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Aug 12, 2016
Court of Appeals
Division I
State of Washington

73893-3

NO. 73893-3-1

IN THE COURT OF APPEALS DIVISION I

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Petitioner,

v.

BRUCE M. SNYDER
GREGG B. SNYDER
Respondents.

On Motion for discretionary review from Skagit County Superior Court

The Honorable Dave Needy, Judge

RESPONDENT BRUCE SNYDER'S REPLY TO BRIEF OF PETITIONER

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A. INTRODUCTION

Respondent, Bruce Snyder, asks this Court to affirm the judgment of Skagit County Superior Court Judge Needy.

Following a bench trial, Mr. Snyder was convicted of one count of unlawful hunting of big game in the second degree in Skagit County District Court. At trial, Mr. Snyder asserted an affirmative defense of treaty hunting rights as a member of the Snoqualmoo Tribe. The Trial Court found Mr. Snyder failed to prove the affirmative defense by a preponderance of the evidence because only members of a federally recognized tribe may exercise treaty rights. RPII 17-18. The Court said, "Um only a tribe can exercise treaty rights. It must be uh an established um tribal status, um one of the 9 tribes established uh to have treaty rights under *U.S. v. Washington I and II.*" RPII 18. The Trial Court did not address or weigh the evidence presented at trial regarding whether the Snoqualmoo Tribe was a signatory tribe or a successor in interest to a signatory tribe to the Point Elliot Treaty. The trial Court did not address or weigh the evidence presented at trial regarding whether the Snoqualmoo Tribe had "some defining characteristic of the original tribe [that] persists in an evolving tribal community," or whether the Tribe had a "continuous and defining political or cultural characteristic to the entity that was granted the treaty rights," pursuant to *State v. Posenjak,* 127 Wn.App. 41,

49, 111 P.3d 1206 (2005); *Order of Judge Warren Gilbert* of December 6, 2012. The Trial Judge in District Court in his oral ruling clearly relied upon an erroneous understanding of the tests to determine if Mr. Snyder had proven the affirmative defense of treaty rights. The inclusion or exclusion from the "nine tribes established" through *US v. Washington* is simply not the correct legal analysis.

Mr. Snyder timely appealed to the Skagit County Superior Court. Judge Needy of the Superior Court held the District Court erred in its reliance on the lack of federal recognition of the Snoqualmoo Tribe. *Order on RALJ Appeal*, Conclusion #5. The Superior Court further held Mr. Snyder had proven the affirmative defense of treaty hunting rights by a preponderance of the evidence, relying upon *State v. Posenjak,* 127 Wn.App. 41, 111 P.3d 1206 (2005). *Order on RALJ Appeal*, Findings #1-7. In his oral ruling, Judge Needy stated he "adopt[s] that language" from *Posenjak* that sets forth the tests for determining whether treaty rights have been established for purposes of the affirmative defense of treaty rights. *Transcript of Ruling*, 5.

Judge Needy further found the District Court had abused its discretion in finding Mr. Snyder failed to prove the affirmative defense by a preponderance of evidence. *Order on RALJ Appeal*, Conclusion #4.

B. ISSUE PRESENTED FOR REVIEW

Did the Superior Court err in holding Mr. Snyder had proven the affirmative defense of treaty hunting rights by a preponderance of the evidence based upon *State v. Posenjak,* 127 Wn.App. 41, 111 P.3d 1206 (2005)?

C. STATEMENT OF THE CASE

At trial, Mr. Snyder presented evidence, in part, as follows. The Snoqualmoo Tribe was specifically referenced as a signatory tribe to the Point Elliott Treaty. RP 50-51, 118, 135. Pat Ka-Nam signed the Point Elliott Treaty, RP 118, 135, and in order to be a member of the Snoqualmoo Tribe one must be a direct descendant of John or Pat Ka-Nam. RP 96. Mr. Snyder was a member of the Snoqualmoo Tribe. RP 51, RPII 4. The Point Elliott Treaty was admitted as an exhibit at trial.

Tribal Council meetings and yearly membership meetings occur regularly. RP 45, 96. While not federally recognized, the Snoqualmoo Nation is eligible for Indian health benefits, and members receive payments relating to a land transaction from the U.S. government. RP 61. Earngy Sandstrom, Head Chief and Chairman of the Tribe, testified the

Tribe has continually existed, "always lived by the Treaty [of Point Elliott]," and was never notified of termination of tribal status by the government in the way some other tribes have been. RP 100. Mr. Sandstrom testified the Tribe's activities stretch back to the signing of the Point Elliott Treaty; that naming and burial ceremonies currently practiced originated from older Snoqualmoo traditions; and that the current Tribe still grows the original strain of potatoes from the same "span of potatoes that was growing in the 1800s" by the Tribe. RP 115, 116-117, 135. Mr. Sandstrom testified since the signing of the Point Elliott Treaty there has been a continuous group of people who have called themselves Snoqualmoo. RP 115.

The Tribe's hunting and fishing coordinator, Michael Snyder, issues hunting tags to tribal members in accordance with tribal regulations and consults with the Tribal Council to mete out punishment to members who violate hunting and fishing rules. RP 66-69. The Tribe files regular reports with the Department of Fish and Wildlife regarding "what type of animal was harvested…where it was harvested and how many were harvested for each person…[and] how many tags [were issued]." RP 67. The Coordinator testified he has never received any indication from the Department of Fish and Wildlife that the Tribe's hunting practices were impermissible. RP 72.

The Trial Court found Mr. Bruce Snyder guilty of Unlawful Hunting of Big Game in the Second Degree. On RALJ appeal to the Superior Court, the conviction was overturned by Judge Dave Needy who found that the affirmative defense of treaty rights was proven by a preponderance of the evidence, and that it was an abuse of discretion by the trial court to hold otherwise. The State's appeal to this Court followed.

D. ARGUMENT

An appellate court reviewing a decision of a Superior Court, which in turn was reviewing a District Court decision, shall: "accept those factual determinations supported by substantial evidence in the record (1) which were expressly made by the court of limited jurisdiction, or (2) that may reasonably be inferred from the judgment of the court of limited jurisdiction." RALJ 9.1, *see State v. Ford*, 110 Wn. 2d 827, 755 P.2d 806 (1988). RALJ 9.1(a) states that a reviewing court is to determine if there were any errors of law in the lower court. *State v. Weber*, 159 Wn. App. 779, 786, 247 P.3d 782 (2011).

1. **The decision of the Superior Court is in accordance with Washington case law.**

The decision of the Superior Court relied upon, and is consistent with, the holding of the Washington Court of Appeals in *State v. Posenjak,* 127 Wn.App. 41, 111 P.3d 1206 (2005). The Court in *Posenjak* set forth the standards for an affirmative defense of treaty hunting rights:

> To establish the affirmative defense, the defendant must show by a preponderance of the evidence (1) the existence of the treaty, (2) of which he is a beneficiary, and (3) that, as a matter of law, the treaty saves him from the operation and enforcement of the hunting laws and regulations.

Id. at 48.

To establish the second element of the defense, that a defendant is a beneficiary of a treaty, the defendant must prove he or she is a member of a tribe that was a signatory tribe to the treaty, or that the tribe is a successor in interest to a signatory tribe. *Id.* at 49.

To establish treaty rights as a signatory tribe, it must be shown (1) "it has maintained an 'organized tribal structure,'" which can be '"shown by establishing that 'some defining characteristic of the original tribe persists in an evolving tribal community;'" and (2) that "'a group of citizens of Indian ancestry is descended from a treaty signatory.'" *Id.* (Citations omitted.)

To establish treaty rights as a successor in interest to a signatory tribe, the successor tribe "must trace a continuous and defining political or cultural characteristic to the entity that was granted the treaty rights.'" *Id.* (Citations omitted.)

The Superior Court applied these standards from *Posenjak* to determine the affirmative defense of tribal hunting rights had been proven by a preponderance of the evidence.

In *Posenjak,* the Court only held the defendant in that case, Mr. *Posenjak*, failed to prove the defense, stating, "[B]ased on the evidence presented at trial, Mr. Posenjak does not have any treaty rights under the Point Elliot Treaty." *Id.* at 50. This is unsurprising given the lack of evidence before the trial court in Mr. Posenjak's case. Only one witness was called, Mr. Posenjak's brother, who testified his grandfather told him "where the elk were," and that his grandfather was on the "Robin Rolls." *Id.* at 47. No other evidence was presented; not even a copy of the Point Elliott treaty was admitted at trial.

Mr. Posenjak failed to present evidence that the Snoqualmoo Tribe maintained an organized tribal structure, that some defining characteristic of the original tribe persists in an evolving tribal community, and failed to

provide evidence of a continuous and defining political or cultural characteristic to the entity that was granted the treaty rights.

The State cites *Posenjak* and federal cases such as *US v. Washington* for the proposition that an affirmative defense of treaty rights cannot be asserted by a member of a tribe that has not been recognized by the federal government. *Appellant's Brief*, 36. There is no language in *Posenjak*, *Washington,* or other case law cited by the State, to support this assertion.

The Skagit County District Court and the State maintain members of a tribe may only assert an affirmative defense of treaty hunting rights if a federal court has recognized the Tribe has treaty rights. It is this position that is in conflict with established State case law from Division I of the Court of Appeals. In *State v. Courville,* 36 Wn.App. 615, 676 P.2d 1011 (1983), the defendants were charged in Federal Way District Court with possessing shellfish in excess of state limits. The defendants raised an affirmative defense of treaty shellfish rights. The District Court dismissed the charges based on the affirmative defense. On RALJ appeal, the King County Superior Court reversed, holding before a tribal member may assert an affirmative defense of treaty rights, a preliminary determination of such rights must be made in federal court.

The Court of Appeals reversed the Superior Court, holding:

> [T]reaty fisherman may raise a treaty defense when charged with unlawful possession of shellfish even though their tribe has not received a preliminary determination of such right in federal court and adopted and filed with the court shellfish regulations...That prior adjudication of a treaty right is not a prerequisite to the assertion of a treaty defense is further evident by the fact that the treaties are self-enforcing and become obligatory on the parties when ratified. Therefore, the Superior Court erred in holding that absent a prior adjudication of the right to take shellfish, the defendants are barred from asserting a treaty right to take shellfish as an affirmative defense to state criminal charges of taking shellfish in excess of state limits."

Id. at 621-22 (Citations omitted).

2. <u>The Superior Court's decision did not create a new path to establishing treaty rights.</u>

The decision of the Superior Court has no precedential value. The Court in *Bauman v. Turpen,* 139 Wn.App. 78, 87, 160 P. 3d 1050 (2007), said, "[T]he findings of fact and conclusions of law of a superior court are not legal authority and have no precedential value." The decision of the Superior Court does not confer any treaty rights on the Snoqualmoo Tribe or its members. The decision of the Superior Court only resolves the issue of the affirmative defense of tribal hunting rights in this particular case. Similarly, when a district court had found the Snoqualmoo Tribe was a successor tribe, the finding had no precedential effect. *Posenjak,* 127

Wn.App. 41, 50, 111 P.3d 1206 (2005). The decision of the Superior Court will not prevent the State from prosecuting individuals, including Mr. Snyder, who the State believes are not entitled to hunt pursuant to treaty hunting rights.

State v. Buchanan, cited at page 36 of the State's brief, 138 Wn.2d 186, 978 P.2d 1070 (1999), does not stand for the proposition that tribal treaty status must be litigated in the "proper" forum before being raised as an affirmative defense. *Buchanan* involved a member of the Nooksack Tribe charged with hunting offenses. Counsel for Buchanan raised treaty rights not as an affirmative defense, but in a motion to dismiss. The Supreme Court determined the motion to dismiss should not have been granted, but stated Buchanan may assert treaty rights as an affirmative defense at trial-- precisely what Mr. Snyder did in this case. *Buchanan*, 138 Wn.2d 186, 978 P.2d 1070 (1999).

The decision of the Superior Court will not have any impact on other tribes. The Superior Court did not recognize the Snoqualmoo Tribe as a new treaty tribe. Rather, the Court only held an affirmative defense had been established in this particular criminal case. This case involved the taking of one elk pursuant to hunting regulations of the Snoqualmoo Tribe. Here, the record contains no evidence regarding the frequency of

alleged Snoqualmoo-related hunting violations or their impact on the State's elk resources.

a. **The Superior Court adhered to the appropriate standard of review and applied the appropriate legal standards.**

The Superior Court's decision was based upon its determination that the District Court committed an error of law by holding only members of federally recognized tribes may assert treaty hunting rights as an affirmative defense, and its determination that the uncontroverted evidence established the affirmative defense. The District Court made no factual determinations, expressly or inferentially, regarding the weight of the evidence or the credibility of witnesses with regard to the affirmative defense. Rather, the District Court made an erroneous legal determination that members of the Snoqualmoo Tribe cannot establish a defense of tribal hunting rights because the Tribe is not one of nine federally recognized tribes. RPII 18.

b. **Mr. Snyder established the affirmative defense by a preponderance of the evidence.**

The uncontroverted evidence at trial established the affirmative defense. Specifically: the Snoqualmoo Tribe was a signatory tribe to the Point Elliott Treaty, RP 50-51, 118, 135; Mr. Snyder is a member of the

Tribe based upon descent, RP 51, 96; the Snoqualmoo Tribe has been continuously in existence since the Treaty was signed, RP 100, 115; the Tribe has regular meetings, RP 45, 96; the Tribe carries on some of the same traditions as the original Snoqualmoo Tribe, including growing the same potatoes on the same "span," conducting the same burial ceremonies, and conducting the same naming ceremonies, RP 115, 116-117, 135.

Treaty rights are an affirmative defense which must be pled and proved by the defendant by a preponderance of the evidence. To establish the defense, it must be shown by a preponderance that: (1) a treaty exists, (2) of which the defendant is a beneficiary, and (3) "that, as a matter of law, the treaty saves him from the operation and enforcement of hunting laws and regulations". *State v. Posenjak*, 127 Wn. App. 41, 48, 111 P.3d 1206 (2005).

In *Posenjak*, the Court of Appeals provided what amounts to two separate paths to establishing the affirmative defense of treaty rights: one standard that must be met for Indians asserting treaty rights as direct beneficiaries of a treaty, and a second for Indians asserting their tribe has treaty rights as a successor in interest to a signatory tribe. By either standard, the testimony at trial was sufficient to establish the affirmative defense of treaty rights. The State argues that a reference to "tribal lands"

in Judge Needy's Order on RALJ appeal somehow invalidates his legal reasoning. *Order on RALJ Appeal,* at ¶ 5. The State asserts there are no Snoqualmoo tribal lands, but there is no basis in the record for this assertion. Additionally, neither path to establishing the affirmative defense of treaty rights requires a factual finding regarding the existence of tribal lands.

1. Mr. Snyder established the Snoqualmoo tribe has maintained a tribal structure and common descendance from a treaty signatory.

For a tribe asserting treaty rights directly, as a signatory tribe, *Posenjak* held:

> "Indians later asserting treaty rights must establish that their group has preserved its tribal status… First, it must show that it has maintained an organized tribal structure. This can be "shown by establishing that 'some defining characteristic of the original tribe persists in an evolving tribal community.'" Id. (quoting *Washington II*, 641 F.2d at 1372-73). Second, it must show that "a group of citizens of Indian ancestry is descended from a treaty signatory." *Washington I*, 520 F.2d at 693."

State v. Posenjak, 127 Wn. App. 41, 49, 111 P.3d 1206 (2005).

Mr. Posenjak, a member of the Snoqualmoo tribe, asserted treaty rights as an affirmative defense to a charge of unlawful hunting of big game in the 2nd degree after he killed an elk in

Kittitas County. The only witness called by the defense was Mr. Posenjak's brother who testified that his grandfather had told him "where the elk were" and that his grandfather was on a list of Indians called the "Robin Rolls." *Id* at 47. Ultimately, the Court found that Mr. Posenjak "failed to establish" that he was a member of a signatory tribe. *Id* at 49. Given the lack of evidence presented at trial in support of his contention, the Court's conclusion is not surprising.

The evidence before the trial court in this case, however, was substantially greater. The treaty itself was admitted as an exhibit at trial. It clearly shows representatives of the Snoqualmoo Tribe, including its Chief, signed the Treaty of Point Elliott. Additionally, three members and officials of the Tribe testified as to the group's organized tribal structure, including regular meetings and elections. Mr. Sandstrom testified regarding the continuity of the Tribe's defining characteristics in naming and burial ceremonies as well as cultivation of potatoes grown by the Snoqualmoo people from the same span since the 1800s. RP 115, 116-117, 135. Finally, the testimony of Ms. Surduik, Mr. Sandstrom, and the Snyders that they are a group of people directly descended from Indians who signed the Treaty of Point Elliott

stands uncontroverted. This uncontroverted testimony was sufficient to prove by a preponderance of the evidence that Bruce Snyder is a member of a signatory tribe to the Treaty of Point Elliott, which grants him tribal hunting rights that bar application of State hunting laws against him.

2. *The Snoqualmoo trace a continuous and defining political or cultural characteristic to the entity that was granted the treaty rights.*

A tribal member asserting treaty rights as a successor tribe bears the burden of establishing successorship. To do this, more than common ancestry is required. Rather, the tribe must show that it has maintained "a continuous and defining political or cultural characteristic to the entity that was granted the treaty rights." *State v. Posenjak*, 127 Wn. App. 41, 49, 111 P.3d 1206 (2005) (internal citations omitted).

During trial there was somewhat confusing testimony about a rift in the Snoqualmie Tribe in the 1980s that resulted in some members of Snoqualmie becoming members of the Snoqualmoo nation. RP 55 *et seq*. This does not mean that the Snoqualmoo Tribe did not exist before that time-- the signatory

designations on the Treaty of Point Elliott establish that, as does Mr. Sandstrom's testimony that he has been a member of the Snoqualmoo Tribe his entire life and was never a member of the Snoqualmie tribe. RP 114. Evidence as outlined above was presented at trial to establish the Snoqualmoo Tribe today is entitled to the treaty rights that were bestowed on the Snoqualmoo who signed the Treaty of Point Elliott. However, if this Court is not persuaded the Snoqualmoo tribe is a signatory tribe, there is sufficient evidence to prove by a preponderance of the evidence it is a successor to a signatory tribe. In addition to the substantial uncontroverted testimony regarding Mr. Snyder's descendance from a signatory to the Treaty of Point Elliott, testimony was presented at trial that the Snoqualmoo have retained traditional ceremonies and grown the same strain of crops that were practiced by their ancestors. RP 49-51, 79-80, 98-99, 115-117, 135-136.

In its brief, the State argues that Mr. Snyder's trial counsel acknowledged and Judge Needy of the Superior Court indicated the Snoqualmoo Tribe is a recent phenomenon, or at least not a continuous one. The trial testimony outlined above contradicts that assertion and stood uncontroverted at trial. Additionally, the State's citations to the record in support of this

point are mischaracterizations. Trial counsel for Mr. Snyder, Geoff McCann, in his closing discussed how the historical Snoqualmoo Tribe operated and the relationship between the families of the Tribe. *Trial Transcript*, p. 12, lines 22-24. Perhaps inelegantly phrased, Mr. McCann's statements were clearly intended to educate the Court as to how the Tribe was formed and functioned, rather than a refutation of the existence of the Tribe. Judge Needy is misquoted in the State's brief. Judge Needy stated: "It's also uncontested that at least in the last twenty to thirty years, the Snoqualmoo have been reorganized, if you will, or actively participating as a Tribe or group..." RP 22, 11. 9-12 Proceedings of May 28, 2015. This statement by its plain terms does not suggest the Snoqualmoo ever ceased to exist as an entity, but rather refers to an evolution of the way the Tribe conducts itself.

At trial and in its pre-trial motion in limine, the State relied upon several cases to support its contention that the law has already decided the question of whether the Snoqualmoo Tribe possesses treaty rights under the Point Elliott Treaty. The State mentions the *United States v. Washington* cases. The more recent of the two cases was decided by the Ninth Circuit Court of Appeals in 1984. This case dealt with the geographic delineation of "usual

and accustomed grounds and stations" pertaining to the Makah Tribe and the Treaty of Neah Bay. *United States v. Washington*, 730 F.2d 1314 at 1315 (9th Cir. 1984). Neither that Tribe nor that Treaty are involved in this case, and thus it does not settle the question of whether treaty rights were established by a preponderance of the evidence based on the exhibits and testimony in Mr. Snyder's trial.

The first *United States v. Washington* case was a suit brought by the United States against the state of Washington alleging that Washington fish and game laws infringed on Indians' rights under federal law to hunting and fishing. *United States v. Washington,* 730 F.2d 1314 (9th Cir. 1984). A number of Washington tribes intervened as parties in these proceedings and matters pertaining to them were decided by Judge Boldt. However, the Snoqualmoo Tribe was not among the tribes involved in that case, and no holding in that case bars this Court from a determination in favor of Mr. Snyder in this matter. There is no factual basis in the record for the State's bald assertion that the Snoqualmoo were not involved in the litigation of the *Washington* cases because they did not exist. *Appellant's Brief*, 38. No factual basis exists in the record for the State's assertion

that the entire membership of the Snoqualmoo tribe "splintered off" from the Snoqualmie tribe and "reorganized" as the Snoqualmoo. *Appellant's Brief*, 22.

3. Federal law does not mandate the decision of the Superior Court be overturned.

The State argues this Court should grant its appeal upon Federal case law involving other tribes that is not binding on this Court. "[F]ederal case law interpreting a federal rule is not binding on this court even where the rule is identical '[t]his court is the final authority insofar as interpretations of this State's rules is concerned.'" *In re Detention of Turay,* 139 Wn.2d 379, 402, 986 P.2d 790 (1999) (Citations omitted). "On matters of federal law, we are bound by the decisions of the United States Supreme Court...Decisions of the federal circuit courts are 'entitled to great weight' but are not binding." *W.G. Clark Constr. Co. v. Pac. Nw. Reg'l Council of Carpenters,* 180 Wn.2d 54, 62, 322 P.3d 1207 (2014) (Citations omitted).

Further, the State misconstrues federal case law and its application. Federal case law provides standards for federal recognition of tribal hunting rights. These standards were adopted by the Court in *Posenjak, supra,* in delineating the elements of the affirmative defense of treaty

hunting rights in State court. Federal case law does not, however, control, or even address, whether an affirmative defense of treaty rights may be asserted or proven in State court in a criminal prosecution under State law.

Federal law clearly provides the lack of federal recognition of a tribe is immaterial to the question of whether a tribe and its members enjoy treaty rights.

> 'Nonrecognition of the tribe by the federal government…may result in loss of statutory benefits, but can have no impact on vested treaty rights.' Judge Boldt subsequently stated, in resolving the present dispute: 'only tribes recognized as Indian political bodies by the United States may possess and exercise the tribal fishing rights secured and protected by the treaties of the United States.' 476 F.Supp. at 1111. This conclusion is clearly contrary to our prior holding and is foreclosed by well-settled precedent.

United States v. Washington, 641 F.2d 1368, 1371 (9th Cir. 1981) (Citations omitted).

The Court further said:

> We have defined a single necessary and sufficient condition for the exercise of treaty rights by a group of Indians descended from a treaty signatory: the group must have maintained an organized tribal structure. This single condition reflects our determination that the sole purpose of requiring proof of tribal status is to identify the group asserting treaty rights as the group named in the treaty. For this purpose, tribal status is preserved if **some** defining characteristic of the original tribe persists in an evolving tribal community.

Id. at 1372-73. (Emphasis added).

The State argues the Snoqualmoo Tribe is not entitled to exercise treaty hunting rights predicated upon rulings in federal litigation involving other tribes. However, the Snoqualmoo Tribe was not a party in any federal case cited by the State, no federal court has ever adjudicated the issue of treaty rights of the Snoqualmoo Tribe, and the evidence adduced at trial in the present case regarding the Snoqualmoo Tribe is different than the evidence presented during federal litigation involving other tribes.

Further, there is no authority for the proposition that other tribes' unsuccessful attempts to litigate *federal* recognition in *federal court* has any bearing whatsoever on the ability of an individual defendant to assert the affirmative defense of treaty rights in his criminal case.

The State cites to a 1997 decision of the Department of Interior in which an individual, Mr. Posenjak, asked the BIA to reconsider its rejection of tribal recognition for the Snoqualmie tribe. 31 IBIA 260-62, *In Re Federal Acknowledgment of the Snoqualmie Tribal Organization.* The motion to reconsider was denied largely because Mr. Posenjak's pleading was deficient. "The Board finds that, not only does Posenjak's filing fail to allege any of the grounds in subsection 83.11(d), it also fails to allege any other basis for reconsideration that would warrant referral to the Secretary." *Id.* It is of note that Mr. Posenjak included nothing in his

short filing regarding the Snoqualmoo tribe, its members, its heritage or its practices other than a statement of genealogical descendance and directing the Department to the Tribal rolls. The decision of the Administrative Judges in that matter was not based on any factual determinations or inquiry.

The decision of the Administrative Judges in Mr. Posenjak's case concerning the Snoqualmie Tribe has no bearing on whether or not Mr. Snyder could assert or establish the affirmative defense of treaty hunting rights in his criminal case. The same is true for the *Posenjak v. Dept of Fish and Wildlife* matter which the State cites in a footnote in its brief. *Appellant's Brief*, fn. 3; *Posenjak v. Dept of Fish and Wildlife,* 74 F.App'x 744, 746-747 (9th Cir 2003). In *Posenjak v. Dept of Fish and Wildlife*, Posenjak initiated a *civil* suit against the Washington Department of Fish and Wildlife in federal court. The suit was dismissed after granting summary judgment to the State because the record failed to demonstrate a violation of any right, and the record did not contain sufficient specific information to establish a treaty right, but the opinion gives no insight as to precisely what was presented to the Court in the way of evidence. *Posenjak v. Dept of Fish and Wildlife,* 74 F.App'x 744, 746-747 (9th Cir 2003). There is nothing instructive in this opinion for this Court in evaluating Mr. Snyder's affirmative defense of treaty rights. Mr. Snyder's

case is a Washington state criminal case, and sufficient evidence in his trial was presented to establish the affirmative defense of treaty rights.

E. CONCLUSION

Because Mr. Snyder proved the affirmative defense of treaty rights by a preponderance of the evidence, Mr. Snyder respectfully requests the Court affirm the judgment of the Skagit County Superior Court.

DATED: August 12, 2016

Respectfully submitted,

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Attorney for Respondent, Bruce Snyder

C. Wesley Richards, #11946
Attorney for Respondent, Bruce Snyder

IN THE COURT OF APPEALS DIVISION 1
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Petitioner, vs. BRUCE M. SNYDER, GREGG B. SNYDER, Respondents.	NO. 73893-3-1 AFFIDAVIT OF SERVICE

I, ELIZABETH CRAFTON, hereby declare as follows:

1. I am over the age of 18 years and not a party to this action. My business/residence address is: 121 Broadway, Mount Vernon, WA 98273

2. On August 12, 2016, I delivered the following document by way of electronic mail and United States Postal Service:
:

RESPONDENT'S BRUCE M. SNYDER'S REPLY TO BRIEF OF PETITIONER

3. Service Address: Paula Plummer
plumlaw@gmail.com
417 W. Gates St., Ste. 1
Mount Vernon, WA 98273

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

SIGNED this 12th day of August, 2016, at Mount Vernon, Washington.

ELIZABETH CRAFTON

SKAGIT COUNTY PUBLIC DEFENDER
121 BROADWAY
MOUNT VERNON, WA 98273
(360)336-9405

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1. I am over the age of 18 years and not a party to this action. My business/residence address is: 121 Broadway, Mount Vernon, WA 98273

2. On August 12, 2016, I delivered the following document by way of hand delivery: RESPONDENT'S BRUCE M. SNYDER'S REPLY TO BRIEF OF PETITIONER

3. Service Address: Skagit County Prosecuting Attorney at
605 S. Third
Mount Vernon, WA 98273

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

SIGNED this 12th day of August, 2016 at Mount Vernon, Washington.

ELIZABETH CRAFTON

SKAGIT COUNTY PUBLIC DEFENDER
121 BROADWAY
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