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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

HAZEN GRAHAM SHOPBELL'S  
MOTION FOR BILL OF  
PARTICULARS

**I. MOTION**

Maintaining that this prosecution violates Tulalip Treaty rights under supreme federal law<sup>1</sup>, Tulalip Tribal member defendant Hazen Graham Shopbell (“Defendant” or “Mr. Shopbell”) moves the Court for an order directing the Prosecution to make the June 18, 2019, Amended Information more definite and certain by stating the essential facts the State intends to offer to prove guilt as to each element of the crimes charged. Pursuant to CrR 2.1(c), Article 1, Section 22 of the Washington State Constitution, and the Sixth Amendment to the United States Constitution, a Bill of Particulars is necessary because the State has not provided a Certification for

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<sup>1</sup> U.S. Const. Art. VI, Cl. 2 (Treaties “shall be the supreme Law of the Land; and the judges in every state shall be bound thereby . . .”).

1 Determination of Probable Cause along with the Amended Information or otherwise set forth facts  
2 supporting each count in the Amended Information.

3 The Amended Information relies on generalized statements which does not inform Mr.  
4 Shopbell of the specific conduct with which the he is charged. A Bill of Particulars addressing  
5 each count in the Amended Information is necessary because that charging document's allegations  
6 are vague, ambiguous, and uninformative. The information sought is within the particular  
7 knowledge of the Prosecution and is essential to allow Mr. Shopbell to adequately prepare for trial.  
8 Any failure to grant a Bill of Particulars pursuant to CrR 2.1(c) will Mr. Shopbell of his possible  
9 defenses to the crimes alleged in the Amended Information; compel him to stand trial unprepared  
10 to assert possible defenses; force him to testify against himself at trial; and deprive him of a fair  
11 trial without due process of law, in violation of the rights guaranteed to the Defendant by the Fifth  
12 and Sixth Amendments of the United States Constitution.

## 13 II. FACTUAL BACKGROUND

### 14 A. Procedural History

15 On June 15, 2018, Mr. Shopbell was charged by Information with five felony counts: (1)  
16 Count I - Unlawful Use of Fish Buying and Dealing Licenses in the First Degree; (2) Count II -  
17 Unlawful Use of Fish Buying and Dealing Licenses in the First Degree; (3) Count III - Unlawful  
18 Trafficking in Fish, Shellfish, or Wildlife in the Second Degree; ( 4) Count IV - Unlawful  
19 Trafficking in Fish, Shellfish, or Wildlife in the Second Degree; and (5) Count V - Unlawful  
20 Trafficking in Fish, Shellfish, or Wildlife in the Second Degree. The Information was not  
21 accompanied any Certification of Probable Cause.

22 On May 6, 2019, the State filed a Motion to Amend Information in recognition that Counts  
23 1 and II alleged versions of the underlying statute that was not in effect at the time of the alleged  
24 violations. The Court granted the motion to amend on or about June 18, 2019.

1           B.     The Amended Information Charges

2           The Amended Information alleges in Counts I and II that Defendant committed first-degree  
3 Unlawful Fish and Shellfish Catch Accounting in violation of RCW 77.15.630(2). RCW  
4 77.15.630 applies to individuals who receive or deliver fish or shellfish under certain  
5 circumstances. See RCW 77.15.630(1). Under the statute, an individual “‘receives’ fish or  
6 shellfish when title or control of the fish or shellfish is transferred or conveyed to the person.” *Id.*  
7 at 77.15.630(4)(a). An individual “‘delivers’ fish or shellfish when title or control of the fish or  
8 shellfish is transferred or conveyed from the person.” *Id.* at 77.15.630(4)(b). Counts III, IV and  
9 V charge Defendant with second-degree Unlawful Trafficking in Fish, Shellfish or Wildlife in  
10 violation of RCW 77.15.260(1). RCW 77.15.260 criminalizes “‘trafficking in fish, shellfish, or  
11 wildlife” under certain circumstances. RCW 77.15.260(1). “‘Trafficking’ means ‘offering,  
12 attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or  
13 deleterious exotic wildlife.’” *State v. Yon*, 159 Wash. App. 195 (2010) (quoting RCW 77.08.010).

14           The discovery thus far furnished by the Prosecution identifies potentially multiple  
15 violations of RCW 77.15.630 and RCW 77.15.260 but fails to provide specific information  
16 regarding Defendant’s alleged role in each transaction. The Prosecution’s discovery also fails to  
17 identify any facts supporting assertions in the State’s October 6, 2021, Memorandum in Opposition  
18 to Motions to Suppress Evidence and/or Dismiss (“State’s Opposition”), in which the State argues,  
19 without evidentiary support, that Defendant is both a principal and an accomplice to prosecution  
20 witness Jamie Torpey. State’s Opposition at 13-14. The Prosecution generally states “the  
21 defendants specifically authorized Jamie Torpey, their employee, to purchase the shellfish at issue  
22 in Counts 1 and 2 and to sell the shellfish at issue in Counts 3 – 5. They are criminally liable for  
23 her actions.” *Id.* at 14-15. This is constitutionally insufficient.

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1                                   **III.           DEMAND FOR BILL OF PARTICULARS**

2           Based on the vague and insufficient statements made in the State’s Opposition, Mr.  
3 Shopbell demands pursuant to CrR 2.1(c) that the Prosecution make the charge in the Amend  
4 Information more definite and certain by stating the essential facts the prosecution intends to  
5 establish to prove his guilt as to each element of the crimes charged in Counts I through V. The  
6 charges allege multiple acts which can create issues of lack of juror unanimity because all do not  
7 agree that the same criminal act has been proven beyond a reasonable doubt. *See, State v. Petrich,*  
8 *101 Wn.2d 566, 683 P.2d 173 (1984).* If the State intends to claim this is a multiple act situation,  
9 the constitutional prohibition against double jeopardy may be violated by a defendant's conviction  
10 of multiple counts based on a single act. *See, e.g, State v. Ellis, 71 Wn. App. 400, 859 P.2d 632*  
11 *(1993).* Without a Bill of Particulars, neither Mr. Shopbell nor the Court will know what facts  
12 support each charge and whether there is a risk of violation of the double jeopardy clause.

13           Defendant specifically requests that the Prosecution provide the following:

14           **A.       Count I**

15           1.       State whether the clam bait was taken from (a) a closed area, (b) at a closed time,  
16 or (c) by a person not licensed to take the clam bait for commercial purposes; and (d) the nature of  
17 any commercial purpose.

18           2.       State whether Defendant acted with knowledge that the clam bail was taken in  
19 violation of any tribal law.

20           3.       State specifically how the requirements of RCW 77.15.630 were violated and who  
21 committed the violation.

22           4.       State whether the prosecution contends Defendant was required to be licensed as a  
23 Commercial Fisher, a Wholesale Fish Buyer, or a Limited Fish Seller and identify all rules and  
24 regulations requiring any such license.

1           5.       State whether Defendant received or delivered clam bait and identify (a) all dates,  
2 times, and places the clam bait was received or delivered and (b) all persons present when the  
3 claim bait was received or delivered.

4           6.       State whether the prosecution contends Defendant was acting as a “high managerial  
5 agent” as defined by RCW 9A.08.030(1)(d), at the times related to the response immediately  
6 above.

7           7.       State whether the Prosecution contends Defendant violated a duty to act imposed  
8 by law on Defendant or Puget Sound Seafood Distr., LLC (“PSSD”) and if so, identify the duty  
9 and how it is imposed.

10           **B.     Count II**

11           1.       State whether the clam bait was taken from (a) a closed area, (b) at a closed time,  
12 or (c) by a person not licensed to take the clam bait for commercial purposes; and (d) the nature of  
13 any commercial purpose.

14           2.       State whether Defendant acted with knowledge that the clam bail was taken in  
15 violation of any tribal law.

16           3.       State specifically how the requirements of RCW 77.15.630 were violated and who  
17 committed the violation.

18           4.       State whether the prosecution contends Defendant was required to be licensed as a  
19 Commercial Fisher, a Wholesale Fish Buyer, or a Limited Fish Seller and identify all rules and  
20 regulations requiring any such license.

21           5.       State whether Defendant received or delivered clam bait and identify (a) all dates,  
22 times, and places the clam bait was received or delivered and (b) all persons present when the  
23 claim bait was received or delivered.

1           6.       State whether the prosecution contends Defendant was acting as a “high managerial  
2 agent” as defined by RCW 9A.08.030(1)(d), at the times related to the response immediately  
3 above.

4           7.       State whether the Prosecution contends Defendant violated a duty to act imposed  
5 by law on Defendant or PSSD and if so, identify the duty and how it is imposed.

6           **C.    Count III**

7           1.       State whether Defendant (a) offered, (b) attempted to engage in, or (c) engaged in  
8 the sale, barter or purchase of clam bait.

9           2.       State any person to, with, or from whom Defendant sold, bartered, or purchased  
10 the clam bait.

11          3.       State the date, time, and locations of each occasion in which Defendant sold,  
12 bartered, or purchased clam bait.

13          4.       Identify all persons present when Defendant sold, bartered, or purchased clam bait.

14          5.       State whether the Prosecution contends Defendant was acting as a “high managerial  
15 agent” as defined by RCW 9A.08.030(1)(d), at the times related to the response immediately  
16 above.

17          6.       State whether the Prosecution contends Defendant violated a duty to act imposed  
18 by law on Defendant or PSSD and if so, identify the duty and how it is imposed.

19          **D.    Count IV**

20          1.       State whether Defendant (a) offered, (b) attempted to engage in, or (c) engaged in  
21 the sale, barter or purchase of clam bait.

22          2.       State any person to, with, or from whom Defendant sold, bartered, or purchased  
23 the clam bait.

24          3.       State the date, time, and locations of each occasion in which Defendant sold,

1 bartered, or purchased clam bait.

2 4. Identify all persons present when Defendant sold, bartered, or purchased clam bait.

3 5. State whether the Prosecution contends Defendant was acting as a “high managerial  
4 agent” as defined by RCW 9A.08.030(1)(d), at the times related to the response immediately  
5 above.

6 6. State whether the Prosecution contends Defendant violated a duty to act imposed  
7 by law on Defendant or PSSD and if so, identify the duty and how it is imposed.

8 **E. Count V**

9 1. State whether Defendant (a) offered, (b) attempted to engage in, or (c) engaged in  
10 the sale, barter or purchase of clam bait.

11 2. State any person to, with, or from whom Defendant sold, bartered, or purchased  
12 the clam bait.

13 3. State the date, time, and locations of each occasion in which Defendant sold,  
14 bartered, or purchased clam bait.

15 4. Identify all persons present when Defendant sold, bartered, or purchased clam bait.

16 5. State whether the Prosecution contends Defendant was acting as a “high managerial  
17 agent” as defined by RCW 9A.08.030(1)(d), at the times related to the response immediately  
18 above.

19 6. State whether the Prosecution contends Defendant violated a duty to act imposed  
20 by law on Defendant or PSSD and if so, identify the duty and how it is imposed.

21 **IV. AUTHORITY AND ARGUMENT**

22 Mr. Shopbell is entitled to a Bill of Particulars under CrR 2.1(c), Article 1, § 22 of the  
23 Washington State Constitution and the Sixth Amendment to the United States Constitution where  
24 necessary in order to prepare his defense and to avoid prejudicial surprise. *State v. Noltie*, 116

1 Wn.2d 831, 835, 809 P.2d 190, 194 (1991). He has a constitutional right to be informed of the  
2 nature and cause of the accusation against him to enable him to prepare his defense. *State v.*  
3 *Peerson*, 62 Wn. App. 755, 816 P.2d 43 (1991).

4 The function of a Bill of Particulars is to amplify or clarify particular matters considered  
5 essential to the defense. *State v. Allen*, 116 Wn. App. 454, 460, 66 P.3d, 653, 656 (2003). Even a  
6 technically proper Information may be subject to a timely motion for a more definite statement if  
7 it is vague as to the specifics as to the crime committed. *State v. Dictado*, 102 Wn.2d 277, 285,  
8 687 P.2d 172, 177 (1984) (abrogated on other grounds, *State v. Lorenz*, 152 Wn.2d 22, 93 P.3d  
9 133 (2004)). A motion to make the charge more definite is timely if made prior to trial. *City of*  
10 *Seattle v. Koh*, 26 Wn. App. 708, 709, 614 P.2d 665, 667 (1980). It is made at this point given the  
11 vague and insufficient explanations of the factual basis for the charges alleged in Counts I through  
12 V and the State's Opposition.

### 13 V. CONCLUSION

14 Mr. Shopbell should be apprised fully of the acts constituting the conspiracy and  
15 underlying crimes so that he can prepare for trial. Since the Amended Information and the  
16 discovery produced by the State are insufficient to inform the Defendant of the nature and cause  
17 of the accusation against him, a Bill of Particulars is necessary to protect his constitutional rights.  
18 The Court should order the prosecution to provide the requested Bill of Particulars to defense  
19 counsel within ten (10) court days of the date this motion is granted.

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DATED this 1st day of December, 2021.

Respectfully submitted,

GALANDA BROADMAN, PLLC



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**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 filed in the above-captioned court via U.S. Mail, and served via email and fax on the following:

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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 1<sup>st</sup> day of December, 2021.

  
\_\_\_\_\_  
Wendy Foster