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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.

ANTHONY EDWIN PAUL,

Defendant.

CASE NO. 18-1-00622-29

DEFENDANTS’ JOINT REPLY IN
SUPPORT OF MOTION FOR BILL OF
PARTICULARS

Co-Defendant:
HAZEN GRAHAM SHOPBELL, 18-1-00621-29

I. INTRODUCTION

As this Court is aware, trial in this case is scheduled to commence on January 3, 2022. The State alleges through the Amended Information that Tulalip Tribal members Anthony Edwin Paul (“Mr. Paul”) and Hazen Graham Shopbell (“Mr. Shopbell”) (collectively the “Defendants”) are each criminally culpable for the acts of former Puget Sound Seafood Dist. LLC (“PSSD”) employee Jamie Torpey, the PSSD’s State licensed Fish Buyer. Defendants’ request for a Bill of Particulars is predicated on numerous constitutional considerations, including avoiding prejudicial surprise at trial. The requested relief is necessary to force the State to adequately present its theory of the case, provide the Defendants sufficient notice of the essential facts the State intends to offer as evidence of guilt, and allow them a fair opportunity to prepare for trial.

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II. ARGUMENT

A. A Bill of Particulars is Required to Prepare the Defense and Avoid Surprise.

The State's Response to Defendant's Motion for Bill of Particulars ("State's Response") asks the Court to deny Defendants a Bill of Particulars because: "[t]he charging document provides all the statutory and non-statutory elements. ... [f]ull discovery has been provided to the defense. (State's Response, p. 6.) Neither statement is true.

CrR 2.1(c) allows the Defendants to require the State to make the Amended Information more definite and certain by stating the essential facts the prosecution intends to establish at trial to prove guilt. *State v. Noltie*, 116 Wn. 2d 831, 835, 809 P.2d 190, 194 (1991). The Defendants' right to be adequately prepared for trial is guaranteed by Article 1, § 22 of the Washington State Constitution and the State Amendment to the United States Constitution. *Id.*

B. The State's Discovery Materials and Charging Document are Inadequate.

The Amended Information alleges multiple instances of violation of the underlying statutes without describing the facts that would make either Defendant liable for Ms. Torpey's actions under RCW 9A.08.030(1)d). For Counts I and II, the Amended Information alleges violations of RCW 77.15.630 without specifying which of the various ways the statute could be violated applies to each alleged act. For example, was the clam bait taken from a closed area, at a closed time or by a person not licensed to harvest the claim bait for commercial purposes? The charging document does not answer these questions, nor does anything produced by the State in discovery.

The same problems exist regarding Counts III, IV and V. Those counts allege a violation of RCW 77.15.2601). This statute criminalizes "trafficking" by "offering, attempting to engage, or engaging in sale barter, or purchase" of clam bait. As with Counts I and II, the Amended Information does not explain why either Defendant would be legally accountable under RCW 9A.08.030(1)(d) for Ms. Torpey's conduct as PSSD's agent.

1 The State's boilerplate argument against a Bill of Particulars is further undermined by its
2 Witness List, copies of which are attached as Appendix A. Although the State's Witness List
3 references "police reports and attached statements," no such witness information is appended. *Id.*
4 Of the nine individuals listed as Primary State's Witnesses, the names of Danielle Toepelt, Amy
5 Seiders, Marjorie Morningstar, Paula Galivan, and Carol Stedman do not appear in discovery and
6 the State's discovery materials do not contain reports or statements authored by them. The State has
7 not produced any witness statements for either WDFW Det. Clementson, Merle Hayes, Yamah
8 Hood, Toepelt, Seiders, Morningstar, Galivan, or Stedman. It is of note that the single set of Treaty
9 Shellfish Receiving Tickets ("TFRT") and receipts produced in discovery pertain to thirteen
10 separate transactions involving Ms. Torpey's sale of clam bait to Treaty fishermen Mr. Hood, Roy
11 Pablo, Theodore James, William Gobin, Clancy Hatch, Adrian Henry, Tristin Zackuse, Greg
12 Sullivan, Donny Black, and Justin Parks. The State has only produced a statement from Mr.
13 Sullivan, so the defense has no idea what knowledge other Treaty fishermen may possess. Again,
14 the defense has neither information regarding the underlying sale transactions conducted by Ms.
15 Torpey, nor statements from the twelve individuals who purchased the clam bait from the State's
16 primary witness, Ms. Torpey.

17 **C. Counts I and II Illustrate the Deficiencies In Discovery and the Charging Document.**

18 Counts I and II involve bait clams harvested from Cama Beach in the Tulalip U&A by
19 Tulalip tribal members Carnegie Hayes, Merle Hayes and Dayson Parks and purchased on the
20 Tulalip Reservation by Ms. Torpey. While these Counts are based on the allegation that the
21 Defendants (which Defendant gave this purported instruction remains unknown) directed Ms.
22 Torpey to purchase the clams "that were not harvested in accordance with State or Tribal seasons or
23 in accordance with Washington State Department of Health laws and rules," nothing in the
24 discovery produced by the State identifies which Defendant gave instructions to Ms. Torpey as to a
25 specific clam bait purchase transaction, the dates of the Tulalip Tribes' clam harvest season for that
26

1 transaction, or why DOH laws or rules would apply to any Treaty clam harvest conducted
2 exclusively within the jurisdiction of the Tulalip Tribes.

3 In addition, nothing in the discovery indicates whether Ms. Torpey is alleged to have
4 instructed Carnegie Hayes, Merle Hayes or Dayson Parks not to assist her in preparing TFRTs,
5 which, if even required by Tulalip Tribes, would have been completed or kept by the Treaty
6 harvester and PSSD's licensed Fish Buyer, Ms. Torpey, not the Defendants.

7 III. CONCLUSION

8 Because the State's discovery either fails to confirm its representations in the Amended
9 Information or simply does not exist, Defendants are vulnerable to prejudicial surprise at the
10 January 3, 2022 trial. For these reasons, Defendants respectfully requests this Court grant the
11 motion and direct the State to supply a Bill of Particulars no later than December 27, 2021.

12 DATED this 16th day of December, 2021.

13 Respectfully submitted,

14 SUMMIT LAW GROUP, PLLC

15 By s/ David H. Smith

16 David H. Smith, WSBA #10721
17 *davids@summitlaw.com*

18 *Attorneys for Defendant Anthony Edwin Paul*

19 GALANDA BROADMAN, PLLC

20 By s/ Gabriel S. Galanda

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25 Email: *gabe@galandabroadman.com*

26 *Attorneys for Defendant Hazen Shopbell*

CERTIFICATE OF SERVICE

I, Patricia Shillington, certify under penalty of perjury under the laws of the State of Washington that, on December 16, 2021, I caused to be served on the person(s) listed below the foregoing Defendants' Joint Reply in Support of Motion for Bill of Particulars.

Skagit County Prosecuting Attorney
Attn: Rosemary Kaholokula
605 S. Third
Mount Vernon, WA 98273
Email: rosemaryk@co.skagit.wa.us
United States Mail, First Class
By Legal Messenger
By Facsimile
By Federal Express
By Email

Gabriel S. Galanda
Galanda Broadman
P.O. Box 15146
Seattle, WA 98115
Email: gabe@galandabroadman.com
United States Mail, First Class
By Legal Messenger
By Facsimile
By Federal Express
By Email

DATED this 16th day of December, 2021.

s/Patricia Shillington
Patricia Shillington

4815-1610-4422, v. 1

APPENDIX A

**SKAGIT COUNTY SUPERIOR COURT
STATE OF WASHINGTON**

STATE OF WASHINGTON, Plaintiff,

vs.

ANTHONY EDWIN PAUL, Defendant.

NO: 18-1-00622-29

WITNESS LIST

The following is a list of witnesses that the Prosecuting Attorney may use at the trial or hearings of the above-named defendant in the above titled cause number(s):

WENDY WILLETTE, DET.
C/O DEPT. OF FISH & WILDLIFE
16018 MILL CREEK BLVD
MILL CREEK, WA 98012

DANIELLE TOEPELT
C/O DEPARTMENT OF HEALTH
PO BOX 47824
TUMWATER, WA 98501

CHRIS T. CLEMENTSON, DET.
C/O DEPT. OF FISH & WILDLIFE
PO BOX 1100
LACONNER, WA 98257

AMY SEIDERS
C/O NORTHWEST INDIAN FISH
COMMISION
6730 MARTIN WAY E.
OLYMPIA, WA 98516

JAMIE INEZ GREGORY (TORPEY)
1146 SE SALMONBERRY ROAD
PORT ORCHARD, WA 98366

MARJORIE MORNINGSTAR
C/O WDFW FISH RECEIVING
TICKETS
PO BOX 43200
OLYMPIA, WA 98504

MERLE A. HAYES
8308 VERLE HATCH DRIVE
MARYSVILLE, WA 98271

PAULA GALIVAN
CAROL STEDMAN
C/O WDFW LICENSING
PO BOX 43200
OLYMPIA, WA 98504

DEPT. OF REVENUE
INFORMATION GOVERNANANCE
OFFICE
6400 LINDERSON WAY SW
WA 47456

GREG H. SULLIVAN
31130 LITTLE BOSTON RD. NE
KINGSTON, WA 98346

YAMAH HOOD
5321 MERIDIAN AVE N
TULALIP, WA 98271

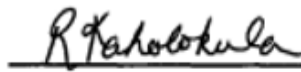
The substance of testimony of the above witness(es) is as follows:

See police reports and attached statements.

- The Toxicologist may testify to the effects of alcohol in addition to standard foundation issues of blood alcohol analysis or breath alcohol analysis.

The State reserves the right to supplement this witness list as necessary and to add additional witnesses as soon as practicable after a determination that the witness will be called by the State at trial.

The State reserves the right to call additional witnesses whose names are listed in police reports and who may not be listed above.



WSBA #25026

Date: 12/13/21

Rosemary Kaholokula
Chief Criminal Deputy Prosecuting Attorney

**SKAGIT COUNTY SUPERIOR COURT
STATE OF WASHINGTON**

STATE OF WASHINGTON, Plaintiff,
vs.
HAZEN GRAHAM SHOPBELL, Defendant.

NO: 18-1-00621-29

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MARJORIE MORNINGSTAR
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5321 MERIDIAN AVE N
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_____ **WSBA #25026**

Rosemary Kaholokula
Chief Criminal Deputy Prosecuting Attorney

Date: 12/13/21