

RECEIVED  
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JUDICIAL DISTRICT COURT

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

STATE OF WASHINGTON,  
Plaintiff,

v.

MICHAEL J. RABANG,

Defendant.

Co-Defendants:

LISA MARIE RABANG, C00094696  
JAMES VICTOREO RABANG, C0094697  
FRANCISCO J. RABANG, C00094699

NO. C00094698

SUPPLEMENT TO CrRLJ 8.3(c)  
MOTION TO DISMISS

Defendant Michael 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.*

SUPPLEMENT TO CrRLJ 8.3(c) MOTION TO  
DISMISS - 1

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Seattle, Washington 98115  
(206) 557-7509

1 A proposed alternative Order of dismissal accompanies this Motion.

2 DATED this 20<sup>th</sup> day of February, 2020.

3 GALANDA BROADMAN, PLLC

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

10 Attorneys for Michael 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 35<sup>th</sup> 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 20<sup>th</sup> day of February, 2020.

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20 WENDY FOSTER

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[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.

1           2.       The State cannot proffer evidence that Defendant Francisco J. Rabang was a non-  
2 Indian who needed to have “purchased the appropriate fishing or shellfishing license” pursuant  
3 to RCW 77.15.380(1), before he harvested shellfish on May 10, 2019. *State v. Knapstad*, 41 Wn.  
4 App. 781, 788, 706 P.2d 238 (1985). In other words, the State cannot overcome Defendant’s  
5 showing that the shellfish licensing requirements in RCW 77.15.380 do not apply to Defendant’s  
6 shellfish fishing activities at Semiahmoo Spit on May 10, 2019, because he is a Nooksack Tribal  
7 member who was fishing at a usual and accustomed Nooksack fishing place pursuant to the Point  
8 Elliott Treaty. 12 Stat. 927 (Jan. 22, 1855), Art. V; *U.S. v. Washington*, 384 F. Supp. 312, 333  
9 (W.D. Wash. 1974); *U.S. v. Washington*, 157 F.3d 630 (9th Cir. 1998), *cert. denied*, 119 S. Ct.  
10 1376; *Tulee v. Washington*, 315 U.S. 681 (1942).

11           3.       Therefore, the citation against Defendant Michael J. Rabang for violation of RCW  
12 77.15.380(1) is DISMISSED without prejudice, in the interest of justice. *Knapstad*, 41 Wn.  
13 App. at 788.

14           DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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17 District Court Judge  
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