeals. None.

8. Contents of record.

- a. Is a transcript necessary to review the issues on appeal? Yes (X) No ()

If yes, full (X) or partial () transcript?

- b. Has the transcript already been delivered to the parties and filed with the trial court administrator? Yes () No (X)

If not, has it been ordered from the court reporter? Yes (X) No ()

9. Is oral argument requested? Yes (X) No. ()

10. Identify the type of brief to be filed: Formal brief under Rule 128.02.

11. Names, addresses, zip codes and telephone numbers of attorney for appellant and respondent.

Attorney for Plaintiff/Appellant

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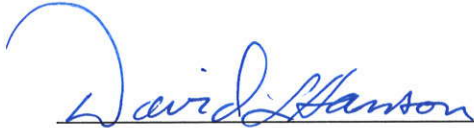
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Respectfully submitted.

10-19-17

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