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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)

CR 09- **CR 09 00122**

Plaintiff,)

I N F O R M A T I O N

v.)

[16 U.S.C. §§ 1538(a)(1)(F),
1540(b)(1): Illegal Offer To
Sell Endangered Species In
Interstate Commerce; 16
U.S.C. § 1540(e)(4)(A):
Forfeiture of Endangered
Species Offered For Sale In
Interstate Commerce]

GERARD "JERRY" SNAPP,)

Defendant.)

(Class A Misdemeanor)

The United States Attorney alleges:

COUNT ONE

(16 U.S.C. §§ 1538(a)(1)(F), 1540(b)(1))

Beginning on or before December 9, 2008, and continuing to
on or about December 11, 2008, in Los Angeles County, within the
Central District of California, and elsewhere, defendant GERARD
"JERRY" SNAPP did knowingly offer for sale in interstate commerce

///

DM:dm DM

FILED

1 endangered wildlife species, namely, one Asian elephant skull,
2 without a permit issued by the United States Fish and Wildlife
3 Service.

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1 COUNT TWO

2 (NOTICE OF FORFEITURE)

3 (16 U.S.C. § 1540(e)(4)(A))

4 As a result of the offense alleged in Count One, defendant
5 GERARD "JERRY" SNAPP shall forfeit to the United States one Asian
6 elephant skull offered for sale in interstate commerce, in
7 violation of the Endangered Species Act, Title 16, United States
8 Code, Sections 1538(a)(1)(F) and 1540(b)(1).

9
10 THOMAS P. O'BRIEN
United States Attorney

11 

12 CHRISTINE C. EWELL
Assistant United States Attorney
13 Chief, Criminal Division

14 JOSEPH O. JOHNS
Assistant United States Attorney
15 Chief, Environmental Crimes Section

16 DENNIS MITCHELL
Assistant United States Attorney
17 Environmental Crimes Section

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Attorney for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) No. CR 09-122(A) -RZ
)
Plaintiff,) TRIAL MEMORANDUM
)
v.) 16 U.S.C. §§ 1538(a)(1)(F),
GERARD "JERRY" SNAPP,) 1540(b)(1)(offering endangered
Defendant.) wildlife for sale in interstate
) commerce)
)
) Trial Date: September 15, 2009
) Time: 9:00 a.m.
) Courtroom: Roybal 540

Plaintiff United States of America, by and through its counsel of record, Assistant United States Attorney Dennis Mitchell, hereby submits its trial memorandum.

五

CASE SCHEDULING MATTERS

Jury trial is set for September 15, 2009 at 9:00 a.m. The estimated time for the government's case-in-chief is 1-2 days. The government anticipates calling approximately 4-6 witnesses in its

1 case-in-chief. A list of those witnesses is attached hereto as
2 Exhibit 1.

3 The defendant is out of custody.

4 II

5 THE INFORMATION

6 Defendant Gerard "Jerry" Snapp ("defendant") is charged in a
7 two-count information with violating 16 U.S.C. §§ 1538(a)(1)(F),
8 1540(b)(1) (offering an endangered species of wildlife for sale in
9 interstate commerce). The government has the burden of proving the
10 following elements:

11 1. Defendant knowingly offered to sell wildlife in interstate
12 commerce;

13 2. The wildlife offered for sale by defendant was included on
14 the list of endangered species set forth in 50 CFR Section 17.11;
15 and

16 3. Defendant's conduct was unlawful, that is, defendant did
17 not have permission from the agency that could issue permits and
18 authorize such activity, i.e. the Department of Commerce or the
19 Department of the Interior.

20 Note: For purposes of Section 1538(a)(1)(F), the term,
21 "knowingly" means that the act was done voluntarily and
22 intentionally and not because of mistake or accident. It does not
23 mean that the government must show that defendant knew that the act
24 he "knowingly" committed constituted a violation of law.

III

STATEMENT OF FACTS

The government intends to prove at trial the following facts, among others:

Title 16, United States Code, Section 1538(A)(1)(F) prohibits an individual from offering to sell an endangered species in interstate commerce. In this case, Gerard "Jerry" Snapp ("Snapp"), who resides in Los Angeles, offered to sell an elephant skull (which constitutes an endangered species for purposes of Section 1538) to an undercover agent (the "UC").

In December 2008, defendant was running an internet advertisement on Craigslist for a "complete skull of mature female Asian elephant...." On December 9-10, 2008, the UC communicated via e-mail with defendant regarding the elephant skull. The UC made defendant aware that the UC resided in the State of Washington (which is where the UC was, in fact, assigned as a special agent with U.S. Fish & Wildlife Service). The UC also inquired about the cost of shipping the skull from California to Washington. Defendant responded by stating that he was willing to sell the skull at a reduced price of \$4,500 (it was originally offered by defendant on Craigslist for \$9,000).¹

The UC made arrangements with defendant, via e-mail, to have another undercover agent, Ed Newcomer ("Newcomer") meet with defendant in Los Angeles to view the skull. In the course of those

¹ The government will seek to introduce as exhibits (1) a copy of Snapp's Craigslist's advertisement offering to sell the elephant skull for \$9,000 and (2) a copy of the pertinent e-mails between the UC and defendant, including defendant's offer to sell the elephant skull for \$4,500.

e-mails, defendant also offered to sell a rhinoceros skull for \$3,500.²

December 10, 2008 Recorded Phone Conversation Between
Undercover Agent Newcomer and Defendant

On December 10, 2008, Newcomer spoke with defendant by phone. During this recorded conversation, defendant stated,

"This is a chance for ... if he's just a regular skull collector and, uh, he's not a member of the wildlife people, is he? I'm not ... I'm trying not to get myself set up for a sting here."

When Newcomer asked defendant what he meant, defendant said that even though he was "a registered museum, there are some things you just aren't supposed to have." Defendant went on to describe the Convention of the International Trade In Endangered Species of Flora and Fauna ("CITES"), the Marine Mammal Protection Act ("MMPA") and the differences between legal and illegal ivory. Defendant also described the skull as having come from a captive Asian elephant at the Los Angeles Zoo that had gone "insane" and was euthanized after suffering from severe infections in her teeth and tusks.

Defendant also said that he had obtained the skull, with flesh still on it, from a rendering plant³ in Los Angeles. Defendant claimed that he took the skull and other parts of the elephant back

² Subsequent investigation, however, indicated that the rhinoceros skull was not from a species of rhinoceros which appears on the endangered species list. Consequently, defendant has not been charged with a violation of federal law by offering to sell the rhinoceros skull in interstate commerce.

³ A rendering plant essentially converts the remains of dead animals into fertilizer product which is then sold overseas.

1 to his property where he used insects to remove the flesh from its
2 bones.

3 During this phone conversation, defendant also indicated that
4 even though he already had an offer from another prospective buyer,
5 he would prefer to sell the skull to Newcomer. Defendant, as shown
6 below, also made statements which reflected his knowledge of the
7 restrictions placed on the sale of wildlife across state lines.

8 Snapp: "I have another offer from, um ... well, I haven't
9 actually ... I told Steve that he could have it
10 for \$4,500 bucks but, I, my asking price is
11 \$9,000.

12 Newcomer: Right.

13 Snapp: And that's actually what it's worth. It's actually
14 worth between \$9,000 and \$12,000.

15 Newcomer: Wow

16 Snapp: But, I would be much happier knowing that it was
17 at somebody's home that I could call up once in
18 awhile and say, 'Hey, I got something more cool
19 for you or, you know, chat with a real person. An
20 institute in Washington said that if I would
21 provide the papers or at least the ..., [pause].
22 If I sell this to them cross state lines, I need
23 to be able to show that at least it's not covered
24 by CITES and I'm having difficulty finding that
25 exact paragraph in these hundreds of pages of
26 stuff I've been reading through, so...
27
28

Newcomer: Hm.

Snapp: But from one private collector to another, I don't have to come up with any crap. I personally would rather sell it for less to a personal guy.

During the phone conversation, Newcomer expressed concern about personally driving the skull to the State of Washington. Defendant, as shown below, reassured Newcomer in the following exchange:

Newcomer: If I drive it up there, just for me, I mean if I get pulled over, like you said something about state lines, if I'm in Oregon and I get stopped.

Snapp: You'd be in a lot more trouble with the whale skull that I have in my backyard.

Newcomer: Okay, but the whale not the ... but the rhino and
the elephant I'm going to be ...

Snapp: The rhino and the elephant, for one thing, you throw a tarp over them and you're just relocating. It's your own personal thing. Somebody's own personal thing is not anything.

Newcomer: So, I don't say, this is a ... I'm taking this ...
My buddy bought it, I don't say anything

Snapp: Right, you're moving up to Washington and you're taking your first truck load of stuff. You put money down at a house, you're dropping this off, you're dropping it off at your mom's it doesn't make any difference but you're not

'transporting something for sale.' That would be
... that might throw up a flag.⁴

As they ended their phone conversation, Newcomer and defendant arranged to meet at defendant's home on December 11, 2008 so that Newcomer could examine the skulls.

Undercover Agent Newcomer's Visit To Defendant's Residence

On December 11, 2008, Newcomer and another undercover agent met defendant at his residence. Upon entering the home, Newcomer saw a number of large skulls prominently displayed in the living room. Newcomer was able to recognize two of the skulls as being the Asian elephant skull and rhinoceros skull offered for sale by defendant.

During their meeting, defendant pointed to the elephant skull and said that he knew the difference between ivory and bone. Defendant specifically told Newcomer that the only part of the skull that is ivory were the tusks. Defendant also stated that the skull and ivory were legal but that he could not provide any papers. Defendant further said that no papers were necessary because the sale of the skull was legal.

Defendant also gave Newcomer and the other undercover agent a tour of his home and property and discussed his possession of various animal bones and skulls. Defendant also described some of the bones on display as belonging to marine mammals, such as seals and sea lions. He also outlined his basic understanding of the MMPA and the fact that it could be illegal to collect or possess marine

⁴ At other times, defendant made statements to the effect that it was legal to sell the elephant skull. Nevertheless, as explained in the Evidentiary Issues section of this brief, defendant's knowledge or lack of knowledge of the illegality of his acts is irrelevant.

1 mammals parts but also said, "Of course, if I see [a dead] one, I
2 throw it in my car."

3 Defendant also mentioned that he had another prospective buyer
4 for the elephant skull, and that he wanted the UC to quickly make a
5 decision about buying the skull. When Newcomer asked defendant
6 about the other buyer, defendant identified the other buyer as a
7 "research facility."

8 When asked by Newcomer if the other buyer was worried about
9 buying it from defendant, defendant immediately answered, "Yeah,
10 they were." Defendant further said that the other buyer wanted to
11 make sure there was paperwork available and that they would not buy
12 it if defendant could not provide paperwork or prove that he did not
13 need paperwork to legally sell the skull.

14 After defendant concluded the tour of his home and property,
15 Newcomer and the other undercover agent identified themselves to
16 defendant as federal agents. Newcomer advised defendant that he was
17 under investigation for offering to sell endangered species in
18 interstate commerce and asked defendant if he could provide
19 identification. Defendant stated that his identification was inside
20 the house and also said that he was a registered museum and that he
21 was allowed to possess and sell the items.

22 Defendant was also advised that he was not under arrest and was
23 not required to answer any questions. Defendant, however, seated
24 himself on a couch and voluntarily began asking and answering
25 questions. During the ensuing interview, defendant stated,

26 "I thought I wasn't doing something wrong. I mean, these, to
27 the best of my knowledge ... for one, I know I acquired them

1 legally, I know that I'm not violating any laws. I did offer
2 to sell it but that's what I ... as far as I knew, there was
3 information available that would provide me with the ability to
4 sell these without, you know, the CITES information in regard
5 to ... since they are not imported illegally, they are a
6 resident of California. And, I am allowed to sell this skull
7 here within the state of California. And, all I was doing was
8 waiting... and the same is true for the rhino skull."

9 Defendant also complained to the agents that he was in a
10 desperate financial situation. He further stated that he was not
11 trying to violate any laws by selling the skulls but that "I
12 probably would have been willing to drive it over state lines... not
13 because I'm a desperate criminal but because I'm a desperate dad."

14 **Evidence Pertaining To How Defendant Obtained The Elephant
15 Skull**

16 As mentioned above, defendant indicated that the skull came
17 from an elephant from the Los Angeles Zoo. Newcomer recently spoke
18 with a Zoo official who indicated that the Zoo did have an elephant
19 named Annie that had died in 1997.

20 An employee at the rendering plant told Newcomer that the plant
21 has only received one elephant for processing

22 **Defendant Did Not Possess A Permit Allowing Him To Sell The
23 Elephant Skull**

24 On January 6, 2009, Newcomer queried the Fish & Wildlife
25 Service Permit Issuance Tracking System ("SPITS") and found that
26 there were no records indicating that a permit had been issued to a
27 "Jerry Snapp" or to anyone with the last name of "Snapp."

1 The Elephant Skull Is Included In The Endangered Species List
23 The elephant skull offered by Snapp has been identified as an
4 Asian elephant skull. The list of endangered species of wildlife,
5 which is set forth at 50 CFR § 17.11 includes Asian Elephant as an
6 endangered species. The statutory definition of wildlife includes
7 the dead body or parts thereof of such wildlife. See 16 USC
8 § 1532(8).9 IV
1011 LEGAL ISSUES
1213 A. Elements of 16 U.S.C. §§ 1538(a)(1)(F), 1540(b)(1) Violation
1415 Title 16, United States Code § 1538(a)(1)(F) provides in
16 pertinent part:17 "Except as provided in sections 1535(g)(2) and 1539 of this
18 title, with respect to any endangered species of fish or
19 wildlife listed pursuant to section 533 of this title it is
20 unlawful for any person subject to the jurisdiction fo the
21 United States to - sell or offer for sale in interstate or
22 foreign commerce any such species ..."23 1. Defendant Offered To Sale Wildlife In Interstate Commerce
2425 The first element of a 16 U.S.C. §§ 1538(a)(1)(F), 1540(b)(1)
26 violation is that defendant offered to sell wildlife in interstate
27 commerce.28 Under Title 16, United States Code § 1532(16), the term
 "species" "includes any subspecies of fish or wildlife or plants,
 and any distinct population segment of any species of vertebrate
 fish or wildlife which interbreeds when mature."29 Under Title 16, United States Code § 1532(6) defines the term
30 "endangered species" as "any species which is in danger of
31 extinction throughout all or a significant portion of its range

1 other than a species of the Class Insecta determined by the
2 Secretary to constitute a pest whose protection under the provisions
3 of this chapter would present an overwhelming and overriding risk to
4 man."

5 Under Title 16, United States Code § 1532(8), the term "Fish or
6 wildlife" is defined as "any member of the animal kingdom, including
7 without limitation any mammal, fish, bird, . . . , amphibian, reptile,
8 . . . and includes any part, product, egg, or offspring thereof, or
9 the dead body or parts thereof."

10 Under the definitions set forth above, the elephant skull
11 sought to be sold by defendant falls within the definition of
12 "wildlife" and within the definition of "species."

13 In addition, defendant offered to sell the elephant skull in
14 interstate commerce. The government anticipates that the Craigslist
15 advertisement seen by the UC in the State of Washington and the
16 recorded telephone conversations between defendant and Newcomer will
17 clearly show that defendant offered to sell the elephant skull in
18 interstate commerce.

19 2. The Elephant Skull Constitutes An Endangered Species Of
Wildlife

20 Title 16, United States Code Section 1533 authorizes the
21 Secretary of the Interior, pursuant to certain criteria, to
22 determine which species of animals shall be placed on the List of
23 Endangered Species of Wildlife. That list is published in the Code
24 of Federal Regulations ("CFR") at 50 CFR Section 17.11.

25 The government intends to introduce a copy of that portion of
26 the Endangered Species of Wildlife list into evidence to show that
27 the Asian elephant species was included as an endangered species at

1 the time that defendant offered to sell the elephant skull in
2 interstate commerce.

3. Defendant Did Not Have A Permit Authorizing Him To Sell An
Elephant Skull In Interstate Commerce.

4 The government will also introduce testimony from the case
5 agent to show that various queries run on a database maintained by
6 the U.S. Fish and Wildlife Service failed to disclose the issuance
7 of any permit authorizing defendant to sell an elephant skull in
8 interstate commerce.

9 V

10 EVIDENTIARY ISSUES

11 A. Testimony Pertaining to Defendant's Lack Of Knowledge That His
Conduct Was Illegal Is Irrelevant

12 The government anticipates that defendant may testify and claim
13 that he was unaware that his offering to sell the elephant skull in
14 interstate commerce was unlawful. Such testimony, however, is
15 irrelevant to the determination of defendant's guilt and should be
16 deemed inadmissible under Fed. R. Evid. 403.

17 In order to prove a criminal violation of 16 U.S.C.
18 §§ 1538(a)(1)(F), 1540(b)(1), the government need only prove that
19 defendant was aware that he was offering to sell an elephant skull
20 as opposed to some other item. The government is not required to
21 show that defendant knew that an Asian elephant was included on the
22 list of endangered species or that his conduct was illegal.

23 In United States v. McKittrick, 143 F.3d 1170, 1176-77 (9th Cir.
24 1998), the defendant shot and killed a Gray Wolf and later skinned
25 and decapitated it and kept the hide and head to his home. Id. at
26 1172. Defendant was later found guilty of various statutes,

1 including 16 U.S.C. §§ 1538(a)(1)(G), 1540(b)(1), and 50 CFR §§
 2 17.84(i)(3) (prohibiting the taking of a Gray Wolf and 16 U.S.C.
 3 §§ 1538(a)(1)(G), 1540(b)(1) and 50 CFR § 17.84(i)(5) (possession of
 4 a Gray Wolf). On appeal, one of defendant's arguments was that his
 5 taking of the wolf was not "knowing" because he did not realize what
 6 he was shooting. Id. at 1173.

7 In rejecting defendant's argument, the court pointed out that
 8 in 1978, Congress changed the wording of Section 11 of the
 9 Endangered Species Act (codified at 16 U.S.C. § 1540(b)(1)) "to
 10 reduce [] the standard for criminal violations from 'wilfully' to
 11 'knowingly.'" Id. at 1177 quoting H.R. Rep. No. 95-1625, at 26
 12 (1978), reprinted in 1978 U.S.C.C.A.N. 9453, 9476.⁵ See United
 13 States v. Nguyen, 916 F.2d 1016, 1018-19 (5th Cir. 1990) (sustaining
 14 possession conviction did not require that defendant know animal's
 15 Endangered Species Act status and stating that the purpose behind
 16 amendment was to make criminal violations of the Endangered Species
 17 Act a general rather a specific intent crime subjecting importers
 18 and exporters of fish and wildlife and plants to strict liability
 19 penalties), United States v. Ivey, 949 F.2d 759, 766 (5th Cir.
 20 1991) (holding that violation of 16 U.S.C. § 1538(c) (prohibiting any
 21 possession or trade in species contrary to Convention on

22

23

24 ⁵ Even though the McKittrick court held that the government
 25 did not need to show that defendant was aware that he had shot a
 26 wolf, the Solicitor General subsequently announced that the
 27 government will seek a jury instruction requiring a jury to find
 28 that the defendant was aware of the type of animal involved in his
 acts. Consequently, in this case, the government takes the position
 that it must prove that defendant was aware that he was offering the
 skull of an elephant for sale.

1 International Trade in Endangered Species of Wild Fauna and Flora)
 2 is a general intent crime).

3 The authorities cited above show that whether defendant knew
 4 that his offering the elephant skull was illegal is not relevant to
 5 the determination of his criminal liability for violating 16 U.S.C.
 6 § 1538(a)(1)(F). Consequently, the Court should preclude testimony
 7 from defendant to the extent that defendant attempts to testify that
 8 he was unaware that the offering of the elephant skull was illegal.
 9 Otherwise, the jury may become confused as to the elements it must
 10 find in determining whether defendant is liable for a criminal
 11 violation of Section 1538.

12 B. Business Records

13 1. A document is admissible under the business records
 14 exception to the hearsay rule if two foundational facts are
 15 established: (a) the document was made or transmitted by a person
 16 with knowledge at or near the time of the incident recorded, and (b)
 17 the document was kept in the course of a regularly conducted
 18 business activity. See United States v. Ray, 930 F.2d 1368, 1370
 19 (9th Cir. 1990); Kennedy v. Los Angeles Police Dept., 901 F.2d 702,
 20 717 (9th Cir. 1990).

21 2. In determining if these foundational facts have been
 22 established, the court may consider hearsay and other evidence not
 23 admissible at trial. See Fed. R. Evid. 104(a) and 1101(d)(1);
 24 Bourjaily v. United States, 483 U.S. 171, 178-179 (1986).

25 3. The foundation may be established either through a
 26 custodian of records or "other qualified witness." The phrase
 27 "other qualified witness" is broadly interpreted to require only

1 that the witness understand the record keeping system. See Ray, 930
 2 F.2d at 1370; United States v. Franco, 874 F.2d 1136, 1139-40 (7th
 3 Cir. 1989); United States v. Hathaway, 798 F.2d 902, 906 (6th Cir.
 4 1986).⁶

5 4. The Government need not establish precisely when or by
 6 whom the document was prepared; all the rule requires is that the
 7 document be made "at or near the time" of the act or event it
 8 purports to record. See Ray, 930 F.2d at 1370; United States v.
 9 Huber, 772 F.2d 585, 591 (9th Cir. 1985); United States v. Basey,
 10 613 F.2d 198, 201 n.1 (9th Cir. 1979).

11 5. The use of a computer to create or store business records
 12 is not material to the analysis under Rule 803(6); "it is immaterial
 13 that the business record is maintained in a computer rather than in
 14 company books assuming that the proponent lays a proper foundation."
 15 United States v. Catabran, 836 F.2d 453, 457 (9th Cir. 1988),
 16 quoting United States v. De Georgia, 420 F.2d 889, 893 n.11 (9th
 17 Cir. 1969)).

18 6. Records of regularly conducted activity that would be
 19 admissible under Rule 803(6) do not require extrinsic evidence of
 20 authenticity as a condition precedent to admissibility if they are
 21 accompanied by a written declaration of a custodian of record
 22 certifying that the record (A) was made at or near the time of the
 23 occurrence of the matters set forth by, or from information
 24 transmitted by, a person with knowledge of those matters; (B) was

25 _____
 26 6 "When a witness is used to lay the foundation for admitting
 27 records under Rule 803(6), all that is required is that the witness
 be familiar with the record keeping system." Hathaway, 798 F.2d at
 28 906.

kept in the course of the regularly conducted activity; and (C) was made by the regularly conducted activity as a regular practice. Fed. R. Evid. 902(11).

F. Admissibility of Public Records

1. Records and reports of public agencies setting forth matters observed pursuant to duty imposed by law as to which matters there was a duty to report are generally admissible as an exception to the hearsay rule. See Fed. R. Evid. 803(8).

2. Certified copies of a conviction and judgment are public records and are admissible under the hearsay exception set forth in Federal Rule of Evidence 803(22).

G. Best Evidence

1. A duplicate is admissible to the same extent as an original unless (1) there is a genuine question as to the authenticity of the original or, (2) in the circumstances, use of the duplicate would be unfair. See Fed. R. Evid. 1003.

2. Even a photocopy bearing extraneous handwriting not connected to the defendant can be admissible. See United States v. Skillman, 922 F.2d 1370, 1375 (9th Cir. 1990).

F. Cross-Examination of Defendant

1. A defendant who testifies at trial waives his right against self-incrimination and subjects himself to cross-examination concerning all matters reasonably related to the subject matter of his testimony. The scope of defendant's waiver is co-extensive with the scope of relevant cross-examination. See United States v. Cuozzo, 962 F.2d 945, 948 (9th Cir. 1992) United States v. Black, 767 F.2d 1334, 1341 (9th Cir. 1985) ("Defendant's testimony on

direct examination does not determine the extent of permissible cross-examination or of his waiver. Instead, the issue is whether the Government's questions are reasonably related to the subjects covered by the defendant's testimony).

2. Federal Rule of Evidence 404(b) "restricts the use of evidence solely for purposes of demonstrating a criminal proclivity. It does not proscribe the use of other act evidence as an impeachment tool during cross-examination." United States v. Gay, 967 F.2d 322, 328 (9th Cir. 1992).

J. Authentication and Identification

1. The Federal Rules of Evidence treat authenticity and identification under Rule 901 as simply "a special aspect of relevancy." Fed. R. Evid. 901(a) (Advisory Committee Notes).

2. Under Rule 901, the condition or fact to be satisfied is whether there is sufficient evidence that the item proffered is what the proponent claims. See United States v. Whitworth, 856 F.2d 1268, 1283 (9th Cir.), cert. denied, 489 U.S. 1084 (1989).

3. When proffered evidence is challenged on grounds of authenticity or identity, the evidence should be admitted once the government makes a prima facie showing of authenticity. See United States v. Black, 767 F.2d 1334, 1342 (9th Cir. 1985).⁷

4. As stated in Black, the trial judge's decision is simply whether "sufficient proof has been introduced so that a reasonable juror could find in favor of authenticity or identification." The

⁷ In Black, the court stated that "[t]he rule requires only that the court admit evidence if sufficient proof has been introduced so that a reasonable juror could find in favor of authenticity or identification." 767 F.2d at 1343, quoting Weinstein's Evidence ¶ 901(a)[01], at 901-16 to -17 (1983).

1 credibility or probative force of the evidence offered is,
2 ultimately, an issue for the jury. See United States v. Black, 767
3 F.2d 1334, 1342 (9th Cir. 1985) (citing 5 J. Weinstein & M. Berger,
4 Weinstein's Evidence, § 901(a)(1), at 901-17 (1983)).

5 K. Duplicates

6 A duplicate is admissible to the same extent as an original
7 unless (1) a genuine question is raised as to the authenticity of
8 the original, or (2) under the circumstances, it would be unfair to
9 admit the duplicate instead of the original. See Fed. R. Evid.
10 1003.

11 DATED: Sept. 10, 2009

Respectfully submitted,

12 GEORGE S. CARDONA
13 Acting United States Attorney

14 CHRISTINE C. EWELL
15 Assistant United States Attorney
16 Chief, Criminal Division

17 
18 DENNIS MITCHELL

19 Assistant United States Attorney

20 Attorneys for Plaintiff
21 United States of America

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FILED

2009 SEP -9 PM 3:50

CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF
LOS ANGELESUNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) CR 09-122 (A) -RZ
Plaintiff,) F I R S T
v.) S U P E R S E D I N G
GERARD "JERRY" SNAPP,) [16 U.S.C. §§ 1538(a)(1)(F),
Defendant.) 1540(b)(1): Illegal Offer To
) Sell Endangered Species In
) Interstate Commerce; 16 U.S.C.
) § 1540(e)(4)(A): Forfeiture of
) Endangered Species Offered For
) Sale In Interstate Commerce]
) (Class A Misdemeanor)
)

The United States Attorney alleges:

COUNT ONE

(16 U.S.C. §§ 1538(a)(1)(F), 1540(b)(1))

Beginning on or before December 9, 2008, and continuing to
on or about December 11, 2008, in Los Angeles County, within the
Central District of California, and elsewhere, defendant GERARD
"JERRY" SNAPP did knowingly offer for sale in interstate
commerce endangered wildlife species, namely, one Asian elephant
skull, without a permit issued by the Secretary of the United

DM:dm

1 States Department of the Interior or the Secretary of the United
2 States Department of Commerce.

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1 COUNT TWO

2 (NOTICE OF FORFEITURE)

3 (16 U.S.C. § 1540(e)(4)(A))

4 As a result of the offense alleged in Count One, defendant
5 GERARD "JERRY" SNAPP shall forfeit to the United States one
6 Asian elephant skull offered for sale in interstate commerce, in
7 violation of the Endangered Species Act, Title 16, United States
8 Code, Sections 1538(a)(1)(F) and 1540(b)(1).

9

10 GEORGE S. CARDONA

11 Acting United States Attorney

*David S. Goodman, Asst. U.S. Atty., Deputy Chief,
Criminal Division, FOIA*

12 CHRISTINE C. EWELL

13 Assistant United States Attorney
Chief, Criminal Division

14 JOSEPH O. JOHNS

15 Assistant United States Attorney
Chief, Environmental Crimes Section

16 DENNIS MITCHELL

17 Assistant United States Attorney
Environmental Crimes Section

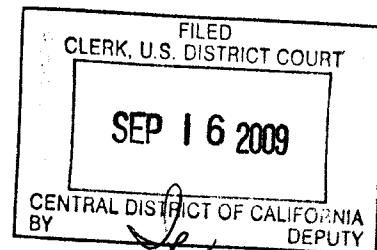
UNITED STATES OF AMERICA v. GERARD "JERRY" SNAPP

Case No. CR 09-122 (A) -RZ

GOVERNMENT'S WITNESS LIST

1. Special Agent Steven Furrer
2. Special Agent Paul Montouri
3. Forensic Specialist Darby Morrell
4. Supervisory Forensic Scientist Bonnie Yates
5. Special Agent Lisa Nichols
6. Special Agent Ed Newcomer
7. Bob Bicknell

EXHIBIT 1



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) CR No. 09-122(A) - RZ
Plaintiff,)
vs.) JURY INSTRUCTIONS
GERARD "JERRY" SNAPP,)
Defendant.)

1 COURT'S INSTRUCTION NO. 1

2 Members of the jury, now that you have heard all the evidence, it
3 is my duty to instruct you on the law which applies to this case.

4 It is your duty to find the facts from all the evidence in the
5 case. To those facts you will apply the law as I give it to you. You
6 must follow the law as I give it to you whether you agree with it or
7 not. And you must not be influenced by any personal likes or dislikes,
8 opinions, prejudices, or sympathy. That means that you must decide the
9 case solely on the evidence before you. You will recall that you took
10 an oath promising to do so at the beginning of the case.

11 In following my instructions, you must follow all of them and not
12 single out some and ignore others; they are all equally important. You
13 must not read into these instructions or into anything the court may
14 have said or done any suggestion as to what verdict you should return
15 -- that is a matter entirely up to you.

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COURT'S INSTRUCTION NO. 2

The information is not evidence. The defendant has pled not guilty to the charges. The defendant is presumed to be innocent and does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of each charge beyond a reasonable doubt.

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COURT'S INSTRUCTION NO. 3

A defendant in a criminal case has a constitutional right not to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that the defendant did not testify.

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COURT'S INSTRUCTION NO. 4

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

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COURT'S INSTRUCTION NO. 5

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received into evidence; and
- (3) any facts to which all the lawyers have stipulated.

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1 COURT'S INSTRUCTION NO. 6

2 In reaching your verdict you may consider only the testimony and
3 exhibits received into evidence. Certain things are not evidence and
4 you may not consider them in deciding what the facts are. I will list
5 them for you:

6 A. Arguments and statements by lawyers are not evidence. The
7 lawyers are not witnesses. What they have said in their
8 opening statements, closing arguments, and at other times is
9 intended to help you interpret the evidence, but it is not
10 evidence. If the facts as you remember them differ from the
11 way the lawyers state them, your memory of them controls.

12 B. Questions and objections by lawyers are not evidence.
13 Attorneys have a duty to their clients to object when they
14 believe a question is improper under the rules of evidence.
15 You should not be influenced by the question, the objection,
16 or the court's ruling on it.

17 C. Testimony that has been excluded or stricken, or that you
18 have been instructed to disregard, is not evidence and must
19 not be considered. In addition some testimony and exhibits
20 have been received only for a limited purpose; where I have
21 given a limiting instruction, you must follow it.

22 D. Anything you may have seen or heard when the court was not
23 in session is not evidence. You are to decide the case
24 solely on the evidence received at the trial.

1 COURT'S INSTRUCTION NO. 7

2 Evidence may be direct or circumstantial. Direct evidence is
3 direct proof of a fact, such as testimony of an eyewitness.
4 Circumstantial evidence is indirect evidence, that is, proof of a chain
5 of facts from which you could find that another fact exists, even
6 though it has not been proved directly. You are to consider both kinds
7 of evidence. The law permits you to give equal weight to both, but it
8 is for you to decide how much weight to give to any evidence.

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1 COURT'S INSTRUCTION NO. 8

2 In deciding the facts in this case, you may have to decide which
3 testimony to believe and which testimony not to believe. You may
4 believe everything a witness says, or part of it, or none of it.

5 In considering the testimony of any witness, you may take into
6 account:

- 7 1. the opportunity and ability of the witness to see or hear or
8 know the things testified to;
- 9 2. the witness's memory;
- 10 3. the witness's manner while testifying;
- 11 4. the witness's interest in the outcome of the case and any
12 bias or prejudice;
- 13 5. whether other evidence contradicted the witness's testimony;
- 14 6. the reasonableness of the witness's testimony in light of all
15 the evidence; and
- 16 7. any other factors that bear on believability.

17 The weight of the evidence as to a fact does not necessarily
18 depend on the number of witnesses who testify.

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COURT'S INSTRUCTION NO. 9

The defendant is on trial only for the crime charged in the information, not for any other activities.

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COURT'S INSTRUCTION NO. 10

You have heard testimony that the defendant made a statement. It is for you to decide (1) whether the defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which the defendant may have made it.

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COURT'S INSTRUCTION NO. 10

You have heard testimony from a person who, because of education or experience, is permitted to state opinions and the reasons for her opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

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COURT'S INSTRUCTION NO. 12

Count One of the First Superseding Information charges defendant Gerard "Jerry" Snapp with having committed an offense in violation of Title 16, United States Code, Sections 1538(a)(1)(F) and 1540(b)(1).

I will now read Count One of the First Superseding Information.

The United States Attorney alleges:

COUNT ONE

(16 U.S.C. §§ 1538(a)(1)(F), 1540(b)(1))

Beginning on or before December 9, 2008, and continuing to on or about December 11, 2008, in Los Angeles County, within the Central District of California, and elsewhere, defendant GERARD "JERRY" SNAPP did knowingly offer for sale in interstate commerce endangered wildlife species, namely, one Asian elephant skull, without a permit issued by the Secretary of the United States Department of the Interior or the Secretary of the United States Department of Commerce.

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COURT'S INSTRUCTION NO. 13

Section 1538(a)(1)(F) of Title 16 of the United States Code provides in pertinent part:

(a) Generally

(1) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to--

(F) sell or offer for sale in interstate or foreign commerce any such species;

And, Section 1540(b)(1) provides that:

Any person who knowingly violates [16 U.S.C. § 1538(a)(1)(F)] shall be guilty of an offense against the United States.

COURT'S INSTRUCTION NO. 14

In order to find defendant guilty of the crime charged in Count One, the government must establish beyond a reasonable doubt each of the following elements on any date that falls within the time period charged:

1. Defendant knowingly offered for sale wildlife in interstate commerce;

2. The wildlife offered for sale by defendant was included on the list of endangered species set forth in 50 Code of Federal Regulations Section 17.11; and

3. Defendant's conduct was unlawful, that is, defendant did not have permission from the agency that could issue permits and authorize such activity, i.e. the Department of the Interior, U.S. Fish and Wildlife Service.

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COURT'S INSTRUCTION NO. 15

Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed reasonably near a date within the time period alleged in the Information, it is not necessary for the government to prove that the offense was committed precisely on a particular date.

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COURT'S INSTRUCTION NO. 16

2 As to the first element of the crime alleged in Count One, that
3 is, whether defendant knowingly offered for sale wildlife in interstate
4 commerce, the government must establish beyond a reasonable doubt that
5 defendant knew that he was offering wildlife for sale. You are
6 instructed that the term wildlife means any member of the animal
7 kingdom, including without limitation, any mammal, and includes any
8 part, product, egg, or the dead body or parts thereof. Therefore, the
9 government must prove beyond a reasonable doubt that defendant knew
10 that he offered an elephant skull for sale.

11 In order to satisfy the first element of the crime charged in
12 Count One, you must also find that defendant offered wildlife for sale
13 in interstate commerce. Interstate commerce means commerce between one
14 state, territory or possession of the United States and another state,
15 territory or possession of the United States, including the District
16 of Columbia. Commerce includes travel, trade, transportation, and
17 communication. The element of interstate commerce may be satisfied if
18 the defendant knew or understood that the wildlife he offered for sale
19 would be transported in interstate commerce, even if the defendant
20 himself would not transport the wildlife.

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COURT'S INSTRUCTION NO. 17

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

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COURT'S INSTRUCTION NO. 18

The second element of the crime charged in Count One, is satisfied if you find that during the time period charged in Count One, an Asian elephant was included on the list of endangered species of wildlife.

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COURT'S INSTRUCTION NO. 19

2 In regard to the third element of the crime alleged in Count One,
3 that is, whether defendant's conduct was unlawful,
4 you are instructed that the offering for sale of an endangered species
5 of wildlife is unlawful unless the person offering the endangered
6 species of wildlife for sale in interstate commerce had been granted
7 a permit to do so from the United States Department of the Interior,
8 U.S. Fish and Wildlife Service. This permit is commonly referred to
9 as an Endangered Species Act permit. A person who has such a valid
10 permit only had permission to offer that endangered species of wildlife
11 into interstate commerce described in the permit and then only in
12 accordance with the terms of the permit.

13 If you find from the evidence that a diligent search of the
14 official records maintained by the United States Department of the
15 Interior, U.S. Fish and Wildlife Service failed to disclose any valid
16 Endangered Species Act permit issued to allow defendant to offer for
17 sale the endangered species in question in interstate commerce, then
18 you may, but are not required, to infer that no such permit was issued
19 to defendant.

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COURT'S INSTRUCTION NO. 20

When you begin your deliberations, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

8 Each of you must decide the case for yourself, but you should do
9 so only after you have considered all the evidence, discussed it fully
10 with the other jurors, and listened to the views of your fellow jurors.

11 Do not be afraid to change your opinion if the discussion
12 persuades you that you should. But do not come to a decision simply
13 because other jurors think it is right.

14 It is important that you attempt to reach a unanimous verdict but,
15 of course, only if each of you can do so after having made your own
16 conscientious decision. Do not change an honest belief about the
17 weight and effect of the evidence simply to reach a verdict.

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COURT'S INSTRUCTION NO. 21

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

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COURT'S INSTRUCTION NO. 22

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes.

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COURT'S INSTRUCTION NO. 23

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

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COURT'S INSTRUCTION NO. 24

A verdict form has been prepared for you. There are 2 questions on the form. The first asks whether you find the defendant Guilty or Non Guilty. The second question is to be answered only if you find the defendant guilty. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it, and advise the bailiff that you are ready to return to the courtroom.

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COURT'S INSTRUCTION NO. 25

2 If it becomes necessary during your deliberations to communicate
3 with me, you may send a note through the bailiff, signed by your
4 foreperson or by one or more members of the jury. No member of the
5 jury should ever attempt to communicate with me except by a signed
6 writing, and I will respond to the jury concerning the case only in
7 writing, or here in open court. If you send out a question, I will
8 consult with the lawyers before answering it, which may take some time.
9 You may continue your deliberations while waiting for the answer to any
10 question. Remember that you are not to tell anyone - including me -
11 how the jury stands, numerically or otherwise, on the question of the
12 guilt of the defendant, until after you have reached a unanimous
13 verdict or have been discharged.

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CLERK, U.S. DISTRICT COURT

SEP 16 2009

CENTRAL DISTRICT OF CALIFORNIA

DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) CR No. 09-122 (A) - RZ
12 Plaintiff,)
13 vs.) V E R D I C T
14 GERARD "JERRY" SNAPP,) REDACTED VERDICT
15 Defendant.) AS TO FOREPERSON
16 _____) SIGNATURE

VERDICT FORM

COUNT ONE:

1. For Count One of the First Superseding Information, We, the jury in the above-captioned action, unanimously find defendant Gerard "Jerry" Snapp:

GUILTY

NOT GUILTY _____.

Answer the following question only if you find the defendant guilty:

14 2. Is the elephant skull admitted as Exhibit 19 the elephant
15 skull that defendant offered for sale in interstate commerce?

YES

NO _____

REDACTED
By court

FOREPERSON OF THE JURY

DATED: 16 Sep at Los Angeles, California.

EXHIBIT A

1

2 UNITED STATES DISTRICT COURT

3 CENTRAL DISTRICT OF CALIFORNIA
4 WESTERN DIVISION

5 UNITED STATES OF AMERICA,)
6)
7 PLAINTIFF,)
8 VS.) CASE NO. CR 09-00122-RZ
9)
10)
11 GERARD "JERRY" SNAPP,) LOS ANGELES, CALIFORNIA
12) JANUARY 25, 2010
13) (1:32 P.M. TO 1:58 P.M.)
14 DEFENDANT.)
15)
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17 SENTENCING
18 BEFORE THE HONORABLE RALPH ZAREFSKY
19 UNITED STATES MAGISTRATE JUDGE

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APPEARANCES: SEE NEXT PAGE

COURT REPORTER: RECORDED; COURT SMART

COURTROOM DEPUTY: ILENE BERNAL

TRANSCRIBER: DOROTHY BABYKIN
COURTHOUSE SERVICES
1218 VALEBROOK PLACE
GLENDORA, CALIFORNIA 91740
(626) 963-0566

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29 PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;
30 TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

1 APPEARANCES: (CONTINUED)

2 FOR THE PLAINTIFF: GEORGE CARDONA, ACTING
3 UNITED STATES ATTORNEY
4 CHRISTINE C. EWELL
5 CHIEF, CRIMINAL DIVISION
6 ASSISTANT UNITED STATES ATTORNEY
7 BY: DENNIS MITCHELL
8 ASSISTANT UNITED STATES ATTORNEY
9 312 NORTH SPRING STREET
10 LOS ANGELES, CALIFORNIA 90012

11 FOR THE DEFENDANT:

12 SEAN K. KENNEDY
13 FEDERAL PUBLIC DEFENDER
14 BY: ANTHONY EAGLIN
15 DEPUTY FEDERAL PUBLIC DEFENDER
16 321 EAST SECOND STREET
17 LOS ANGELES, CALIFORNIA 90012

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I N D E X

2 CASE NO. CR 09-00122-RZ

JANUARY 25, 2010

3 PROCEEDINGS: SENTENCING

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1 LOS ANGELES, CALIFORNIA; MONDAY, JANUARY 15, 2010; 1:32 P.M.

2 THE CLERK: CALLING CASE NUMBER CR 09-00122-RZ,

3 UNITED STATES OF AMERICA VERSUS GERARD JERRY SNAPP.

4 COUNSEL, PLEASE MAKE YOUR APPEARANCES.

5 MR. MITCHELL: GOOD AFTERNOON, YOUR HONOR.

6 DENNIS MITCHELL APPEARING ON BEHALF OF THE UNITED
7 STATES.

8 THE COURT: GOOD AFTERNOON.

9 MR. EAGLIN: GOOD AFTERNOON, YOUR HONOR.

10 ANTHONY EAGLIN ON BEHALF OF GERARD EUGENE SNAPP,
11 WHO'S PRESENT AND BEFORE THE COURT.

12 YOUR HONOR, MAY I TAKE THE PODIUM?

13 THE COURT: ALL RIGHT. WHERE ARE YOU GOING TO TAKE
14 IT?

15 MR. EAGLIN: JUST STAND IN FRONT OF THE PODIUM,
16 YOUR HONOR.

17 THE COURT: ALL RIGHT. GO AHEAD.

18 ALL RIGHT. WE'RE HERE FOR SENTENCING.

19 MR. SNAPP, HAVE YOU READ THE PRESENTENCE -- THE
20 PRESENTENCE REPORT?

21 THE DEFENDANT: I BELIEVE I HAVE.

22 THE COURT: MR. MITCHELL, YOU'VE READ IT?

23 MR. MITCHELL: YES, YOUR HONOR.

24 THE COURT: AND MR. EAGLIN?

25 MR. EAGLIN: I HAVE, YOUR HONOR.

1 THE COURT: ALL RIGHT. ARE THERE ANY OBJECTIONS TO
2 ANYTHING IN THE REPORT OTHER THAN WHAT YOU'VE PUT IN YOUR
3 PAPERS ALREADY TO ME, MR. MITCHELL?

4 MR. MITCHELL: NO, YOUR HONOR.

5 THE COURT: MR. EAGLIN?

6 MR. EAGLIN: NO, YOUR HONOR.

7 THE COURT: ALL RIGHT. THERE ARE SOME CALCULATIONS
8 UNDER THE SENTENCING GUIDELINES IN THE REPORT.

9 BOTH COUNSEL AGREE THEY ARE APPROPRIATE, MR.
10 MITCHELL?

11 MR. MITCHELL: YES, YOUR HONOR.

12 THE COURT: MR. EAGLIN?

13 MR. EAGLIN: YES, YOUR HONOR.

14 THE COURT: ALL RIGHT. MR. EAGLIN, I'LL HEAR FROM
15 YOU AS TO WHAT YOU THINK AN APPROPRIATE SENTENCE SHOULD BE.

16 MR. EAGLIN: YOUR HONOR, WE ARE BEFORE THE COURT
17 FOR SENTENCING AFTER MR. SNAPP HAVING BEEN CONVICTED BY A
18 JURY IN THIS COURT OF OFFERING AN ENDANGERED SPECIES FOR
19 SALE.

20 I NEED NOT GET INTO THE FACTS OF THIS CASE BECAUSE
21 THE COURT WAS THERE, AND THE COURT HEARD ALL THE EVIDENCE IN
22 THIS CASE.

23 THE COURT: JUST A MOMENT.

24 ARE WE ABLE TO PICK UP WHAT MR. EAGLIN IS SAYING?
25 COULD YOU MOVE -- THERE YOU GO.

1 ALL RIGHT.

2 MR. EAGLIN: THE COURT HAS HEARD ALL OF THE
3 EVIDENCE IN THIS PARTICULAR CASE.

4 MR. SNAPP WAS IN --

5 THE COURT: ONE MINUTE.

6 (THE COURT CONFERRING WITH CLERK.)

7 THE COURT: JUST KEEP YOUR VOICE UP SO WE CAN MAKE
8 SURE WE RECORD YOU. ALL RIGHT?

9 MR. EAGLIN: I WILL, YOUR HONOR.

10 THE COURT: ALL RIGHT. GO AHEAD.

11 MR. EAGLIN: MR. SNAPP WAS IN POSSESSION OF THIS
12 ELEPHANT SKULL FOR NO NEFARIOUS REASONS. MR. SNAPP IS A
13 COLLECTOR. HE REFERS TO HIMSELF AS A -- HE IS A COLLECTOR OF
14 BONES. HE SALVAGED -- HE'S A RECYCLER OF ANIMAL PARTS.

15 HE HAD A NUMBER OF PARTS IN HIS COLLECTION. AND
16 THE COURT SAW THAT ELEPHANT SKULL THAT WAS IN THE COURT. IT
17 WAS BY NO MEANS SOME -- THE COURT EXPRESSED SOME CONCERN
18 INITIALLY PRIOR TO THE TRIAL AS TO WHETHER OR NOT THIS WOULD
19 HAVE BEEN A SANITARY ITEM OR NOT.

20 AND THE COURT SAW THAT THIS WAS NOT ONLY A SANITARY
21 SPECIMEN BUT THE MATTER WAS CLEAN. THE MATTER WAS PERFECTLY
22 PRESERVED. AND SUCH WERE A LOT OF THE THINGS IN MR. SNAPP'S
23 COLLECTION.

24 AND THE COURT IS AWARE OF HOW MR. SNAPP CAME INTO
25 POSSESSION OF THIS ELEPHANT SKULL. THIS ELEPHANT WAS A

1 NATIVE ELEPHANT OF THE STATE OF THE CALIFORNIA -- NOT NATIVE,
2 BUT THIS ELEPHANT WAS A MEMBER OF THE LOS ANGELES ZOO UNTIL
3 THIS ELEPHANT DIED AND WAS BROUGHT TO A RENDERING PLANT.
4 MR. SNAPP RESCUED OR OBTAINED THIS ELEPHANT SKULL FROM THE
5 RENDERING PLANT. HE CURED IT. PLACED IT IN HIS COLLECTION.
6 AND THEN AT A POINT IN TIME WHEN HE WAS EXPERIENCING EXTREME
7 FINANCIAL DIFFICULTY HE OFFERED THE ELEPHANT SKULL FOR SALE.

8 I INDICATED IN MY PAPERS THAT IT WAS NOT AGAINST
9 ANY FEDERAL LAW FOR MR. SNAPP TO HAVE -- POSSESS THIS
10 ELEPHANT SKULL. IT WAS NOT AGAINST ANY FEDERAL LAW FOR MR.
11 SNAPP TO OFFER THIS ELEPHANT SKULL FOR SALE EVEN WITHIN THE
12 STATE OF CALIFORNIA.

13 BUT THE GOVERNMENT IN ITS PAPERS SUGGESTS THAT
14 THERE IS POTENTIALLY SOME STATE STATUTE WHICH DEFENDANT
15 PROBABLY COULD HAVE RUN AFOUL BY OFFERING THIS ELEPHANT SKULL
16 FOR SALE IN THE STATE OF CALIFORNIA. BUT THAT'S BESIDE THE
17 POINT. WE'RE HERE FOR SENTENCING.

18 AND WHEN THE COURT CONSIDERS ALL THE FACTS AND
19 CIRCUMSTANCES IN THIS CASE, NOTWITHSTANDING THE GUIDELINE
20 RANGE OF 10 TO 16 MONTHS, ALL OF THE PARTIES BEFORE THE COURT
21 ARE IN AGREEMENT THAT A CUSTODIAL SENTENCE WITHIN THE
22 RECOMMENDATION OF THE GUIDELINE RANGE IS MORE THAN NECESSARY
23 TO ADDRESS THE NEEDS OF PUNISHMENT IN THIS PARTICULAR CASE.

24 THE PROBATION OFFICER RECOMMENDS TO THE COURT A
25 SENTENCE OF THREE YEARS' PROBATION -- BUT SOMEHOW STILL

1 WEDDED TO THE GUIDELINE SUGGESTS -- RECOMMENDS THAT THIS
2 COURT IMPOSE A SENTENCE OF TEN MONTHS OF HOME DETENTION AND
3 IN ADDITION TO THAT SOME 250 HOURS OF COMMUNITY SERVICE. THE
4 GOVERNMENT THINKS THAT THAT IS THE APPROPRIATE SENTENCE.

5 WE WOULD SUBMIT TO THE COURT THAT A SENTENCE LESS
6 THAN THAT WOULD BE APPROPRIATE IN THIS CASE. IF THERE EVER
7 WAS A CASE WHERE STRAIGHT PROBATION WOULD BE APPROPRIATE, I
8 WOULD SUBMIT THAT THIS WOULD BE ONE OF THOSE CASES.

9 THIS DEFENDANT WAS NOT ENGAGED IN THE SELLING OF
10 ANIMAL PARTS. THIS PERSON WAS INTERESTED IN PARTING WITH A
11 COLLECTION OF HIS HOBBY. HE JUST CHOSE TO GO ABOUT IT WHICH
12 RAN AFOUL OF THE LAW.

13 WE WOULD ASK THAT THE COURT IMPOSE A SENTENCE OF
14 STRAIGHT PROBATION. AND IF THE COURT FEELS THAT THERE SHOULD
15 BE SOME CONDITION ATTACHED TO PROBATION, WE WOULD SUGGEST
16 THAT PERHAPS MAYBE A TERM OF HOME DETENTION LESS THAN THAT
17 WHICH IS RECOMMENDED BY THE PROBATION OFFICER AND THE
18 GOVERNMENT. A SENTENCE OF THREE MONTHS HOME DETENTION WOULD
19 BE MORE THAN ADEQUATE TO ADDRESS PUNISHMENT IN THIS
20 PARTICULAR CASE.

21 IN ADDITION, YOUR HONOR, THE PROBATION OFFICER ALSO
22 RECOMMENDS 250 HOURS OF COMMUNITY SERVICE. THAT IS A
23 SUBSTANTIAL NUMBER OF HOURS WHEN YOU CONSIDER THE ADDITIONAL
24 RECOMMENDATION OF HOME DETENTION.

25 I WOULD ASK THAT THE COURT IMPOSE SOMETHING LIKE 50

1 HOURS OF COMMUNITY SERVICE, THREE MONTHS OF HOME DETENTION,
2 THREE YEARS OF PROBATION. THAT WOULD BE A JUST SENTENCE.
3 AND WE FEEL THAT THAT WOULD BE THE APPROPRIATE SENTENCE IN
4 THIS CASE.

5 THE COURT: THANK YOU.

6 MR. MITCHELL.

7 MR. MITCHELL: THANK YOU, YOUR HONOR.

8 THE GOVERNMENT'S POSITION IS PRETTY WELL SPELLED
9 OUT IN THE PLEADING THAT WAS FILED IN RESPONSE TO THE
10 PRESENTENCE REPORT AND TO THE DEFENDANT'S SENTENCING
11 POSITION.

12 THE BOTTOM LINE, YOUR HONOR, IS THAT GIVEN THE
13 PARTICULAR HISTORY AND CHARACTERISTICS OF DEFENDANT AND THE
14 NATURE OF THIS OFFENSE AND SO FORTH, WHEN ALL THOSE FACTORS
15 ARE TAKEN INTO ACCOUNT A CUSTODIAL SENTENCE WOULD BE A LITTLE
16 TOO MUCH HERE -- DESPITE THE FACT DEFENDANT DID GO TO TRIAL
17 AND SO FORTH.

18 THERE SHOULD BE SOMETHING MORE THAN PROBATION. AND
19 THE SENTENCE THAT'S BEEN RECOMMENDED BY THE PROBATION OFFICE
20 REALLY STRIKES THE RIGHT BALANCE.

21 THERE SHOULD BE SOMETHING MORE THAN PROBATION
22 BECAUSE DEFENDANT NOT ONLY VIOLATED A STATUTE, THE EVIDENCE
23 SHOWS THAT HE KNEW HE WAS VIOLATING THE STATUTE. HE KNEW --
24 OR, AT LEAST -- AT THE VERY LEAST, HE WAS DOING SOMETHING
25 ILLEGAL.

1 THE EVIDENCE SHOWED THAT HE WAS GIVING SOME ADVICE
2 ABOUT HOW TO AVOID DETECTION IN CASE THE PURCHASER OF THE
3 SKULL WAS STOPPED. THAT KIND OF EVIDENCE SHOWS HE WAS NOT
4 IGNORANT OF THE FACT THAT HE WAS VIOLATING THE LAW. AND SO
5 SOMETHING THAT'S MORE SEVERE THAN PROBATION IS CALLED FOR.

6 AND, YET, THE DEFENDANT BASICALLY MOST OF HIS LIFE
7 HAS LED A LAW-ABIDING LIFE. HE'S SHOWN A LOT OF
8 CHARACTERISTICS OF SELFLESSNESS AND HELPING OTHERS.

9 AND IT ALSO IS CLEAR THAT HIS PRIME MOTIVATION FOR
10 SELLING THE ELEPHANT SKULL, IT WASN'T A BUSINESS THAT HE HAD.
11 HE WAS -- HE DIDN'T REALLY WANT TO SELL IT, BUT HE WAS
12 DESPERATE FINANCIALLY. AND THAT WAS REALLY HIS MOTIVATION.
13 IT WASN'T THAT HE HAD THIS KIND OF BUSINESS WHERE HE WAS JUST
14 SELLING THESE THINGS ON AN ONGOING BUSINESS.

15 SO, IN SOME WAYS HIS MOTIVE WAS NOT AS CULPABLE,
16 SHALL WE SAY, AS IT COULD BE WITH SOMEONE WHO WAS OPERATING
17 THIS KIND OF A BUSINESS. AND, YET, ON THE OTHER HAND, HE DID
18 KNOW THAT WHAT HE WAS DOING WAS VIOLATING THE LAW.

19 SO, A HOME DETENTION SENTENCE REALLY STRIKES THE
20 RIGHT BALANCE. I DON'T THINK THERE'S ANYTHING TOO SEVERE
21 ABOUT TEN MONTHS OF HOME DETENTION. THE GOVERNMENT HAS NO
22 OBJECTION.

23 AND I SUSPECT THE PROBATION OFFICER WOULD PROBABLY
24 ALLOW MR. SNAPP TO WORK DURING THE DAY. HOPEFULLY, HE CAN
25 FIND EMPLOYMENT -- SO THAT IF HE NEEDS TO LEAVE HIS HOME OR

1 WORK DURING THE DAY, HE'D BE ABLE TO DO IT. BUT, OBVIOUSLY,
2 YOU KNOW, THE NIGHT HOURS HE SHOULD BE SERVING HIS HOME
3 DETENTION SENTENCE.

4 THE 250 HOURS OF COMMUNITY SERVICE IS APPROPRIATE.
5 GIVEN, YOU KNOW -- MR. SNAPP'S GOT A LOT TO OFFER IN TERMS OF
6 HIS KNOWLEDGE ABOUT SPECIES AND ENDANGERED SPECIES AND SO
7 FORTH. MAYBE THERE'S SOME KIND OF COMMUNITY SERVICE HE CAN
8 DO IN THAT REGARD. WHO KNOWS. BUT I DON'T THINK THAT OVER A
9 THREE-YEAR PERIOD OF PROBATION IT WILL BE DIFFICULT AT ALL
10 FOR MR. SNAPP TO COMPLETE 250 HOURS OF COMMUNITY SERVICE.

11 A FINE IS CLEARLY NOT WARRANTED HERE. DEFENDANT'S
12 FINANCIAL CONDITION CERTAINLY DOESN'T ALLOW THAT.

13 SO, UNLESS, THERE'S FURTHER QUESTIONS FROM THE
14 COURT, I THINK THAT THE SENTENCE THAT PROBATION HAS
15 RECOMMENDED IS A FAIR ONE. IT'S JUST. IT REALLY FOLLOWS THE
16 SPIRIT AND THE LETTER OF WHAT THE -- NOT ONLY SENTENCING --
17 WELL, THE SENTENCING GUIDELINES, NO, BUT THE FACTORS SET
18 FORTH IN TITLE 18, UNITED STATES CODE SECTION 3553(A) AND SO
19 FORTH IN THAT SECTION.

20 AND THAT'S WHAT THE GOVERNMENT WOULD RECOMMEND.

21 THE COURT: ALL RIGHT.

22 MR. EAGLIN: YOUR HONOR, MAY I JUST ADD JUST A
23 COUPLE MORE COMMENTS.

24 AND MR. SNAPP, HE JUST ADVISED ME THAT -- YOU KNOW,
25 IN TERMS OF COMMUNITY SERVICE AND THE 250 HOURS OF COMMUNITY

1 SERVICE, MR. SNAPP ADVISED ME THAT HE DOES NOT LIVE IN A
2 COMMUNITY.

3 AT THE TIME THAT MR. SNAPP WENT TO TRIAL, MR. SNAPP
4 WAS LIVING ON A 10-ACRE --

5 (MR. EAGLIN CONFERRING BRIEFLY WITH CLIENT.)

6 MR. EAGLIN: IT WAS A THREE-ACRE COMPOUND OUT IN
7 THE RURAL PARTS OF RIVERSIDE. SINCE THEN, MR. SNAPP HAS
8 MOVED. HE LIVES IN AN EVEN RURAL -- MORE RURAL AREA. IT'S
9 MY UNDERSTANDING HE LIVES IN APPLE VALLEY.

10 THE DEFENDANT: I LIVE APPROXIMATELY 10 MILES OUT
11 OF APPLE VALLEY IN THE MIDDLE OF THE MOJAVE DESERT.

12 MR. EAGLIN: IN THE MIDDLE OF THE MOJAVE DESERT.

13 THE DEFENDANT HAD SOME PROBLEMS WITH TRANSPORTATION
14 TO MAKE IT TO COURT DURING THE TRIAL. AT ONE POINT IN TIME
15 THE COURT THREATENED TO SANCTION MR. SNAPP BECAUSE HE DID NOT
16 APPEAR TIMELY. THERE WOULD BE SOME PROBLEMS WITH RESPECT TO
17 COMMUNITY SERVICE. THERE'S VERY LITTLE, IF ANY, COMMUNITY
18 SERVICE THE DEFENDANT COULD -- COULD DO WITHIN THE AREA IN
19 WHICH HE LIVES.

20 I WOULD ASK THAT THE COURT CONSIDER THAT IN
21 FASHIONING ANY SENTENCE THAT THE COURT THINKS IS JUST.

22 WITH THAT, WE WOULD SUBMIT THE MATTER, YOUR HONOR.

23 THE COURT: MR. MITCHELL, IS THERE ANYTHING
24 FURTHER?

25 MR. MITCHELL: ONE OTHER ITEM, YOUR HONOR. AND I

1 SHOULD HAVE THOUGHT OF THIS EARLIER -- IT WAS THIS MORNING.
2 I, UNFORTUNATELY, THOUGHT OF IT THIS LATE. AND THAT IS THAT
3 I THINK IT'S NECESSARY FOR THE GOVERNMENT TO SUBMIT AN
4 APPLICATION FOR A FINAL ORDER OF FORFEITURE ALONG WITH A
5 PROPOSED ORDER OF FORFEITURE. AND I WILL -- I DID CHECK WITH
6 --

7 THE COURT: WHY DO YOU THINK THAT'S NECESSARY?

8 MR. MITCHELL: I WENT TO THE ASSET FORFEITURE
9 SECTION THIS MORNING, YOUR HONOR, AND SPOKE WITH ONE OF THE
10 PEOPLE UP THERE WHO HAS SOME EXPERIENCE IN THAT AREA. AND
11 SHE INFORMED ME THAT THAT'S TYPICALLY WHAT'S DONE.

12 WE ALREADY HAVE A PRELIMINARY ORDER.

13 THE COURT: YES.

14 MR. MITCHELL: THERE'S HAS BEEN A PUBLICATION OF A
15 NOTICE. BUT I THINK THERE'S SOME FORMALITY WITH THIS THING
16 WHERE THERE'S AN APPLICATION AND A PROPOSED FINAL ORDER.

17 AND SO --

18 THE COURT: THE LAW REQUIRES, AS I UNDERSTAND IT,
19 THAT THE JUDGMENT INCLUDE A FINAL ORDER OF FORFEITURE. BUT I
20 DON'T KNOW WHY YOU WOULD HAVE TO SUBMIT A FURTHER APPLICATION
21 UNLESS YOU JUST WANT TO.

22 MR. MITCHELL: JUST TO PLAY IT SAFE.

23 MY UNDERSTANDING FROM THE AUSA WHO WAS TELLING ME
24 ABOUT THIS WAS THAT YOU COULD HAVE A DEFENDANT SENTENCED AND
25 STILL HAVE FORFEITURE PROCEEDINGS ONGOING.

1 MY SUGGESTION --

2 THE COURT: I THINK THAT USED TO BE THE LAW, BUT IT
3 CHANGED IN DECEMBER.

4 MR. MITCHELL: OH. I APPRECIATE THAT. I DIDN'T
5 KNOW THAT.

6 MY SUGGESTION, YOUR HONOR, WOULD SIMPLY BE -- IS
7 THAT THE COURT, IF POSSIBLE, NOT ISSUE A FINAL JUDGMENT UNTIL
8 LET'S SAY FRIDAY. AND THAT WAY I CAN GET AN APPLICATION IN
9 TOMORROW OR WEDNESDAY AT THE LATEST AND LODGE THAT WITH THE
10 COURT IF THE COURT THINKS THAT'S APPROPRIATE, YOU KNOW, TO
11 PROCEED FROM THERE.

12 THE COURT: WELL, WHAT WOULD THIS APPLICATION SAY?

13 MR. MITCHELL: WELL, I LOOKED AT THE FORM THAT I
14 WAS GIVEN, AND IT BASICALLY RECITES THE FACT THAT THERE WAS A
15 PRELIMINARY ORDER, THAT A FINAL ORDER IS APPROPRIATE. IT
16 WOULD RECITE THE FACT THAT THE DEFENDANT WAS CONVICTED. AND
17 THAT UNDER THE LAW THE GOVERNMENT IS ENTITLED TO HAVE THE
18 SKULL FORFEITED. THAT'S PRETTY MUCH WHAT IT WOULD SAY I
19 THINK.

20 THE COURT: IS THERE ANY --

21 MR. MITCHELL: THERE'S A BOND THERE TOO.

22 THE COURT: IS THERE ANYTHING TO CONTEST IN THAT,
23 MR. EAGLIN?

24 MR. EAGLIN: YOUR HONOR, WE TAKE NO POSITION WITH
25 RESPECT TO THE GOVERNMENT'S FORMALITY.

1 THE COURT: LET ME ASK IT THIS WAY. LET'S ASSUME
2 THAT MR. MITCHELL INSTEAD OF TELLING ME THAT HE WANTED TO PUT
3 IN AN APPLICATION, HAD SUBMITTED AN APPLICATION THAT
4 CONTAINED THE ITEMS HE JUST ENUMERATED.

5 WOULD YOU CONTEST IT?

6 MR. EAGLIN: I WOULD NOT, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 MR. MITCHELL: ONE LAST FACT, YOUR HONOR --

9 THE COURT: YES.

10 MR. MITCHELL: -- JUST FOR THE SAKE OF FULL
11 DISCLOSURE.

12 WHEN THE THING GOT PUBLISHED, THE NOTICE OR THE
13 PRELIMINARY ORDER OF FORFEITURE, THE CASE NUMBER WAS CRIMINAL
14 09-122-RZ. TECHNICALLY, I GUESS IT SHOULD HAVE HAD A PAREN,
15 CAPITAL A, CLOSE PAREN, BECAUSE THE MATTER THAT WENT TO TRIAL
16 WAS A SUPERSEDING INFORMATION.

17 BUT I DON'T BELIEVE THAT THAT SHOULD AFFECT
18 ANYTHING. I THINK IF ANYBODY WANTED TO FIND THE CASE SIMPLY
19 BY HAVING 09-122-RZ OR MR. SNAPP'S NAME, I THINK THEY WOULD
20 BE ABLE TO FIND IT. BUT I JUST WANTED TO DISCLOSE THAT. I
21 HAD ASKED TO PUT IN THE Z -- I MEAN, THE CAPITAL A, BUT
22 APPARENTLY IT DIDN'T HAPPEN.

23 THE COURT: ALL RIGHT.

24 MR. MITCHELL: I SHOULD HAVE PUT IT IN MY PAPERS
25 THERE WHEN I WAS GIVING IT TO THE PEOPLE WHO PUBLISHED IT.

1 THANKS.

2 THE COURT: ALL RIGHT. THE COURT RECEIVES THE
3 PRESENTENCE REPORT AND ADOPTS ITS FINDINGS OF FACT AND
4 CONCLUSIONS OF LAW.

5 MR. SNAPP, YOU HAVE THE RIGHT TO ADDRESS THE COURT
6 AS TO ANYTHING YOU THINK PERTINENT TO THESE PROCEEDINGS. YOU
7 DON'T HAVE TO, BUT IT IS YOUR ABSOLUTE RIGHT BEFORE I
8 PRONOUNCE SENTENCE. AND, SO, I GIVE YOU THAT OPPORTUNITY NOW
9 IF THERE IS ANYTHING YOU WANT TO TELL ME.

10 THE DEFENDANT: WELL, YOUR HONOR, I DON'T REALLY
11 HAVE A LOT TO SAY IN REGARD TO THIS.

12 I THINK I'VE BEEN TREATED AS FAIRLY AND JUSTLY AS I
13 COULD DO IN THE INSTANCE OF PLEADING NOT GUILTY. I WILL
14 FAITHFULLY FOLLOW THROUGH WITH WHATEVER I AM -- THE COURT
15 DECIDES TO IMPOSE UPON ME.

16 I'M -- I HAVE MY REGRETS FOR WHAT I'VE DONE. I
17 MEANT NO CRIMINAL INTENT AT ANY POINT IN TIME. THAT DIDN'T
18 OCCUR TO ME, A CRIMINAL INTENT. SO, I AM WILLING TO FOLLOW
19 THROUGH WITH THE BEST OF MY ABILITY WHATEVER IS IMPOSED UPON
20 ME.

21 THE COURT: ALL RIGHT. THANK YOU.

22 IS THERE ANY LEGAL CAUSE WHY SENTENCE SHOULD NOT BE
23 PRONOUNCED, MR. MITCHELL?

24 MR. MITCHELL: NO, YOUR HONOR.

25 THE COURT: MR. EAGLIN?

1 MR. EAGLIN: NO, YOUR HONOR.

2 THE COURT: THE COURT HAS CONSIDERED ALL THE
3 SENTENCING FACTORS WHICH ARE LISTED IN THE STATUTE 18, USC
4 SECTION 3553 SUBSECTION A.

5 AND THE COURT HAS CONSIDERED THE GUIDELINES, WHICH
6 ARE ADVISORY, WHICH BASED UPON AN OFFENSE LEVEL OF 12 AND A
7 CRIMINAL HISTORY OF -- CRIMINAL HISTORY CATEGORY OF ROMAN
8 NUMERAL I, SUGGESTS AN IMPRISONMENT SENTENCE RANGE OF 10 TO
9 16 MONTHS.

10 IT IS ORDERED THAT THE DEFENDANT SHALL PAY TO THE
11 UNITED STATES A SPECIAL ASSESSMENT OF \$25, WHICH IS DUE
12 IMMEDIATELY.

13 ALL FINES ARE WAIVED. THE COURT FINDS THE
14 DEFENDANT DOES NOT HAVE THE ABILITY TO PAY A FINE.

15 THE COURT FINDS THAT THE PROPERTY WHICH HAS BEEN
16 IDENTIFIED IN COUNT TWO OF THE INFORMATION AND WHICH WAS
17 SPECIFIED IN THE PRELIMINARY ORDER OF FORFEITURE HAS BEEN
18 DETERMINED TO BE SUBJECT TO FORFEITURE. THE PRELIMINARY
19 ORDER OF FORFEITURE IS INCORPORATED BY REFERENCE INTO THE
20 JUDGMENT AND IT IS MADE FINAL. AND THE ELEPHANT SKULL WHICH
21 WAS ADMITTED AS EVIDENCE IN THE TRIAL IS FORFEITED TO THE
22 UNITED STATES.

23 THE DEFENDANT, GERARD SNAPP, IS HEREBY PLACED ON
24 PROBATION ON COUNT ONE OF THE INFORMATION FOR A TERM OF THREE
25 YEARS UNDER THE FOLLOWING TERMS AND CONDITIONS:

1 THE DEFENDANT SHALL COMPLY WITH THE RULES AND
2 REGULATIONS OF THE UNITED STATES PROBATION OFFICE AND GENERAL
3 ORDER 318, A COPY OF WHICH WILL BE PROVIDED TO THE DEFENDANT
4 BY THE PROBATION OFFICE AND EXPLAINED TO HIM.

5 THE DEFENDANT SHALL REFRAIN FROM ANY UNLAWFUL USE
6 OF A CONTROLLED SUBSTANCE.

7 THE DEFENDANT SHALL SUBMIT TO ONE DRUG TEST WITHIN
8 15 DAYS OF RELEASE FROM -- 15 DAYS FROM THE DATE OF JUDGMENT
9 AND, AT LEAST, TWO PERIODIC DRUG TESTS THEREAFTER NOT TO
10 EXCEED EIGHT TESTS PER MONTH AS DIRECTED BY THE PROBATION
11 OFFICE.

12 THE DEFENDANT SHALL PARTICIPATE FOR A PERIOD OF
13 THREE MONTHS IN A HOME DETENTION PROGRAM WHICH MAY INCLUDE
14 ELECTRONIC MONITORING, GPS OR VOICE RECOGNITION AND SHALL
15 OBSERVE ALL RULES OF SUCH A PROGRAM AS DIRECTED BY THE
16 PROBATION OFFICER.

17 THE DEFENDANT SHALL MAINTAIN A RESIDENTIAL
18 TELEPHONE LINE WITHOUT DEVICES AND/OR SERVICES THAT MAY
19 INTERRUPT AN ERUPTION OF THE MONITORING EQUIPMENT.

20 THE PROGRAM SHALL ALLOW THE DEFENDANT TO LEAVE HIS
21 HOME AS NECESSARY, TO WORK, ATTEND MEDICAL APPOINTMENTS, MAKE
22 ANY COURT APPEARANCES OR ATTORNEY VISITS THAT ARE NECESSARY,
23 TRANSPORT HIS ADOPTED SON TO AND FROM SCHOOL AND ATTEND
24 SCHOOL FUNCTIONS, AND PERFORM OTHER TASKS WHICH ARE
25 AUTHORIZED BY THE PROBATION OFFICER.

1 THE DEFENDANT SHALL PERFORM 100 HOURS OF COMMUNITY
2 SERVICE OR OTHER SIMILAR SERVICE DIRECTED BY THE PROBATION
3 OFFICER.

4 THIS SENTENCE IS A DEPARTURE FROM THE SENTENCING
5 GUIDELINES WHICH, AS I INDICATE, PROVIDE FOR A TERM OF
6 IMPRISONMENT IN CIRCUMSTANCES LIKE THIS. THE COURT FINDS
7 THAT A DEPARTURE IS APPROPRIATE FOR THE FOLLOWING REASONS:

8 FIRST, IT IS CLEAR TO THE COURT, AND THE COURT
9 BELIEVES IT WAS CLEAR TO THE JURY, THAT THE DEFENDANT DID NOT
10 ACT OUT OF A DESIRE TO MAXIMIZE A PROFIT BUT, RATHER, BECAUSE
11 HE FOUND HIMSELF IN DIRE CIRCUMSTANCES WITH LITTLE OTHER
12 METHOD TO PROVIDE THE NECESSITIES OF LIFE.

13 SECOND, THE DEFENDANT HAS A HISTORY OF SERVICE TO
14 THE COMMUNITY HAVING TAKEN SIGNIFICANT AND TANGIBLE STEPS TO
15 HELP THOSE WHO HAVE FALLEN ON HARD TIMES.

16 THIRD, THE DEFENDANT HAS A HISTORY OF SIGNIFICANT
17 REDEMPTION IN HIS OWN PERSONAL LIFE HAVING BATTLED AN
18 ADDICTION AND FOR A QUARTER OF A CENTURY HAVING ARRESTED ITS
19 HOLD ON HIM. AND THE DEFENDANT HAS APPARENTLY BEEN FREE OF
20 CRIMINAL BEHAVIOR FOR A LONG PERIOD OF TIME.

21 FOURTH, THE CRIME, LIKE ALL CRIMES, IS SERIOUS, BUT
22 IT IS MITIGATED SOMEWHAT BY THE FACT THAT THE DEFENDANT WAS
23 IN LAWFUL POSSESSION OF THE ELEPHANT SKULL AND DID NOT
24 PROCURE THE SKULL FOR THE PURPOSE OF VIOLATING THE LAW BY
25 OFFERING IT FOR SALE IN INTERSTATE COMMERCE.

1 FIFTH, THE DETERRENT VALUE OF A MORE SEVERE
2 SENTENCE WOULD BE SLIGHT. THE OFFER FOR SALE WAS OUT IN THE
3 OPEN, TRANSPARENT TO ALL, AND NOT PART OF ANY UNDISCLOSED
4 SCHEME, THE ENCOURAGEMENT OF WHICH IS TO BE AVOIDED.

5 SIXTH, A SENTENCE OF IMPRISONMENT WOULD DEPRIVE AN
6 EIGHT-YEAR OLD SON OF HIS ADOPTED FATHER FURTHER INCREASING
7 THE TRAUMA THAT THE CHILD ALREADY HAS UNDERGONE.

8 AND, FINALLY, IN THE COURT'S VIEW, THE IMPOSITION
9 OF PROBATION TOGETHER WITH A REQUIREMENT THAT THE DEFENDANT
10 PERFORM A SIGNIFICANT NUMBER OF HOURS OF COMMUNITY SERVICE OR
11 LIKE SERVICE REINFORCES THE NOTION THAT THE COURT AND THE
12 JUSTICE SYSTEM TAKE THE VIOLATION SERIOUSLY. AND THEY WARN
13 THE DEFENDANT SUFFICIENTLY THAT SIMILAR ACTS IN THE FUTURE
14 MAY BRING A MORE SEVERE RESULT.

15 MR. SNAPP, I'M ADVISING YOU THAT YOU HAVE A RIGHT
16 OF APPEAL OF THE SENTENCE. AND THE APPEAL OF THE SENTENCE
17 MAY BE TAKEN WITHIN -- BY POSTING A NOTICE WITH THE CLERK
18 WITHIN TEN DAYS FROM TODAY'S DATE. FAILURE TO FILE A NOTICE
19 OF APPEAL WILL RESULT IN THERE BEING NO REVIEW OF THE COURT'S
20 SENTENCE.

21 YOU'VE ALREADY QUALIFIED FOR THE APPOINTMENT OF
22 COUNSEL. I FEEL CONFIDENT YOU COULD QUALIFY FOR THE
23 APPOINTMENT OF APPELLATE COUNSEL.

24 MR. EAGLIN, IF MR. SNAPP WISHES TO APPEAL, WILL YOU
25 ASSIST HIM IN FILING SUCH A NOTICE?

1 MR. EAGLIN: I WILL, YOUR HONOR.

2 THE COURT: THERE'S A BOND IN THIS CASE. ANY
3 REASON NOT TO EXONERATE IT?

4 MR. MITCHELL: NO, YOUR HONOR.

5 MR. EAGLIN: NO, YOUR HONOR.

6 THE COURT: ALL RIGHT. THE BOND IS EXONERATED.

7 IS THERE ANYTHING FURTHER TO DO TODAY?

8 MR. MITCHELL: YOUR HONOR, I JUST WASN'T SURE. THE
9 TEN-DAY PERIOD, DOES IT RUN FROM THE TIME THAT THE COURT
10 ISSUES ITS JUDGMENT OR FROM THE ORAL PRONOUNCEMENT? THAT WAS
11 THE ONE THING I WASN'T SURE OF. I MAY BE WRONG. I JUST --

12 THE COURT: I BELIEVE IT IS FROM THE TIME THAT THE
13 JUDGMENT IS ENTERED.

14 MR. MITCHELL: OKAY.

15 THE COURT: BUT I'M NO LONGER AUTHORIZED TO
16 PRACTICE LAW, MR. MITCHELL.

17 MR. EAGLIN, YOU WILL ADVISE THE DEFENDANT ON HOW TO
18 BEST PROTECT HIMSELF IN THE EVENT HE CHOOSES TO TAKE AN
19 APPEAL.

20 MR. EAGLIN: I WILL, YOUR HONOR.

21 THE COURT: ALL RIGHT. ANYTHING ELSE?

22 MR. MITCHELL: NO, YOUR HONOR.

23 THE COURT: MR. EAGLIN.

24 MR. EAGLIN: ONE MATTER, YOUR HONOR.

25 THE COURT, HAVING WAIVED THE FINE IN THIS CASE

1 BECAUSE THE DEFENDANT LACKED THE ABILITY TO DO SO, I THINK
2 THE THREE MONTHS OF HOME DETENTION WITH ELECTRONIC MONITORING
3 WE WOULD ASK THAT THE COURT WAIVE ANY COSTS ASSOCIATED --

4 THE COURT: I DID NOT ORDER THAT HE PAY -- PAY FOR
5 IT.

6 MR. EAGLIN: VERY WELL, YOUR HONOR.

7 THE COURT: FOR A SIMILAR REASON. I LOOKED AT WHAT
8 THE PROBATION OFFICE WAS RECOMMENDING, THAT HE BE ORDERED TO
9 PAY OR THAT HE POSSIBLY BE ORDERED TO PAY, AND THEY WERE
10 ORDERING -- RECOMMENDING TEN MONTHS' DETENTION. BY MY
11 CALCULATION THAT WORKED OUT TO SOME \$3,600, WHICH SEEMED
12 INCONSISTENT WITH AN INABILITY TO PAY A FINE.

13 MR. EAGLIN: YOUR HONOR, I JUST RAISED IT BECAUSE
14 POTENTIALLY IT COULD HAVE BECOME AN ISSUE LATER ON BECAUSE
15 THE COURT DID NOT ADDRESS IT ONE WAY OR ANOTHER.

16 THE COURT: WELL, IT'S THE COURT'S ORDER THAT THE
17 DEFENDANT NOT BE REQUIRED TO PAY FOR THE ELECTRONIC
18 MONITORING.

19 MR. EAGLIN: THANK YOU, YOUR HONOR. WE HAVE
20 NOTHING MORE.

21 THE COURT: MR. MITCHELL, LAST CHANCE.

22 MR. MITCHELL: NOTHING FURTHER, YOUR HONOR. THANK
23 YOU.

24 THE COURT: ALL RIGHT. GOOD LUCK, MR. SNAPP.

25 THE DEFENDANT: THANK YOU, YOUR HONOR.

1 THE COURT: WE'LL BE IN RECESS.

2 (PROCEEDINGS COMPLETED 1:58 P.M.)

3

4 C E R T I F I C A T E

5

6 I CERTIFY THAT THE FOREGOING IS A CORRECT
7 TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE
8 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

9

10 DOROTHY BABYKIN 3/4/10

11 _____

12 FEDERALLY CERTIFIED TRANSCRIBER DATED

13 DOROTHY BABYKIN

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