

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

DEFENDANTS' SUPPLEMENTAL
MOTION TO DISMISS PURSUANT TO
CrR 8.3(b) AND CrR 8.3(c)

On the eve of trial, the State now contends that Defendants' company Puget Sound Seafoods Dist., LLC ("PSSD), is a "non-Indian," over which the State bears "primary responsibility" to enforce state laws in Tulalip territory and U&A under the Rafeedie Consent Decree, *U.S. v. Washington*, 19 F. Supp. 3d 1126, 1149 (W.D. Wash. 1994); Response to Defendants' Pretrial Motions (Jan. 2, 2021) at 3. Because PSSD is "non-Indian," the State contends, state shellfish sanitation laws apply in Tulalip territory and U&A and, therefore, somehow extend to Defendants who are both Tulalip tribal members. *Id.*

Under guiding state law, PSSD is a tribal member. WAC 458-20-192(5) ("Rule 192"). Most instructive is Washington State Department of Revenue's Rule 192, which establishes under state law that a "state chartered corporation comprised only of Indians" that does business in Indian country

1 such as PSSD, generally exists beyond the reach of state regulatory jurisdiction. WAC 458-20-
2 192(5). It, therefore, cannot follow that PSSD—100% owned by Defendants, licensed to do business
3 by the Tulalip Tribes, and headquartered on the Tulalip Reservation—is a “non-Indian” simply
4 because it is a state chartered LLC. *Id.*; *see also Pourier v. S. D. Dept. of Revenue*, 658 N.W.2d 395,
5 404 (S.D. 2003), *aff’d in relevant part and rev’d in part on other grounds on reh’g*, 674 N.W.2d 314
6 (S.D. 2004) (a state-chartered corporation whose sole shareholder was a tribal member was “an
7 enrolled member for the purpose of protecting tax immunity”).
8

9 It cannot follow that state jurisdiction attaches to either Defendant tribal members or their
10 100%-owned “Indian”/”member” company (PSSD) because of the alleged acts of a non-Indian
11 employee that occurred **exclusively** in Indian Country and the U&A. Counts I through V must now
12 be dismissed for lack of jurisdiction over Defendant tribal members for alleged crimes that
13 **indisputably** arose not “within the state of Washington.” *State v. L.J.M.*, 129 Wash.2d 386, 392
14 (1996); *State v. Comenout*, 173 Wash.2d 235, 238 (2011) (quoting Felix S. Cohen, COHEN’S
15 HANDBOOK OF FEDERAL INDIAN LAW § 6.04[1], at 537 (2005) (“[S]tates . . . lack . . . criminal
16 jurisdiction over Indians within Indian country, absent federal legislation specifying to the
17 contrary.”); *U.S. v. Washington*, 19 F. Supp. at 1149 (“Each tribe shall bear primary responsibility
18 for enforcement of shellfish sanitation laws against its members . . . within its reservation, any tribal
19 trust lands, or within the tribe’s usual and accustomed areas.”); *Seymour v. Superintendent of Wash.*
20 *State Penitentiary*, 368 U.S. 351, 359 (1962) (dismissal for lack of jurisdiction over Indians in Indian
21 country is warranted).
22
23

24 Alternatively, the State’s brand new claim that PSSD, not Ms. Torpey (Gregory), was the
25 original receiver makes RCW 77.15.360 unconstitutionally vague as applied to Defendants in Counts
26 I and II. A statute may be held to be void for vagueness and a breach of the due process clause

1 guaranteed under the Fourteenth Amendment where it does not (i) provide fair warning of what
2 conduct it proscribes; (ii) if a person of ordinary intelligence is unable to understand what the Statute
3 proscribes; and (iii) does not prevent the law from being arbitrarily enforced. *See State v. Evergreen*
4 *Freedom Foundation*, 192 Wash. 2d 782, 432 P.3d 805, cert. denied, 139 S. Ct. 2647, 204 L. Ed. 2d
5 284 (2019). Here, because the term original receiver has always been understood to mean the fish
6 buyer (Torpey), rather than the wholesale fish dealer (PSSD), RCW 77.15.360 is unconstitutionally
7 vague as applied to Defendants. Counts I and II must, therefore, be dismissed as unconstitutional.¹

8
9 DATED this 3rd day of January 2022.

10 GALANDA BROADMAN, PLLC

11 

12
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24
25 ¹ Counts I and II should also be dismissed against Defendant Hazen Shopbell because, the State, in its December
26 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,” which is not a crime of any kind.

1 **CERTIFICATE OF SERVICE**

2 I, Gabriel S. Galanda, 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 above-
5 entitled action, and competent to testify as a witness.

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

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Attorneys for Defendant Anthony Paul

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

19 Signed at Seattle, Washington, this 3rd day of January 2022.

20 
21 _____