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Honorable Brian Stiles

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR COUNTY OF SKAGIT

STATE OF WASHINGTON,

Plaintiff,

v.

HAZEN GRAHAM SHOPBELL,

Defendant.

Co-Defendant:  
ANTHONY EDWIN PAUL, 18-1-00622-29

NO. 18-1-00621-29

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
PURSUANT TO CrR 3.6(b)

THIS MATTER having come on for hearing before the Hon. Brian Stiles, Judge of the Skagit County Superior Court for hearing on May 21, 2019 and June 18, 2019 on Defendant Anthony Paul's Motion to Suppress Evidence Or, In The Alternative, To Dismiss Pursuant To CrR 8.3(b) (the "Motion to Suppress"), which Defendant Hazen Shopbell joined. The Court having rendered an oral ruling granting the Motion to Suppress based on the State of Washington Department of Fish and Wildlife's ("WDFW") destruction of all but approximately fifteen (15) of bait clams WDFW officers seized on August 22, 2016, hereby enters the following Findings of Facts and Conclusions of Law Pursuant to CrR 3.6(b).

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
PURSUANT TO CrR 3.6(b) - I

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**I. FINDINGS OF FACT**

A. UNDISPUTED FACTS

1. The Court finds the parties have stipulated that the WDFW reports, photographs, Probable Cause Statement and transcript of WDFW Det. Wendy Willette's September 28, 2018 deposition filed with their Motion to Suppress pleadings are the facts upon which the Court will decide the Motion to Suppress.

2. On August 15, 2016 WDFW Det. Willette went to the Marine View Cold Storage facility in Burlington, WA ("Marine View") and placed a "hold" on 4 totes of bait owned by Puget Sound Seafood Dist., LLC ("PSSD"). The hold prevented PSSD and others from accessing the totes or removing them from the Marine View's facility.

3. On August 22, 2016, Det. Willette and other WDFW officers returned to Marine View to further examine the totes and their contents. WDFW officers used a sledge hammer, hammer and shovel to dislodge the frozen contents of the totes, potentially damaging these items, then removed the contents of the totes and resorted them into two totes containing bait clams.

4. The WDFW officers removed the 2 totes containing bait clams owned by PSSD from Marine View to drive them to the Skagit County dump where the totes were emptied into the waste disposal area.

5. Det. Willette preserved samples from the 4 totes in 4 baggies that contained approximately 15 clams, one of which appears to have been dyed a dark color.

6. Det. Willette relied upon RCW 69.30.020 for legal authority to seize and destroy PSSD owned bait clams. Det. Willette did not have a search warrant, subpoena or other form of compulsory process authorizing the seizure of the bait clams on August 22, 2016, nor did WDFW have a court order allowing the bait clams' destruction.

1 B. DISPUTED FACTS

2 1. There are no disputed facts.

3 II. CONCLUSIONS OF LAW

4 A. This court has jurisdiction over the parties and subject matter herein.<sup>1</sup>

5 B. The Court declines to address the issue of dismissal under CrR 8.3(b).<sup>2</sup>

6 C. The bait clams WDFW officers disposed of on August 22, 2018 were useful and  
7 potentially exculpatory evidence for the defense.

8 D. The retention of four baggies containing approximately 15 bait clams does not  
9 constitute a legally sufficient sample of the evidence WDFW intentionally destroyed.

10 E. No comparable evidence exists to satisfy the constitutional requirement that the  
11 Defendant have an opportunity to present a complete defense.

12 F. The WDFW 's destruction of the bait clams violated the Defendant's  
13 constitutional right to access useful and exculpatory evidence.

14 G. Therefore, all evidence of the seizure, examination and destruction of the bait  
15 clams and other items seized on August 22, 2016 from Marine View is inadmissible at  
16 trial except for the 15 retained clams. This ruling applies to each count in the Amended  
17 Information.

18 H. The practical effect of this order suppressing the evidence is to terminate the  
19 State's ability to prove the elements of each offense charged in the Amended  
20 Information.

21 K. These Findings of Fact and Conclusions of Law apply to State v. Anthony


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23 <sup>1</sup> The Court need not reach, but recognizes, Defendant Shopbell's asserted defense that the harvest of bait clams by  
24 Tulalip Indians occurred solely within usual and accustomed areas and the subsequent sale to a PSSD  
25 representative occurred on the Tulalip reservation trust land and State Court prosecution would violate the Point  
26 Elliott Treaty, Article V. 12 Stat. 927 (Jan. 22, 1855), as affirmed by the Boldt Decision. *United States v. State of  
Wash.*, 384 F. Supp. 312, 333 (W.D. Wash. 1974), *aff'd and remanded*, 520 F.2d 676 (9th Cir. 1975).

<sup>2</sup> However, as indicated during the June 18, 2019, hearing, the Court notes that WDFW and the Washington State  
Attorney General's Office shopped various potential charges against Co-Defendants Paul and Shopbell to King,  
Pierce, and Snohomish Counties, all of which declined to bring those charges, before the Skagit County  
Prosecuting Attorney's Office filed the charges in this case.

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Edwin Paul, 18-1-00622-29.

DATED July 12, 2019 day of \_\_\_\_\_, 2019.

  
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Brian Stiles, Judge

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**Presented by:**

GALANDA BROADMAN, PLLC

By: 

Gabriel S. Galanda, WSBA #30331  
*Attorney for Defendant Hazen Graham Shopbell*

**Approved as to form,  
Approved for entry,  
Notice of presentation waived:**

By: 

Edwin N. Norton, WSBA #19302  
Senior Deputy Prosecuting Attorney  
*Attorney for Plaintiff State of Washington*