

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 PAUL, 18-1-00622-29

NO. 18-1-00621-29

SUPPLEMENTAL REPLY IN  
SUPPORT OF (1) MEMORANDUM IN  
SUPPORT OF MOTION TO DISMISS  
AMENDED INFORMATION DUE TO  
BAD FAITH AND (2) MOTION TO  
DISMISS AMENDED INFORMATION  
PURSUANT TO CrR 8.3(b)

**I. INTRODUCTION**

Defendant Hazen Shopbell submits this Supplemental Reply and the Fourth Supplemental Declaration of Gabriel S. Galanda (Oct. 26, 2021) (“Fourth Supp’l Decl.”) to rebut the hearing testimony of Washington State Department of Fish and Wildlife (“WDFW”) Sargent Wendy Willette and the misleading statements made in the State’s Memorandum in Opposition to Motions to Suppress Evidence and/or Dismiss (the “State’s Response”) regarding Puget Sound Seafood Dist., LLC (“PSSD”). The exhibits attached to Mr. Galanda’s Fourth Supplemental Declaration demonstrate that both PSSD and its principal place of business on the Tulalip Reservation were licensed and regulated by the Tulalip Tribes for the purpose of engaging in wholesale fish dealing within Tribal Treaty territories from 2014 to 2018. These facts support Mr. Shopbell’s contention that the Rafeedie Consent Decree applies to this case.

1 **II. STATEMENT OF FACTS**

2 In opposing Mr. Shopbell’s dismissal motions due to WDFW’s bad faith destruction of  
3 evidence and prosecutorial “shopping,” the State contends: “[D]efendants were co-owners of  
4 Puget Sound Seafood Dist., LLC. This company was registered with the State of Washington.”<sup>1</sup>  
5 State’s Response at 1; *see also id.* at 9 (“The defendants violated many state laws and regulations  
6 while operating as a state licensed company registered in Tacoma. Their business activity is not  
7 protected under any treaty right, nor is their conduct subject to Tulalip tribal jurisdiction.”). Sgt.  
8 Willette and the State both overlook the fact that PSSD was at all material times licensed and  
9 regulated as a Tulalip fish dealer by the Tulalip Tribes, in exercise of Tulalip Treaty rights, inherent  
10 sovereignty, and civil regulatory jurisdiction. Fourth Supp’l Decl., Exs. A-C.

11 From 2014 to 2017, the Tulalip Tribes approved several annual PSSD applications for  
12 licensure to buy and sell Treaty finfish and shellfish within Tulalip territories. *Id.*, Ex. A. PSSD  
13 disclosed the nature of the business to the Tribes as follows: “We sell wholesale seafood products  
14 to the Tulalip Tribes” and “Purchase seafood from Tulalip Marina + wholesale distribute to other  
15 establishments.” *Id.* The Tribes approved the company’s Tulalip business address at Mr.  
16 Shopbell’s home on the Tulalip Reservation—the same home WDFW raided on June 13, 2016—  
17 and granted it a home office exemption under Tribal housing law. *Id.* (citing Tulalip Tribal Code  
18 (“TTC”) 7.135.080). From 2014 to 2018<sup>2</sup>, the Tribes also specifically licensed PSSD as a Tulalip  
19 fish dealer, with its principal place of business at Mr. Shopbell’s home.<sup>3</sup> *Id.*, Exs. B-C. It is,

21 <sup>1</sup> Under Washington State law, a “state chartered corporation comprised only of Indians” that does business in Indian  
22 country such as PSSD, generally exists beyond the reach of state regulatory jurisdiction. RCW 458-20-192(5)(5); *see*  
23 *also Pourier v. S. D. Dept. of Revenue*, 658 N.W.2d 395, 404 (S.D. 2003), *aff’d in relevant part and rev’d in part on*  
24 *other grounds on reh’g*, 674 N.W.2d 314 (S.D. 2004) (a state-chartered corporation whose sole shareholder was a  
25 tribal member was “an enrolled member for the purpose of protecting tax immunity”).

<sup>2</sup> Errata: PSSD’s 2016 Tulalip fish dealer license ran through March 31, 2017, not “March 31, 2016.” Fourth Supp’l  
Decl. ¶3; *id.*, Ex. B; *id.*, Ex. C (“All fish buyers permits are valid through March 30th of each year.”).

<sup>3</sup> The Rafeedie Consent Decree specifically contemplates that “a tribe may license individual tribal members . . . to  
sell the shellfish.” *U.S. v. Washington*, 19 F. Supp. 3d 1126, 1142 (W.D. Wash. 1994). Sgt. Willette’s contention that  
the Rafeedie Consent Decree applies only to shellfish harvesting is false. *See id.*

1 therefore, inaccurate to describe PSSD as merely a “state licensed company” and false to state that  
2 the company’s conduct is not “subject to Tulalip tribal jurisdiction.” State’s Response at 9.

3 **III. LAW AND ARGUMENT**

4 The Tulalip Tribes’ regulation of PSSD as a Tulalip fish buyer is consistent with its  
5 “primary responsibility for enforcement of shellfish sanitation laws against its members . . . within  
6 its reservation, any tribal trust lands, or within the tribe’s usual and accustomed areas.” *U.S. v.*  
7 *Washington*, 19 F. Supp. 3d at 1149. Contrary to Sgt. Willette’s testimony and the arguments  
8 made in the State’s Response, the Tribes need not opt to “undertake primary responsibility” over  
9 members in Tulalip Treaty territories. State’s Response at 5. Unlike other parts of the Rafeedie  
10 Consent Decree, its “Enforcement” under Section VI is not contingent upon any Tribal, state or  
11 federal action. *U.S. v. Washington*, 19 F. Supp. 3d at 1149.<sup>4</sup> Tulalip’s primary enforcement  
12 authority is self-actualizing as per Tulalip Treaty rights and inherent authority.<sup>5</sup> *See id.*

13 Sgt. Willette’s apparent failure to investigate whether PSSD was Tribally licensed and  
14 regulated, at any point from 2015 to 2018, underscores the State’s violations of the Rafeedie  
15 Consent Decree.<sup>6</sup> *See id.* The exhibits to Mr. Galanda’s Fourth Supplemental Declaration are also  
16 admissible to impeach Sgt. Willette’s testimony under ER 607 as extrinsic evidence that  
17

18 \_\_\_\_\_  
19 <sup>4</sup> There is a process for the Tribes to “undertake *sole* responsibility” as a shellfish sanitation control agency in  
20 accordance with the National Shellfish Sanitation Program Manual and Food and Drug Administration laws, but what  
21 is at issue here is Tulalip “*primary* responsibility” over enforcement activities involving tribal members engaged in  
22 Treaty shellfish commerce in Tulalip territories like PSSD. *Compare U.S. v. Washington*, 19 F. Supp. 3d at 1140 *with*  
23 *id.* at 1149 (emphasis added). The State obscures this distinction. State’s Response at 5.

24 <sup>5</sup> Sgt. Willette believes there is “no prohibition” against a State police officer from entering Tulalip Reservation lands  
25 without permission. She is sadly mistaken. Tulalip Treaty rights and inherent sovereignty, as exercised through the  
Tribes’ own codified search warrant procedures and affirmed by federal and state law, prohibit WDFW cops from  
entering the Tulalip Reservation at will, as Sgt. Willette did on August 15, 2016. *See Treaty of Point Elliott*; TTC  
2.25.030; *Worcester v. Georgia*, 31 U.S. 515, 559 (1832); *McClanahan v. Ariz. State Tax Comm’n*, 411 U.S. 164, 179  
(1973) (quoting *Williams v. Lee*, 358 U.S. 217, 220 (1959)); *State v. Clark*, 178 Wn.2d 19, 27 (2013); *see also* RCW  
37.12.010; 65 Fed. Reg. 75948 (2000); *State v. Pink*, 144 Wash. App. 945, 952 (Div. 2 2008).

<sup>6</sup> Sgt. Willette violated the Rafeedie Consent Decree by, *inter alia*, failing to “hold” and not destroy the claim bait  
evidence that she discovered at Marine View Cold Storage on August 15, 2016; and failing to refer the alleged shellfish  
trafficking violations that comprise Counts I through V to Tulalip Tribal Police Chief Carlos Echevarria with a  
statement of probable cause. *U.S. v. Washington*, 19 F. Supp. 3d at 1149.

1 contradicts her testimony on a material fact. *State v Ciskie*, 110 Wn. 2d 263, 751 P.2d 1165 (1988).  
2 Those same exhibits supports a finding that Sgt. Willette violated WDFW’s 1:10 guidance  
3 regarding preservation of evidence, which is relevant to the Court’s determination of her bad faith  
4 vis-à-vis the destruction of the clam bait evidence. Those same exhibits also demonstrate her  
5 motive for “shopping” alleged violations of state law in Counts I through V to at least five non-  
6 tribal prosecutors, in violation of WDFW policy establishing Tribal Court as the only proper forum  
7 for those charges. Supplemental Declaration of Gabriel S. Galanda (Sept. 20, 2021), Ex. A at 2  
8 (“Charge tribal members in State court if violations occur outside the tribe’s U&A. If violations  
9 occur within the Tribe’s U&A, the Officer should report the violations to tribal authorities.”).

10 DATED this 28<sup>th</sup> day of October 2021:

11 GALANDA BROADMAN, PLLC

12 

13 \_\_\_\_\_  
14 Gabriel S. Galanda, WSBA# 30331  
15 Attorney for Defendant Shopbell

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 years, not a party to the  
5 above-entitled action, and competent to testify as a witness.

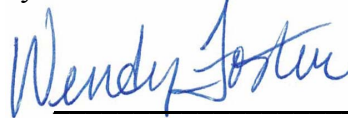
6 2. Today, I caused the foregoing documents to be filed in the above-captioned court  
7 and served via email on the following counsel of record:

8 Rosemary H. Kaholokula  
9 Edwin N. Norton  
10 Skagit County Prosecuting Attorney  
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24 Attorneys for Defendant Anthony Paul

25 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 28th day of October 2021.

  
Wendy Foster