

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 HAZEN SHOPBELL'S
SUPPLEMENTAL 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 and II pursuant to CrR 8.3(c) because the State, in its December 30, 2021, Bill of Particulars, no longer contends that Mr. Shopbell “instructed [Ms. Torpey] to not document the purchases with fish receiving tickets.” Fifth Galanda Decl., Ex. A at 2. The State claims only that he “instructed Torpey to buy these clams,” which is not a crime. *Id.* Defendant also moves to dismiss Counts I through 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 that any of those charged offenses occurred “within the state of Washington.” *State v. L.J.M.*, 129 Wash.2d 386, 392 (1996).

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II. ARGUMENT¹

A. Mr. Shopbell is No Longer Alleged to Have Committed Any Crime in Counts I or II.

As to Counts I and II, the State, in its December 30, 2021, Bill of Particulars, does **not** contend that Mr. Shopbell “instructed [Ms. Torpey] to not document the purchases with fish receiving tickets.” Fifth Galanda Decl., Ex. A at 2. The State claims only that he “instructed Torpey to buy these clams.” *Id.* Even if Mr. Shopbell told Ms. Torpey to merely buy clam bait from the three permitted Tribal harvesters on the Tulalip Reservation, that is not a crime. Quite the contrary, it is a guaranteed Treaty right. Dismissal of Counts I and II is therefore warranted.

B. The State Cannot Carry Its Jurisdictional Burden for Counts I through V.

Counts III through V concerns alleged **sold** clam bait. The State concedes in its December 30, 2021, Bill of Particulars that: “The State does not have information as to the time or locations of the sale or bartering . . .” Fifth Galanda Decl., Ex. A at 3. The State only proffers that those alleged clam bait sales² occurred “on or about 2/10/16, 2/21/16, 3/12/16, [sic] 5/9/16.” *Id.* The State has not yet produced a scintilla of evidence that would allow a reasonable juror to conclude that those alleged claim bait sales by Jamie Torpey occurred “within the state of Washington.”³ This Court must, therefore, dismiss Counts III through V because the State has failed to carry its burden of establishing its jurisdiction to prosecute those three felony charges. *State v. L.J.M.*, 129 Wash.2d at 392; *Seymour v. Superintendent of Wash. State Penitentiary*, 368 U.S. 351, 359 (1962).

Counts I and II concerns alleged **purchased** (received) clam bait. In its December 30, 2021, Bill of Particulars, the State confesses in its December 30, 2021, Bill of Particulars that it cannot prove that the alleged clam bait purchases were of clam bait taken from any “closed area.” Fifth

¹ Mr. Shopbell joins and incorporates by reference the motions to dismiss filed today by co-Defendant Anthony Paul pursuant to CrR 8.3(c) and CrR 8.3(b).

² Because this alleged clam bait was sold to Tribal Treaty fishermen, it did not end up in Burlington and was not destroyed by Det. Wendy Willette.

³ The only evidence before this Court is Det. Willette’s sworn deposition testimony that Jamie Torpey sold that clam bait “at the beach” at Tulalip and within Tribal U&A. Defendant’s Motion to Dismiss Pursuant to CrR 8.3(c) (Sept. 16, 2021), Appendix A, at p. 124; *see also id.* 294-295; *id.*, Appendix B; Galanda Decl. (Sept. 16, 2021), Ex. A (Bates No. 000439-000457) (Treaty Fish Receiving Tickets and clam bait receipts showing sales in Treaty Marina Areas within the Tulalip U&A).

1 Galanda Decl., Ex. A at 1-2. New evidence confirms that clam bait was harvested by Carnegie Hayes
2 and Merle Hayes (who are both now deceased)_and Dayson Parks pursuant to Tulalip clam harvesting
3 permits. *Id.*, Ex. D. The State admits: “From Torpey’s prior statements she **received** these clams at
4 the residence of Merle Hayes.”⁴ *Id.* at 3. It is undisputed that the residence of Merle Hayes sits on
5 the Tulalip Reservation. On October 14, 2021, Sgt. Willette testified that she always knew Merle
6 Hayes’ home was on the Tulalip Reservation:

7 Q. And underneath the 11:40 clearance, it says "Drive by Hayes houses"; is that
8 correct?

9 A. Yes.

10 Q. And is that Merle and Carnegie Hayes' houses?

11 A. I believe so.

12 Q. And is that on the Tulalip Tribe Indian Reservation?

13 A. Yes.

14 Transcript (Oct. 14, 2021) at 108.

15 It is, therefore, undisputed that Ms. Torpey **received** the purchased clam bait on the Tulalip
16 Reservation. According to subpart 4(a) of RCW 77.15.630, as charged in Counts I and II, “[a] person
17 ‘receives’ fish or shellfish when title or control of the fish or shellfish is transferred or conveyed to
18 the person.” RCW 77.15.630(4)(a) (emphasis added). Indeed, that is why there are “treaty Indian

19 ⁴ In a recent defense interview, Ms. Torpey (now Gregory) denies that Mr. Shopbell “instructed Torpey to buy these
20 clams,” as the State contends in its Bill of Particulars. Fifth Galanda Decl., Ex. A at 2. Of note, the State does **not** contend
21 that Mr. Shopbell “instructed her to not document the purchases with fish receiving tickets.” *Id.* Even if Mr. Shopbell told
22 Ms. Torpey to buy clam bait from the three permitted Tribal harvesters, that is not a crime. More generally, Ms. Torpey
23 now testifies:

24 MR. SMITH: Okay. Now, in Detective Willette's reports, she claims that you told her that Hazen
25 Shopbell and/or Anthony Paul told you not to fill out fish receiving tickets when you purchased clams
26 from Tribal members like Merle Hayes and his cousin and other people.

MS. GREGORY: Absolutely not. They would never tell me not to do anything. They were very -- they
were very by the book. In fact, they made sure that we were licensed and bonded and went down to
Olympia to get all 2 the proper licensing at -- I went to the tribes to get us put on the list so we were
legally allowed to buy from that tribe so we were licensed there. [See Fifth Galanda Decl., Ex. B.] We
wouldn't buy unless we were licensed through the tribe.”

1 fish **receiving** tickets” (which Defendant maintains are inapplicable to Treaty clam bait transactions).
2 WAC 220-352-090 (emphasis added). WAC 220-352-090 provides: “Indian fish receiving tickets
3 must be made out in quintuplicate (five copies) **at the time of landing.**” (emphasis added). The
4 allegations that Ms. Torpey “failed to document those purchases with a fish receiving ticket and/or
5 failed to sign or provide information on the fish receiving ticket,” therefore, arose at the time of
6 landing—the moment of receipt.⁵ *Id.* The alleged ticketing-related crimes in Counts I and II,
7 therefore, arose at the moment of shellfish **receipt**, which indisputably occurred on the Tulalip
8 Reservation—not “in the state of Washington.” RCW 77.15.630(2), .634(4)(a).

9 This Court must, therefore, also dismiss Counts I and II because the State has again failed to
10 carry its burden of establishing its jurisdiction to prosecute those two felony charges. *State v. L.J.M.*,
11 129 Wash.2d at 392; *Seymour*, 368 U.S. at 359.

12 III. CONCLUSION

13 The State and Prosecution’s breach of Tulalip Treaty rights has persisted for far too long. The
14 State’s evidence fails to establish that Mr. Shopbell committed any crime that can be charged in
15 Counts I and II. The State’s evidence fails to fails to establish State jurisdiction over Defendant as an
16 element of the conduct alleged in Counts I, II, III, IV or V. Mr. Shopbell is therefore entitled to
17 dismissal of the Amended Information.

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⁵ The State’s allegation in the Bill of Particulars that Ms. Torpey “failed to submit the fish receiving ticket to the DFW” constitutes either a misrepresentation or misapprehension of the law. Fifth Galanda Decl., Ex. A at 2. WAC 220-352-090(a) requires the receiver to submit the Treaty Indian fish receiving ticket to the Northwest Indian Fish Commission (“NWIFC”), not DFW. As detailed in accompanying motions, Marjorie Morningstar, the Manager of DFW’s Fish Tickets Unit, admitted in her defense interview on December 29, 2021, that her unit only receives Treaty Indian fish receiving tickets from NWIFC after the fish buyer files them with the NWIFC. The fish buyer does not and is not required to file Treaty Indian fish receiving tickets with DFW.

1 DATED this 31st day of December 2021.

2 GALANDA BROADMAN, PLLC

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CERTIFICATE OF SERVICE

I, Gabriel S. Galanda, 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 served via email and/or hand delivery on the following:

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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 31st day of December 2021.


