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TULALIP TRIBAL COURT

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IN THE TULALIP TRIBAL COURT
TULALIP INDIAN RESERVATION
TULALIP, WASHINGTON

HAZEN GRAHAM SHOPBELL, enrolled
Tulalip Tribal member, et ux,

Plaintiff,

v.

STATE OF WASHINGTON DEPARTMENT
OF FISH AND WILDLIFE, JIM UNSWORTH,
Director, State of Washington Department of
Fish and Wildlife, WENDY WILLETTE,
Detective, State of Washington Department of
Fish and Wildlife, JOHN DOES 1-6, law
enforcement officers, State of Washington
Department of Fish and Wildlife,

Defendants.

NO. TUL-CV-LC2016- 0278

COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTION AND
OTHER EQUITABLE RELIEF

Comes now enrolled Tulalip Tribal member Plaintiff Hazen Graham Shopbell, individually and on behalf of his marital community, and for cause of action against the State of Washington Department of Fish and Wildlife, alleges as follows:

I. PARTIES

1.1 Plaintiff Hazen Graham Shopbell is an enrolled member of the Tulalip Tribes, a resident of on-reservation Tulalip tribal trust lands, and married to Tia Alexander, an enrolled member of the Lummi Nation.

1 1.2 Defendant Washington State Department of Fish and Wildlife (“DFW”) is a state
2 agency organized under the laws of the State of Washington.

3 1.3 Defendant Jim Unsworth is the Director for and agent of Defendant Washington
4 State Department of Fish and Wildlife, and is sued in his official capacity.

5 1.4 Defendant Wendy Willette is a State of Washington commissioned law
6 enforcement officer employed by Defendant Washington State Department of Fish and Wildlife
7 as a general authority peace officer holding the rank of Detective, and is sued in her official
8 capacity.

9 1.5 Defendants John Does 1-6 are law enforcement officers for and agents of
10 Defendant Washington State Department of Fish and Wildlife, and are sued in their official
11 capacities.

12 1.6 Defendants are collectively hereinafter referred to as “Defendant DFW” or
13 “Defendants.”

14 **II. JURISDICTION AND VENUE**

15 2.1 This Court possesses jurisdiction over this action under TTC §§ 2.05.020(1) and
16 (2). *See also* Constitution And Bylaws For The Tulalip Tribes Of Washington, Art. I (*citing*
17 Treaty Of Point Elliott, 12 Stat. 927, Art. III).

18 2.2 This Court further possesses jurisdiction over this action because WDFW entered
19 into a consensual relationship with the Tulalip Tribes; because WDFW’s conduct threatens and
20 has a direct effect on the political integrity, the economic security, and the health or welfare of
21 the Tulalip Tribes; and because the Tulalip Tribes enjoys separate, inherent authority to regulate
22 WDFW on Tulalip Reservation land. *Montana v. United States*, 450 U.S. 544 (1981); *Smith v.*
23 *Salish Kootenai Coll.*, 434 F.3d 1127, 1140 (9th Cir. 2006); *Water Wheel Camp Recreational*
24 *Area, Inc. v. LaRance*, 642 F.3d 802 (9th Cir. 2011).

25 2.3 Venue is proper in Tulalip, Washington, because the events or omissions giving
26 rise to the claim occurred on the Tulalip Indian Reservation. *See* TTC § 2.05.030(3).

III. PROCEDURAL FACTS

3.1 On information and belief, in or around early June 2016, Defendant WDFW representatives entered the Tulalip Indian Reservation on four occasions in an effort to obtain a search warrant from the Tulalip Tribal Court for Plaintiff Shopbell's residence, which is located on Tulalip tribal trust lands, within the exterior boundaries of the Tulalip Indian Reservation. On first three separate occasions, Defendant WDFW failed to convince the Tribal Court to issue the requested search warrant. Defendant WDFW failed to file copies of the requested search warrants and their supporting affidavit establishing probable cause with the Tulalip Tribal Court on its first three attempts to secure a search warrant.

3.2 On the fourth occasion, in early June 2016, Defendant WDFW entered the Tulalip Indian Reservation, appeared before the Tulalip Tribal Court, and obtained the search warrant attached hereto as Appendix A ("Tribal Court Search Warrant"). Defendant WDFW representatives again failed to file copies of the requested search warrant and its supporting affidavit establishing probable cause with the Tulalip Tribal Court. Defendant WDFW representatives also failed to have the Tribal Court search warrant dated as required by TTC § 2.25.030(3). Defendant WDFW's representatives also violated Article 2 of Tulalip Tribal Code, which regulates the issuance and service of search warrants, in other ways that will be established at hearing or trial.

3.3 Information that Defendant DFW presented to the Tribal Court in support of issuance of the search warrants violated Tulalip tribal sovereignty, territorial authority, law and policy in the following ways:

(a) Defendant DFW intentionally failed to pre-notify the Tulalip Tribes or its Board of Directors of any of its on-reservation activities. To quote Defendant DFW's lead Detective, Wendy Willette: *"Due to concerns regarding confidentiality, the Tulalip Tribal*

1 *Council [sic]*¹ will not be contacted regarding this matter under after the service of the search
2 warrants” (italics in original for emphasis).

3 (b) Defendant DFW representatives also racially profiled and disparaged
4 Plaintiff Hazen Shopbell as, *i.e.*, a dumb Indian. To quote Defendant DFW’s officer, Julie
5 Cook, in full: “Hazen Shopbell: Not so smart.” **Appendix B.**²

6 3.4 On whatever day Defendant WDFW presented and obtained the undated Tribal
7 Court Search Warrant, Defendant WDFW failed to file with the Tribal Court *any* search
8 warrant papers, such as an “original” search warrant, a “duplicate original warrant,” or any
9 “documentary evidence in support of the application for the warrant,” as contemplated by TTC
10 § 2.25.030(3).

11 3.5 The undated Tribal Court Search Warrant directed Defendant WDFW to search
12 the home of Hazen Shopbell, an enrolled Tulalip member, and Tia Shopbell, an enrolled
13 Lummi Nation member, at 8123 21st Ave. W, Apt. B, Tulalip, WA 98271, indicating that the
14 “house” at said address is situated “on property [that] is owned by the Tulalip Tribe.” *Id.* More
15 specifically, the Shopbell home is a duplex located on Tulalip tribal trust land, within the
16 exterior boundaries of the Tulalip Indian Reservation (“Shopbell Home”).

17 3.6 The Tribal Court Search Warrant instructed Defendant WDFW to “[p]romptly
18 return this warrant to [the Judge] or clerk of this court; the return must include an inventory of
19 all property seized.” *See* TTC §§ 2.35.030(5)(b) and (e); *State v. Wallway*, 72 Wash.App. 407,
20 415, 865 P.2d 531 (1994) (citing *State v. Thomas*, 121 Wash.2d 504, 851 P.2d 673 (1993)
21 (warrant timely returned within three days of its execution).

22
23 ¹ The Tulalip Tribes are governed, in relevant part, by a Board of Directors, not a “Tribal Council.” Constitution
And Bylaws For The Tulalip Tribes Of Washington, Art. III.

24 ² Plaintiff Hazen Shopbell will redress in another forum Defendant WDFW’s violations of his federal civil rights,
25 including those pertaining to his false arrest by Defendant WDFW on June 13, 2016 at approximately 11:20 AM at
the Everett Marina in Tulalip Tribal usual and accustomed fishing grounds. 42 U.S.C. §§ 1981 and 1983; Treaty
26 Of Point Elliott, 12 Stat. 927, Art. V. Likewise, he will redress elsewhere the United States’ federal civil rights
violations, given the involvement of Bureau of Alcohol, Tobacco and Firearms (“ATF”) agents on June 13, 2016.
See Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971).

1 3.7 On June 13, 2016, at least four Defendant WDFW officers executed the
2 unlawful Tribal Court Search Warrant on the Shopbell Home. Defendant WDFW officers
3 seized at least twenty-five items belonging to the Shopbells, from at least five different
4 locations in the Shopell Home. These seized items included cell phones, tablets, computers,
5 and other assorted paperwork regarding Puget Sound Distributors—an Indian Treaty seafood
6 distribution business wholly owned by Hazen Shopbell and another Tulalip Tribal member,
7 Anthony Paul, which business is registered with and regulated by the Tulalip Tribes.

8 3.8 During the June 13, 2016, Defendant WDFW raid, WDFW officers forced
9 Plaintiff Shopbell's wife Tia Anderson and their six-month old son to remain confined to a
10 single room in the Shopbell Home for a period of time, thus detaining them without lawful
11 justification. WDFW representatives or their agents seized various items from the Shopbell
12 Home, which were not authorized by the search warrant. The items seized were neither
13 contraband nor fruits of criminal activity.

14 3.9 Defendant WDFW failed to file with the Tulalip Tribal Court any form of return
15 of warrant or inventory until July 28 or 29, 2016—six or seven weeks after the search of the
16 Shopbell Home. It was only after the prompting of the Tribal Court Administrator and in turn
17 the Tribal Police Department in mid-July 2016, when Defendant WDFW decided to finally file
18 at least the “the return” of warrant as required by the Tribal Court Search Warrant and TTC §§
19 2.35.030(5)(b) and (e). Prior to being prompted by Tribal authorities in mid-July 2016,
20 Defendant WDFW had no intention of filing anything regarding the Tribal Court Search
21 Warrant with the Tribal Court, having not done so in the first place as contemplated by TTC §
22 2.25.030(3). Defendant WDFW failed to “promptly” file “the return” of warrant or “inventory
23 of all property seized” despite clear instructions to do so in the Tribal Court Warrant. *See*
24 *Wallway*, 72 Wash.App. at 415.

1 3.10 As of the filing of this Complaint, Defendant WDFW has failed to provide
2 Plaintiff with a copy of any “return of warrant” or “receipt for all articles taken” from the
3 Shopbell Home or any related notification. TTC § 2.35.030(5)(b).

4 3.11 Defendant WDFW lacked probable cause and that a crime had been committed
5 and that contraband or the fruits of any alleged criminal activity would be found in the places to
6 be searched within the Shopbell Home, and the search warrants issued to Defendant WDFW
7 were illegal and invalid as a result; and further, Defendant WDFW violated the terms of the
8 Tribal Court Search Warrant and TTC § 2.35.030; and, therefore, Defendant WDFW lacked
9 any lawful authority to enter upon Tulalip Indian Reservation trust lands for the purposes for
10 which it entered thereon on June 13, 2016. *See Constitution And Bylaws For The Tulalip*
11 *Tribes Of Washington, Art. I (citing Treaty Of Point Elliott, 12 Stat. 927, Art. III).*

12 **IV. FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT**

13 4.1 Plaintiff restates and realleges all allegations in Paragraphs 1.1 through 3.11 as
14 if fully set forth herein.

15 4.2 The foregoing and following allegations entitle Plaintiff to a declaratory
16 judgment.

17 4.3 Defendants violated Tulalip Tribal sovereignty, territorial authority, law and
18 statute in obtaining the Tribal Court Search Warrant, executing the Tribal Court Search
19 Warrant, and returning the Tribal Court Search Warrant.

20 4.4 Defendants lacked any lawful authority to enter upon Tulalip Indian
21 Reservation trust lands for the purposes for which they entered thereon on June 13, 2016.

22 4.5 These violations entitle Plaintiff to a declaration that Defendants have violated
23 Tulalip Tribal law in the manner by which it obtained the Tribal Court Search Warrant,
24 executed the Tribal Court Search Warrant, and returned the Tribal Court Search Warrant.
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26

1 **V. SECOND CAUSE OF ACTION: INJUNCTION**

2 5.1 Plaintiff restates and realleges all allegations in Paragraphs 1.1 through 4.5 as if
3 fully set forth herein.

4 5.2 The foregoing and following allegations entitle Plaintiff to a preliminary and
5 permanent injunction.

6 5.3 Defendants violated Tulalip Tribal sovereignty, territorial authority, law and
7 statute in obtaining the Tribal Court Search Warrant, executing the Tribal Court Search
8 Warrant, and returning the Tribal Court Search Warrant.

9 5.4 Defendants lacked any lawful authority to enter upon Tulalip Indian
10 Reservation trust lands for the purposes for which they entered thereon on June 13, 2016.

11 5.5 These violations entitle Plaintiff to an injunction against Defendants to prohibit
12 Defendants from future violations.

13 **VI. THIRD CAUSE OF ACTION: REPLEVIN/RETURN OF PROPERTY**

14 6.1 Plaintiff restates and realleges all allegations in Paragraphs 1.1 through 5.5 as if
15 fully set forth herein.

16 6.2 Defendants conducted unlawful searches of Plaintiff's persons and property.
17 Defendants seized Plaintiff's persons without the authority of law. Defendants also seized
18 personal property not specified in the search warrants.

19 6.3 The personal property seized from Plaintiff's residence was not contraband nor
20 was it the instrument of a crime.

21 6.4 Defendant DFW remains in possession of the unlawfully seized personal
22 property.

23 6.5 Plaintiff has the right to move for return of all personal property illegally seized
24 from his residence.

25 6.6 Plaintiff has the exclusive right to title and possession of the seized property and
26 is entitled to a writ of replevin.

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VII. PRAYER FOR RELIEF

WHEREFORE, enrolled Tulalip Tribal member Plaintiff Hazen Graham Shopbell and his marital community, pray:

1. For a declaratory judgment that Defendants violated Tulalip Tribal sovereignty, territorial authority, law and statute in obtaining the Tribal Court Search Warrant, executing the Tribal Court Search Warrant, and returning the Tribal Court Search Warrant

2. For preliminary and permanent injunction prohibiting Defendants from further violating Tulalip Tribal sovereignty, territorial authority, law or statute.

3. For the return of all property seized from the Plaintiff's residence on June 13, 2016 and/or for writ of replevin;

4. For the cost and reasonable attorneys' fees incurred, and to be incurred, by Plaintiff.

5. For such other and further relief that the Tribal Court deems just and equitable under the circumstances.

DATED this 5th day of August, 2016.

GALANDA BROADMAN PLLC

By 

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APPENDIX A

IN THE TULALIP TRIBAL COURT OF THE STATE OF WASHINGTON

IN THE COUNTY OF SNOHOMISH

STATE OF WASHINGTON

) NO.

)

) SEARCH WARRANT

)

)

vs.

PUGET SOUND SEAFOOD DIST.

LLC., Defendant

Anthony Edwin Paul, Defendant

Hazen Graham Shopbell, Defendant

TO ANY PEACE OFFICER IN THE STATE OF WASHINGTON:

Upon sworn complaint made before me, there is probable cause to believe that the crime(s)

RCW 77.15.260 Unlawful Trafficking in the First Degree-a Class B Felony

RCW 77.15.630 Unlawful Catch Accounting in the First Degree-a Class C Felony

RCW 69.30.110 Possession or Sale in Violation of Chapter

TTC 3.30.060 Theft

have been committed and that evidence of that crime is/are located in certain premises.

YOU ARE COMMANDED TO:

1. Search within 10 days the items described as follows:

8213 21st Ave NW, Apt B, Tulalip, WA, 98271. The home is a two-story, duplex structure, white in color, with upper and lower front decks, framed in unpainted wood. There is a single garage associated with the home. The specific apartment, B, is on the right-hand side of the structure. There is a covered side-porch on the far right side of the home. The house number, 8213, is located between the garages for apartments A and B, just above the electrical box. "B" is displayed over the door of the home. The parcel number is 30042300302100 and Snohomish County Assessor Records indicate the property is owned by the Tulalip Tribe.



2. Seize if located the following items:

Contraband, the fruits of a crime, or things otherwise criminally possessed, to wit:

RECORDS

- All records pertaining to the harvesting, buying and selling of all reported, under-reported, or unreported fish and shellfish, including any and all business records, state and tribal license records or sets of records, whether handwritten, printed, typed or contained and stored electronically in a computer, tablet, telephone, or other electronic storage devices belonging to Puget Sound Seafood Dist. LLC, and/or its owners, managers, and employees, specifically identified as Anthony Edwin Paul and Hazen Graham Shopbell.

The records described are expected to include: financial documents including but not limited to: cash, bank and financial accounts and records such as statements, withdrawal and deposit records, wire transfer documentation, check registers, petty cash journals and memoranda, canceled checks payable to cash, and/or cashier's checks to Puget Sound Seafood Dist. LLC, and/or its owners, managers, and employees, specifically identified as Anthony Edwin Paul and Hazen Graham Shopbell, and other checks or documentation to individuals as yet unknown related to payments for the purchase of fish and shellfish; federal tax returns, credit card account details, account reconciliation records, sales invoices, purchase orders, purchase receipts, books or files of accounts, product inventories, sales and purchase ledgers and journals, and any files relating to income and expenses; employee identification records, including addresses and phone numbers of employees, co-conspirators, harvesters, fishermen, and customers, and other related indicia or memoranda

Records are also expected to include fish receiving tickets issued to Puget Sound Seafood Dist. LLC that are voided, used, invalidated, or contain any other information that required them to be submitted to WDFW Headquarters, any DOH Certification tags, any shellstock shipping and receiving reports indicating commercial purchase and sale of bivalve shellstock by Puget Sound Seafood Dist. LLC. Any and all documents related to the shipping, transportation, or movement of fish or shellfish, both domestic and international.

- Any and all unlawfully possessed fish or shellfish.
- Any and all keys, combinations, or passwords to computers, cellular phones, or other electronic storage devices, file cabinets, desks, and any locked storage areas, or furniture which is capable of holding the evidence sought by this warrant.

COMPUTER EQUIPMENT

In order to search for data that fall within the list of items to be seized pursuant to the warrant, law enforcement personnel will seize and search the following items, subject to the procedures set forth above:

- Any computer equipment and storage device capable of being used to commit, further, or store evidence of the offense listed above;
- Any computer equipment used to facilitate the transmission, creation, display, encoding or storage of the data, including word processing equipment, modems, docking station, monitors, printers, plotters, encryption device, and optical scanners.
- Any magnetic, electronic or optical storage device capable of storing data such as floppy disk, hard disks, tapes, CD-ROMS, CD-R, CD-RWs, DVDs, optical disks, printer or memory buffers, smart cards, PC cards, memory calculators, electronic dialers, electronic notebooks, and personal digital assistances.
- Any documentation, operating logs and reference manuals regarding the operation of the computer equipment, storage devices or software;
- Any applications, utility programs, compilers, interpreters, and other software used to facilitate direct or indirect communication with the computer hardware storage devices or data to be searched.
- Any physical keys, encryption devices, dongles and similar physical items that are necessary to gain access to the computer equipment, storage devices or data and
- Any passwords, password files, test keys, encryption codes, or other information necessary to access the computer equipment, storage devices or data.
- Dominion and Control documents

TELEPHONES

Based on all the foregoing information, there is probable cause to believe that evidence of the above-listed crimes, exists in the above-described cellular telephone or digital device and its associated storage media, and that there is probable cause to search the above identified phone/device for the following items:

- Documents, records, communications, images, or other data in whatever form, which are or contain evidence of or pertain to the crimes above-listed crime(s), including;
 - Evidence of use of the device to communicate with criminal associates or others about or pertaining to the above-listed crime(s), via incoming or outgoing calls, missed calls, chat sessions, instant messages, text messages, voice memo, voice mail, SMS communications, internet usage, and the like;
 - Other evidence of or pertaining to use of the device in connection with the above-listed crime(s), which may be found in call logs, photographs, images, videos, documents, contact lists, address lists, internet searches, or other data storage within the device;
 - Data, documents, records, images, videos, or other items in whatever form, tending to identify the subscriber of the device, the user of the device, and/or the possessor of the device, and/or dominion and control of the device between the above-listed dates;

3. Promptly return this warrant to me or the clerk of this court; the return must include an inventory of all property seized.

A copy of the warrant and a receipt for the property taken shall be given to the person from whom or from whose premises property is taken. If no person is found in possession, a copy and receipt shall be conspicuously posted at the place where the property is found.

Date/Time:

Judge

Leona Colegrove

Printed or Typed Name of Judge

Leona Colegrove

() This warrant was issued by the above judge, pursuant to the telephonic warrant procedure authorized by JCrR 2.10 and CrR 2.3, on _____, 20____ at _____ AM/PM

Detective Wendy Willette
Washington Dept. of Fish & Wildlife
#W- 53

Signature of Peace Officer
Authorized to Affix Judge's
Signature to Warrant

APPENDIX B



Washington Department of Fish & Wildlife Police Incident Report Form

Incident Number

WA-15-007473

Related Case Number

WA-15-001949

CASE NOTES

Created by: **JULIE COOK**

Date Created: **09/01/2015**

Anthony Paul: Tulalip, not Puyallup. Has Puyallup family members so he lives down south. "Likes money" Owns several smoke shops and fireworks stand. Is a geoduck diver. Owns 5 boats and sublets them out. Goes to China for fireworks under his label. Gets illegal fireworks with more than legal power load but has them mis-labeled. Wholesales them to fireworks stands. "Dirty, but never been able to catch him"

Hazen Shopbell: Not so smart.

Broke his leg at marina, got \$68k from tribe. Used it to start up fish business. Owns Purple Haze fireworks and Auto Detail shop.

ADMONITION

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Officer Signature

Badge #

Location

Date