

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

STATE OF WASHINGTON,

Plaintiff,

v.

HAZEN GRAHAM SHOPBELL,

Defendant.

Co-Defendant:

ANTHONY EDWIN PAUL, 18-1-00622-29

CASE NO. 18-1-00621-29

DEFENDANT'S MOTION TO DISMISS
PURSUANT TO CrR 8.3(c)

I. INTRODUCTION

Defendant Hazen Graham Shopbell, a Tulalip Tribal member ("Defendant"), hereby moves this Court to dismiss Counts I, II, III, IV and V of the Amended Information pursuant to CrR 8.3(c) and *State v. Knapstad*, 107 Wn.2d 346, 352-53, 729 P.2d 48 (1986), as the prosecution's evidence is insufficient as a matter of law to prove jurisdiction and the elements of the charged offenses.

II. FACTS

While this case is legally and factually complex, for the purposes of this Motion only, Defendant states there are no material disputed facts regarding the allegations made in Counts I, II, III, IV and V of the Amended Information, and asserts as a matter of law, the State lacks evidence necessary to prove: (1) the State of Washington has jurisdiction over Defendant for the conduct alleged in the Amended Information; (2) Defendant was acting in the capacity of a "commercial

1 buyer, wholesale fish buyer, or limited fish buyer” between December 28, 2015 and January 11, 2016
2 as alleged in Counts I and II; (3) Defendant “did traffic in fish, shellfish, or wildlife” between
3 February 11, 2016 and May 9, 2016 and was acting in violation of a rule promulgated by the
4 Washington Department of Fish and Wildlife (“WDFW”) or the statutes in the Revised Code of
5 Washington as charged in Counts III, IV and V; or (4) Defendant was legally accountable for the
6 actions of Puget Sound Seafood Dist., LLC’s (“PSSD”) agent Jamie Torpey for the conduct alleged
7 to be a violation of either RCW 77.15.630(2), as charged in Counts I and II, or RCW 77.15.260(1) as
8 charged in Counts III, IV and V.

9 **III. EVIDENCE RELIED UPON**

10 This Motion relies upon the Declaration of Gabriel S. Galanda in Support of Defendant’s
11 Motion to Dismiss Count Pursuant to CrR 8.3(c), and Exhibit A thereto.

12 **IV. ARGUMENT**

13 **A. Standards for Pretrial Dismissal Pursuant to CrR 8.3(c).**

14 Prior to trial, a defendant may move for dismissal of a criminal charge if there are no material
15 disputed facts and the undisputed facts do not establish a prima facie case of the charged crime.
16 CrR 8.3(c); *Knapstad*, 107 Wn.2d at 352–53, 729 P.2d 48. The defendant initiates the motion by
17 filing a sworn affidavit. CrR 8.3(c)(1); *Knapstad*, 107 Wn.2d at 356. The state can defeat the motion
18 by filing an affidavit that denies the defendant’s alleged material facts. CrR 8.3(c)(2); *id.* If the State
19 does not dispute the facts or allege other material facts, the court must determine whether the facts
20 relied upon by the State establish a prima facie case of guilt as a matter of law. CrR 8.3(c)(3);
21 *Knapstad*, 107 Wn.2d at 356–57. Given the nature of the evidence supporting this Motion, the State
22 can neither dispute the facts relevant to this Motion, nor allege that other material facts exist. This
23 Motion can be decided by the trial court as a matter of law.

24 As required by rule, Defendant’s counsel has submitted his declaration alleging there are no
25 material disputed facts regarding the charges alleged in Counts I, II, III, IV and V, and that those facts
26

1 are insufficient to establish a establish criminal culpability under Ch. 9A.08 RCW and insufficient to
2 establish a prima facie case of guilt for violating RCW 77.15.630(2) or RCW 77.15.260(1). *See*
3 Declaration of Gabriel S. Galanda in Support of Defendant’s Motion to Dismiss Pursuant to
4 CrR 8.3(c) (“Galanda Decl.”), ¶ 2.

5 **B. The State Lacks Jurisdiction Over the Conduct Alleged in the Amended Information.**

6 This Court is required to dismiss all counts as the State cannot satisfy its burden of establishing
7 jurisdiction over Defendant (or any member of the Tulalip Tribes) related to the exercise of Treaty
8 fishing rights within the Tribe’s reservation or “usual and accustomed fishing grounds” (“U&A”),
9 specifically the transfer of clam bait between Tribal members. Counts I and II allege that Defendant
10 illegally **purchased** clam bait, while Counts III through V allege that Defendant illegally **sold** clam
11 bait to other Indians. Defendant puts aside for the moment the State’s inability to prove that
12 Defendant personally did any such thing; the State’s evidence shows they were done by PSSD’s
13 employee Ms. Torpey. *See* Section C *infra*. Defendant instead focuses on the situs of the alleged
14 purchase and sales of the clam bait.

15 According to the case detective, Wendy Willette of the Washington Department of Fish and
16 Wildlife (“WDFW”), the **purchased** clam bait in Counts I and II was harvested by three Tulalip
17 Tribal members from within the U&A (Cama Beach) and received by PSSD on the Tulalip
18 Reservation.¹ Also according to Det. Willette, the **sold** clam bait in Counts III through V was both
19 bought “at the beach,” and transferred to nine Tulalip and other tribal members, in the U&A.²

20 Defendant requests that the Court take judicial notice of the following facts under ER 201:

21
22 ¹ *See* Appendix A, at pp. 130-131, where Detective Willette testifies:

23 Q. Those clams were eventually sold to Puget Sound Seafood; is that correct?

24 A. Yes.

25 Q. Where were they bought and sold?

26 A. According to Ms. Torpey, they were purchased at Carnegie Hayes' personal residence on Tulalip.

Q. Within the exterior boundaries of the Tulalip Reservation?

A. I believe so. Galanda Decl., Ex. B at 130-131.

² *See* Appendix A, at p. 124, where Detective Willette testifies Torpey bought that clam bait “at the beach” at Tulalip and within Tulalip’s U&A. *See also id.* 294-295; Appendix B; Galanda Decl., Ex. A (Bates No. 000439-000457).

1 (i) the Tulalip Tribes are political successors in interest and descendants of one or more
2 signatories to the 1855 Treaty of Point Elliott, which reserved the right to harvest shellfish within its
3 U&A. 12 Stat. 927 (1855). *U.S. v. Washington*, 626 F. Supp. 1405, 1527 (W.D. Wash. 1985), *aff'd*,
4 841 F.2d. 317 (9th Cir. 1988); *U.S. v. Washington*, 459 F. Supp. 1020, 1039 (W.D. Wash. 1978);

5 (ii) the Tulalip Tribes' adjudicated U&A includes central Puget Sound marine and freshwater
6 areas east of Whidbey Island, including the area delineated as Region 2 East and Catch Areas 24A
7 through 24D and 26AE on the map at Appendix B. *See U.S. v. Washington*, 626 F. Supp. at 1530-
8 32; *U.S. v. Washington*, 459 F. Supp. at 1059 (mentioning Camano Island as part of Tulalip U&A);

9 (iii) the Tulalip Tribes U&A includes the western shores of Camano Island, including Cama
10 Beach (*see* Appendix B); and

11 (iv) on May 4, 1994, U.S. District Court Judge Edward Rafeedie entered a Consent Decree
12 between the United States and various Stevens Treaty tribes, including the Tulalip Tribes, regarding
13 shellfish sanitation issues (the "Rafeedie Consent Decree"), which affirms the Tulalip Tribes' primary
14 enforcement authority over shellfish activities on the Tulalip Reservation or within the Tulalip U&A.
15 *U.S. v. Washington*, 19 F. Supp. 3d 1126, 1149 (W.D. Wash. 1994) ("Each tribe shall bear primary
16 responsibility for enforcement of shellfish sanitation laws against its members . . . within its
17 reservation, any tribal trust lands, or within the tribe's usual and accustomed areas.").

18 Once judicial notice of these facts is taken, the State's lack of jurisdiction is apparent.
19 Washington courts have long noted that the State bears the burden of establishing its jurisdiction to
20 prosecute. *State v. L.J.M.*, 129 Wash.2d 386, 392 (1996). Dismissal is warranted in the absence of
21 state jurisdiction over tribal members. *See, e.g., Seymour v. Superintendent of Wash. State*
22 *Penitentiary*, 368 U.S. 351, 359 (1962). "As a general rule, '[s]tates . . . lack . . . criminal jurisdiction
23 over Indians within Indian country, absent federal legislation specifying to the contrary.'" *State v.*
24 *Comenout*, 173 Wash.2d 235, 238 (2011) (quoting Felix S. Cohen, COHEN'S HANDBOOK OF
25 FEDERAL INDIAN LAW § 6.04[1], at 537 (2005)). That issue of state-tribal territorial jurisdiction
26 is a question of law. *State v. Pink*, 144 Wash. App. 945, 950 (Div. 2 2008).

1 Here, there is no federal legislation that allows the State of Washington to prosecute any of
2 the five Counts against a Defendant who is a member of the Tulalip Tribes.³ In fact, under federal
3 law—specifically the Rafeedie Consent Decree—the Tulalip Tribes possess enforcement authority
4 over shellfish activities at issue as they occurred on the Tulalip Reservation or within the Tulalip
5 U&A. *U.S. v. Washington*, 19 F. Supp. 3d at 1149-1150.

6 Counts I and II charge Defendant with first-degree Unlawful Fish and Shellfish Catch
7 Accounting in violation of RCW 77.15.630(2). RCW 77.15.630 applies to individuals⁴ who receive
8 or deliver fish or shellfish under certain circumstances. *See* RCW 77.15.630(1). Under the statute,
9 an individual “‘receives’ fish or shellfish when title or control of the fish or shellfish is transferred or
10 conveyed to the person.” *Id.* at 77.15.630(4)(a). An individual “‘delivers’ fish or shellfish when title
11 or control of the fish or shellfish is transferred or conveyed from the person.” *Id.* at 77.15.630(4)(b).
12 Thus, the situs of a violation of RCW 77.15.630 is where title or control was transferred. Here, title
13 and control to the 4,531 pounds of clam bait bought by a PSSD agent Ms. Torpey was transferred to
14 PSSD on the Tulalip Reservation. Appendix A at pp. 130-131. As the State lacks evidence to
15 establish that the harvest or transfer of bait clams occurred beyond Tulalip Indian country, this Court
16 must dismiss Counts I and II. *See Pink*, 144 Wash. App. at 952; 18 U.S.C. 1151 (defines “Indian
17 country”); CrR 8.3(c)(3); and *Knapstad*, 107 Wn.2d at 356–57.

18
19
20 ³ The State had partial jurisdiction at Tulalip from 1953 to 2000, but not today. In 1953, Congress enacted Public Law
21 83-280 and gave states power to assume jurisdiction over Indian reservations. *McClanahan v. State Tax Commission of*
22 *Arizona*, 411 U.S. 164, 177 n.17 (1973). In 1957, Washington enacted RCW 37.12.010, through which it “assumed
23 criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands,” except over Indians on
24 tribal or allotted lands within a reservation and held in trust by the United States. *State v. Sohapp*, 110 Wash.2d 907,
25 909 (1988). On July 7, 1958, the State of Washington accepted jurisdiction over the Tulalip Indian Reservation. *Tonasket*
26 *v. State*, 84 Wash.2d 164, 166 n.2 (1974). But in 1986, the State passed RCW 37.12.100, which established a procedure
for the retrocession of criminal jurisdiction over Indians for acts occurring on certain reservations,
including the Tulalip Indian Reservation. RCW 37.12.010. Retrocession is effected by publication in the Federal Register.
State v. Hoffman, 116 Wash.2d 51, 70 (1991). In 2000, the federal government accepted Washington’s proclamation of
retrocession of criminal jurisdiction over the Tulalip Indian Reservation. 65 Fed. Reg. 75948 (2000). Crucially, since
retrocession has occurred at Tulalip, the State lacks criminal jurisdiction over Tulalip members in Tulalip Indian country.
State v. Pink, 144 Wash. App. 945, 952 (Div. 2 2008); 18 U.S.C. § 1151.

⁴ As explained below, Hazen Shopbell did not harvest this clam bait or purchase it from the harvesters.

1 Counts III, IV and V charge second-degree Unlawful Trafficking in Fish, Shellfish or Wildlife
2 in violation of RCW 77.15.260(1). RCW 77.15.260 criminalizes “trafficking in fish, shellfish, or
3 wildlife” under certain circumstances. RCW 77.15.260(1). “‘Trafficking’ means ‘offering, attempting
4 to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic
5 wildlife.’” *State v. Yon*, 159 Wash. App. 195 (2010) (quoting RCW 77.08.010). Here, the State’s
6 evidence that shows that PSSD employee Ms. Torpey purchased 877.75 pounds of clam bait “at the
7 beach” at Tulalip and within Tulalip’s U&A.⁵ Appendix A at p. 124. Again, as the State cannot show
8 that the purchasing occurred beyond Indian country, this Court must dismiss Counts III, IV and V for
9 lack of jurisdiction. *See Pink*, 144 Wash. App. at 952.

10 In its analysis of this issue the Court should not be confused by the incorrect statement made
11 in the Amended Information and Probable Cause statement as they are surplusage and not evidence.
12 For example, in Counts I and II the State alleges that “[o]n or about and between December 28, 2015
13 and January 11, 2016, in the **County of Skagit**,” the Defendant directed a PSSD employee to
14 “purchase 4531 pounds of clam bait.” Amended Information at 1-2; Motion for Summons (Probable
15 Cause) at 2. Again, the situs of clam harvesting activity and transfer to PSSD’s representative was
16 on the Tulalip Reservation, not in the County of Skagit. Appendix A at pp. 130-131. In a similarly
17 misleading fashion, the State alleges in Counts III, IV and V that “[o]n or about and between February
18 11, 2016 and May 9, 2016, in the **County of Skagit**,” that the Defendant sold “877.75 pounds of
19 illegally harvested clams for bait.” Amended Information at 2-3; Motion for Summons (Probable
20 Cause) at 2. The State’s evidence fails to establish that the situs of PSSD’s transfers of clam bait to
21 tribal fishers occurred in Skagit County as it clearly occurred within the Tulalip Tribal territory. *See*
22 Appendix A at p. 124.

23
24
25
26

⁵ As explained below, Hazen Shopbell also did not purchase this clam bait or sell it to fishers.

1 **C. Defendant Was Not Licensed nor Acting in the Capacity of a “Commercial Buyer,**
2 **Wholesale Fish Buyer, or Limited Fish Buyer” Between December 28, 2015 and**
3 **January 11, 2016.**

4 In order to find Defendant guilty of the crimes alleged in Counts I and II, the State must prove
5 each element beyond a reasonable doubt. *State v. Kroll*, 87 Wn.2d 829, 840, 558 P.2d 173 (1976).

6 These counts allege Defendant violated RCW 77.15.630(2). That portion of the statute provides:

7 (2) A person is guilty of unlawful fish and shellfish catch accounting in the **first**
8 **degree if the person commits an act described by subsection (1) of this section**
9 **and:**

10 (a) The violation involves fish or shellfish worth two hundred fifty dollars or more;

11 (b) The person acted with knowledge that the fish or shellfish were taken from a
12 closed area, at a closed time, or by a person not licensed to take such fish or shellfish
13 for commercial purposes; or

14 (c) The person acted with knowledge that the fish or shellfish were taken in
15 violation of any tribal law. (Emphasis added)

16 Subsection 1 of RCW 77.15.630 states:

17 (1) **A person licensed as a commercial fisher, wholesale fish buyer, or limited**
18 **fish seller, or a person not so licensed but acting in such a capacity, is guilty of**
19 **unlawful fish and shellfish catch accounting in the second degree** if he or she
20 receives or delivers for commercial purposes fish or shellfish worth less than two
21 hundred fifty dollars; and

22 (a) Fails to document such fish or shellfish with a fish-receiving ticket or other
23 documentation required by statute or department rule;

24 (b) Fails to sign the fish-receiving ticket or other required documentation, fails to
25 provide all of the information required by statute or department rule on the fish-
26 receiving ticket or other documentation, or both; or

(c) Fails to submit the fish-receiving ticket to the department as required by statute
or department rule. (Emphasis added)

Based on the statute, the elements of the offense alleged in Counts I and II require proof that

(1) the Defendant was “licensed as a commercial fisher, wholesale fish buyer, or limited fish seller,
or a person not so licensed but acting in such a capacity;” (2) received or delivered for commercial

1 purposes; (3) fish or shellfish; (4) failed to (a) document such fish or shellfish with a fish-receiving
2 ticket or other documentation required by statute or [WDFW] rule or (b) sign the fish-receiving ticket
3 or other required documentation, fails to provide all of the information required by statute or [WDFW]
4 rule on the fish-receiving ticket or other documentation, or both or (c) fails to submit the fish-receiving
5 ticket to the department as required by statute or department rule; (4) the violation involved fish or
6 shellfish was worth two hundred fifty dollars or more; and (5) the Defendant acted with knowledge
7 that (a) fish or shellfish were taken from a closed area, at a closed time, or by a person not licensed
8 to take such fish or shellfish for commercial purposes, or that the fish or shellfish were taken in
9 violation of any tribal law.
10

11 The State has no evidence that Defendant was licensed as or acting in the capacity of a
12 “commercial buyer, wholesale fish buyer, or limited fish buyer,” between December 28, 2015 and
13 January 11, 2016. The undisputed facts are that PSSD’s agent and licensed fish buyer, Ms. Torpey,
14 purchased 4,531 pounds of clam bait on the Tulalip Reservation that had been harvested by tribal
15 members. Galanda Decl., Ex. A (Bates No. 000873); Appendix A at pp. 130-131. As the State lacks
16 facts to establish all elements of the offenses charged in Counts I and II, they must be dismissed.
17

18 **D. Defendant Did Not “Traffic in Fish, Shellfish, or Wildlife” Between February 11, 2016**
19 **and May 9, 2016 as Alleged in Counts III, IV and V.**

20 In order to find the Defendant guilty of the crimes alleged in Counts III, IV and V, the State
21 must prove each element beyond a reasonable doubt. *Kroll*, 87 Wn.2d 829 at 840. RCW 77.15.260
22 (1) provides:

23 A person is guilty of unlawful trafficking in fish, shellfish, or wildlife in the second
24 degree if the person traffics in fish, shellfish, or wildlife with a wholesale value of
25 less than two hundred fifty dollars and; (a) The fish, shellfish, or wildlife is
26 classified as game, food fish, shellfish, game fish, or protected wildlife and the
trafficking is not authorized by statute or [WDFW] rule; or (b) The fish, shellfish,
or wildlife is unclassified and the trafficking violates any [WDFW] rule.

1 “Trafficking” means “offering, attempting to engage, or engaging in sale, barter, or purchase
2 of fish, shellfish, wildlife, or deleterious exotic wildlife.” *Yon*, 159 Wash. App. at 200. As the statute
3 is silent as to the element of mens rea, the court must ask whether the legislature intended to require
4 a knowing act by the defendant. *State v. Williams*, 125 Wn. App. 335, 339, 103 P.3d 1289, 1291
5 (2005), *aff’d*, 158 Wn.2d 904, 148 P.3d 993 (2006).

6
7 In answering this question, courts have applied the eight-factor test in *State v. Bash*, 130
8 Wash.2d 594, 925 P.2d 978 (1996): (1) a statute's silence on a mental element is not dispositive of
9 legislative intent; the statute must be construed in light of the background rules of the common law,
10 and its conventional mens rea element; (2) whether the crime can be characterized as a “public welfare
11 offense” created by the Legislature; (3) the extent to which a strict liability reading of the statute
12 would encompass seemingly entirely innocent conduct; (4) and the harshness of the penalty; (5) the
13 seriousness of the harm to the public; (6) the ease or difficulty of the defendant ascertaining the true
14 facts; (7) relieving the prosecution of difficult and time-consuming proof of fault where the
15 Legislature thinks it important to stamp out harmful conduct at all costs, “even at the cost of
16 convicting innocent-minded and blameless people”; and (8) the number of prosecutions to be
17 expected. *Williams*, 125 Wn. App. at 339 n.1 (citing *Bash*, 130 Wash.2d at 605–06, 925 P.2d 978
18 (quoting 1 WAYNE R. LAFAVE & AUSTIN W. SCOTT, SUBSTANTIVE CRIMINAL LAW §
19 3.8, at 341–44 (1986))).

20
21 Applying this eight-factor test to RCW 77.15.260 can only lead to one conclusion; the State
22 must be required to prove at least the mental state of knowledge. This would be consistent with the
23 proof required to convict under RCW 77.15.630 and common law. Fundamentally, “wrongdoing
24 must be conscious to be criminal.” *Morissette v. United States*, 342 U.S. 246, 252, 72 S. Ct. 240, 96
25 L. Ed. 288 (1952). “[T]he understanding that an injury is criminal only if inflicted knowingly ‘is as
26

1 universal and persistent in mature systems of law as belief in freedom of the human will and a
2 consequent ability and duty of the normal individual to choose between good and evil.” *Rehaif v.*
3 *United States*, 588 U.S. ___, 139 S. Ct. 2191, 2196, ___ L. Ed. 2d. ___ (2019) (quoting *Morissette*, 342
4 U.S. at 250); *accord State v. Anderson*, 141 Wn.2d 357, 366-67, 5 P.3d 1247 (2000).

5 For these reasons, there is “a longstanding presumption, traceable to the common law,” that
6 criminal statutes require proof of a “culpable mental state regarding ‘each of the statutory elements
7 that criminalize otherwise innocent conduct.’” *Rehaif*, 139 S. Ct. at 2195 (quoting *United States v. X-*
8 *Citement Video, Inc.*, 513 U.S. 64, 72, 115 S. Ct. 464, 130 L. Ed. 2d 372 (1994)). Thus, courts presume
9 a mental element or “scienter” is required, even where the text is silent. *Id.* at 2197 (“We have
10 interpreted statutes to include a scienter requirement even where the statutory text is silent on the
11 question.”); *Anderson*, 141 Wn.2d at 367 (courts are “loath ... to conclude that the Legislature
12 intended to jettison the normal requirement that mens rea be proved”). This “presumption applies
13 with equal or greater force when [the legislative body] includes a general scienter provision in the
14 statute itself.” *Rehaif*, 139 S. Ct. at 2195.

15 Here, the State’s evidence shows that PSSD employee Ms. Torpey transferred clam bait to
16 various Tribes members at Tulalip and within Tulalip’s U&A. Appendix A, at p. 124. It would be
17 incredibly unfair to allow the State to accuse Defendant of a felony without having to prove he acted
18 with a consciousness of wrongdoing. Again, as the State cannot show that the Defendant was the
19 person who engaged in the “sale, barter, or purchase’ of the clam bait, this Court must dismiss Counts
20 III, IV and V as all essential elements of a violation under RCW 77.15.260(1) cannot be established.

21 **E. Defendant is Not Legally Accountable for the Actions of PSSD’s Agent Jamie Torpey.**

22 The State’s evidence also fails to establish any of the statutory general requirements for
23 criminal culpability under Ch. 9A.08 RCW. As discussed above, the State’s discovery establishes
24
25
26

1 that the clam bait was harvested by Tulalip tribal members and transferred between Tribal fishermen
2 and PSSD's agent Ms. Torpey on the Tulalip Reservation or "on the beach" at Tulalip and in the
3 U&A. Appendix A at pp. 124, 130-131. There is no evidence that Defendant was present when the
4 bait clams were transferred from or to the Tribal members. As there is no evidence that Defendant
5 was present when these transfers occurred, he can only be legally culpable as Ms. Torpey's
6 "accomplice" as defined in RCW 9A.08.020; or under RCW 9A.08.030 based on his role within
7 PSSD.

8 In order to establish accomplice liability, the State must prove that the Defendant acted with
9 knowledge of the specific crime that Ms. Torpey was going to commit, rather than with a generalized
10 knowledge of criminal activity. *State v. Carter*, 154 Wn.2d 71, 109 P.3d 823 (2005); *State v. Cronin*,
11 142 Wn.2d 568, 578-79, 14 P.3d 752 (2000). The State lacks any evidence that the harvest of bait
12 clams was contrary to the Tulalip Tribes' regulations or that Defendant knew of any such regulations.
13 Thus, the State lacks evidence that Defendant could have done any act with the specific knowledge
14 that Ms. Torpey's purchase of clam bait was illegal.

15 The State faces the same difficulty if it argues that Defendant is culpable merely because
16 Ms. Torpey was PSSD's agent. Under RCW 9A.08.030(4), Defendant could only be culpable for the
17 conduct of PSSD's agent if (1) he knew the company owed a "duty to act," (2) he shared "primary
18 responsibility" for carrying out that duty, and (3) committed a reckless or criminally negligent
19 omission to perform that duty. Again, the State lacks evidence that Defendant knew of any PSSD
20 duty to act as to the clam bait Ms. Torpey either bought from or sold to Tribal member fishermen in
21 Tulalip Indian Country. Nor does the State have any evidence that Defendant shared primary
22 responsibility for fish buying; that responsibility fell exclusively to PSSD's licensed fish buyer,
23 Ms. Torpey. Nor does can the State show any evidence of any reckless or criminally negligent
24 omission on Defendant's part. For all of these reasons, the State lacks evidence to establish any of
25 the elements needed to prove criminal culpability.
26

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
26

V. CONCLUSION

For these reasons stated herein, the State's evidence does not establish State jurisdiction over Defendant nor a prima facie case guilt for the conduct alleged in Counts I, II, III, IV or V. Mr. Shopbell is therefore entitled to dismissal of the Amended Information.

DATED this 16th day of September 2021.

GALANDA BROADMAN, PLLC



Gabriel S. Galanda, WSBA# 30331
8606 35th Ave. NE, Suite L1
PO Box 15146, Seattle, WA 98115
(206) 557-7509 Fax: (206) 299-7690
Email: gabe@galandabroadman.com

Attorneys for Defendant Hazen Shopbell

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
26

CERTIFICATE OF SERVICE

I, Wendy Foster, declare as follows:

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

2. Today, I caused the above document to be electronically filed in the above-captioned court and served via hand delivery on the following:

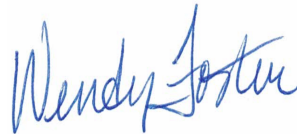
Edwin N. Norton
Skagit County Prosecuting Attorney
605 S. Third Street
Courthouse Annex
Mount Vernon, WA 98273
Tel: (360) 416-1600
Fax: (360) 416-1648
EdWinn@co.skagit.wa.us
Attorneys for Plaintiff

and served via email on the following:

David H. Smith
Garvey Schubert Barer
1191 Second Ave., Suite 1800 Seattle, WA 98101
Tel: (206) 464-3939
Fax: (206) 464-0125
dsmith@gsblaw.com
Attorneys for Defendant Anthony Paul

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

Signed at Seattle, Washington, this 16th day of September 2021.



Wendy Foster