

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON
IN AND FOR COUNTY OF WHATCOM

STATE OF WASHINGTON,
Plaintiff,

v.

FRANCISCO J. RABANG,

Defendant.

Co-Defendants:

LISA MARIE RABANG, C00094696
JAMES VICTOREO RABANG, C0094697
MICHAEL J. RABANG, C00094698

NO. C00094699

SUPPLEMENT TO CrRLJ 8.3(c)
MOTION TO DISMISS

Defendant Francisco J. Rabang, a Nooksack Tribal member, supplements his February 5, 2020, CrRLJ 8.3(c) Motion to Dismiss, with this reliance upon *State v. Knapstad*, 41 Wn. App. 781, 788, 706 P.2d 238 (1985), *aff'd*, 107 Wn.2d 346, 729 P.2d 48 (1986), which allows this Court to consider unavailable evidence of guilt under RCW 77.15.380(1), as grounds to dismiss. The State cannot proffer sufficient evidence that Defendant was a non-Indian who needed to have “purchased the appropriate fishing or shellfishing license,” before he engaged in subsistence clamming on the Semiahmoo Spit—a usual and accustomed Nooksack fishing place—on May 10, 2019. *Knapstad*, 41 Wn. App. at 788; 12 Stat. 927 (Jan. 22, 1855), Art. V. Therefore, “in the interest of justice,” this case should now be dismissed. *Id.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A proposed alternative Order of dismissal accompanies this Motion.

DATED this 20th day of February, 2020.

GALANDA BROADMAN, PLLC



Gabriel S. Galanda, WSBA #30331
P.O. Box 15146, Seattle, WA 98115
Phone: (206) 557-7509 Fax: (206) 299-7690
Email: gabe@galandabroadman.com

Attorneys for Francisco J. Rabang

1 **CERTIFICATE OF SERVICE**

2 I, Wendy Foster, declare as follows:

3 1. I am now and at all times herein mentioned a legal and permanent resident of the
4 United States and the State of Washington, over the age of eighteen, not a party to the above-
5 entitled action, and competent to testify as a witness.

6 2. I am employed with the law firm of Galanda Broadman PLLC, 8606 35th Avenue
7 NE Suite L1, Seattle, WA 98115.

8 3. Today, I served the foregoing document via email and USPS on the following:

9
10 Jesse Corkern
11 Whatcom County Prosecutor's Office
12 311 Grand Avenue, Suite 201
13 Bellingham, WA 98225
14 JCorkern@co.whatcom.wa.us

15 The foregoing statement is made under penalty of perjury under the laws of the State of
16 Washington is true and correct.

17 DATED this 30th day of February, 2020.

18 
19 _____
20 WENDY FOSTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON
IN AND FOR COUNTY OF WHATCOM

STATE OF WASHINGTON,
Plaintiff,

v.

FRANCISCO J. RABANG,

Defendant.

Co-Defendants:

LISA MARIE RABANG, C00094696
JAMES VICTOREO RABANG, C0094697
MICHAEL J. RABANG, C00094698

NO. C00094699

[PROPOSED] ALTERNATIVE
ORDER GRANTING CrRLJ 8.3(c)
MOTION TO DISMISS

THIS MATTER having come on for hearing before the Court on Defendant Francisco J. Rabang's CrRLJ 8.3(c) Motion to Dismiss ("Motion"). The Court, having read Defendant's Motion, the Declaration of Gabriel S. Galanda with Exhibits thereto, and _____, and being fully advised, hereby GRANTS Defendant's Motion and enters the following Conclusions of Law pursuant to CrRLJ 8.3(c)(4).

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter herein.

