

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civ. No. 16-832

ACOMA CEREMONIAL SHIELD,
MORE PARTICULARLY DESCRIBED AS:
LOT #68 “BOUCLIER DE GUERRE PUEBLO
PROBABLEMENT ACOMA OU JEMEZ XIX SIÈCLE OU
PLUS ANCIEN CUIR.”

Defendant-in-rem.

VERIFIED COMPLAINT FOR FORFEITURE *IN REM*

Plaintiff, United States of America, brings this complaint in accordance with Supplemental Rule G(2) of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions, and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action to forfeit and condemn to the use and benefit of the United States of America property involved in violations of the Archaeological Resources Protection Act, 16 U.S.C. § 470aa *et seq.*, and 18 U.S.C. §§ 2314 and 2315, that is subject to forfeiture pursuant to 16 U.S.C. § 470gg(b)(3) and 18 U.S.C. § 981(a)(1)(C).

DEFENDANT *IN REM*

2. The defendant *in rem* consists of the following:
- a. Acoma Ceremonial Shield described by EVE Auction House as Lot #68 “BOUCLIER DE GUERRE Pueblo probablement Acoma ou Jemez XIX siècle ou plus ancien Cuir.” (hereafter referred to as “Acoma Ceremonial Shield” or “Defendant Property”).

3. The Defendant Property is now, and during the pendency of this action will be, in the jurisdiction of this Court.

JURISDICTION AND VENUE

4. The United States District Court for the District of New Mexico has subject matter jurisdiction under 28 U.S.C. §§ 1345, 1355(a) and 1356.

5. Venue for this civil forfeiture action is proper in this district pursuant to 28 U.S.C. §§ 1355 and 1395, as acts or omissions giving rise to the forfeiture took place in this district.

FACTS

6. On May 27, 2016, the Federal Bureau of Investigation (FBI) in Albuquerque, New Mexico learned that EVE Auction House had scheduled the auction for May 30, 2016 in Paris, France. The auction included an item of cultural patrimony belonging to the Pueblo of Acoma located in New Mexico. EVE Auction numbered this item as Lot #68 described it as follows: “BOUCLIER DE GUERRE Pueblo probablement Acoma ou Jemez XIX siècle ou plus ancien Cuir.” (Shield of war Pueblo probably Acoma or Jemez XIX century or more old leather).

7. The Pueblo of Acoma is a federally recognized Indian Tribe and has a government-to-government relationship with the United States. The Pueblo of Acoma reservation is held in trust by the United States and the Pueblo retains the same sovereign powers as other federally recognized Indian Tribes within the United States.

8. Tribal leaders presented pictures of the ceremonial shield being sold by the EVE Auction House in Paris, France to C.S., an enrolled member of the Pueblo of Acoma. C.S. identified the photographs as depicting the exact shield her grandfather had used in cultural and religious ceremonies for the Pueblo. Her grandfather, B.P.S., had held the position as the traditional kiva leader and cultural practitioner with the Pueblo. As such, he was the caretaker of

this ceremonial shield, which was kept in the family home atop the mesa known as Sky City within the exterior boundaries of the Pueblo of Acoma.

9. Special Agents of the Federal Bureau of Investigation (FBI) and the Bureau of Indian Affairs (BIA) interviewed C.S. C.S. gave a detailed and credible account of the stolen Acoma shield that was cared for by her grandfather, B.P.S.

10. C.S. grew up in her grandparent's home and recalled that the pictured shield from EVE Auction House – along with six others - was kept on a wooden shelf built into the adobe wall. The shelf was in a dark room on the second floor of the three-story home, which was a room that was used to care for and protect other patrimonial items as well. C.S. witnessed her grandfather care for and pray with these items on a daily basis. C.S. advised that she would recognize these shields anywhere. C.S. identified the shield currently possessed by EVE Auction house as one that was stolen from her childhood home.

11. This tradition of caretakers of patrimonial items, such as the ceremonial shield, was and remains a common practice within the Pueblo of Acoma. Items of spiritual and cultural patrimony are either handed down through family lines, through clans, or through positions within the community. Caretakers of such items – to include shields – have the responsibility of ensuring not only the protection, but also the proper respect for the traditions involving their use.

12. The responsibilities of the caretakers include traditional practices handed down through an oral history. There are no documents detailing these responsibilities. Rather, an oral tradition exists of previous caretakers passing down the information to young leaders. C.S. recalled her great-grandfather passed down the responsibility of being the caretaker of the shields to B.P.S.

13. This oral history includes the proper use of the shields in religious practices and festivals. While B.P.S. was the caretaker of the shields, they belonged to the Pueblo of Acoma. Other members of the Pueblo would request to use the shields in traditional and religious ceremonies. Ownership of the shields did not transfer when Pueblo members used the shields in such ceremonies.

14. C.S. recalled that the home where she grew up was burglarized in the early 1970s. Six of the seven shields in her grandfather's care were taken. C.S. had not seen them since that time, and did not know their whereabouts. The burglary was thought to have been reported to the tribal sheriff, as the Acoma Police Department did not exist at the time. There is no written record of the burglary, but it was not common practice for reports to be memorialized in writing with the tribal sheriff.

15. C.S. identified for Special Agents of the BIA and FBI a photograph of the shield being auctioned by EVE Auction House as the shield that was under the care of her grandfather. The shield had a name, but she could not remember what it was. She stated that the only difference between the photograph and the shield under the care of her grandfather was the addition of the feathers. Prior to the theft, the shield was plain and without any ornaments.

16. The Historic Preservation Office for the Pueblo of Acoma has informed the FBI that during religious initiation ceremonies these shields would be adorned with eagle or turkey feathers. U.S. Fish and Wildlife Service, which has expertise in cultural patrimony, advised that there have been other instances in which ornaments like feathers are added to items of cultural patrimony and archeological resources in order to add to the authenticity and/or value of the item. In reviewing the images from EVE Auction House, U.S. Fish and Wildlife did not believe that the feathers on the shield were real eagle or turkey feathers..

17. The Pueblo of Acoma has recognized the cultural patrimony of the shield, independent of C.S. According to the Governor of the Pueblo of Acoma, the Pueblo “utilizes its Historic Preservation Office Advisory Board, consisting of various elders, religious leaders, and cultural practitioners to make assessments in identifying the provenance of an item.”

Photographs of the shield were reviewed by the Pueblo of Acoma Historic Preservation Advisory Board on May 19, 2016. The board concluded that this shield appeared to be an authentic Acoma ceremonial item that was removed without authorization from the Pueblo of Acoma.

18. The shield being auctioned by EVE Auction House is circular and measures 52 centimeters in diameter. The front of the shield depicts a Kachina – a deified ancestral spirit in Pueblo culture – with a round face and horns. The Kachina’s face is painted yellow, green, and blue. Circles represent the eyes and triangles represent the teeth of the Kachina. Stitching of leather straps hold together the two thick tanned leather skins that serve as the front and back surfaces of the shield. The back side of the shield has a strap that would be used for holding it on the shoulder or the arm.

19. In a separate search warrant execution in 2015, BIA recovered a shield with similar characteristics – to include the same horned face – as the shield advertised with EVE Auction House. This shield was successfully recovered by the BIA from an art gallery in Bozeman, Montana, where it had been offered for sale. The Acoma Historic Preservation Office positively identified the shield as an Acoma shield, and the Governor of Acoma authenticated it as an historical item of patrimony.

20. The ceremonial shield in the possession of EVE Auction House in Paris, France, is more than 100 years old and is a sacred item with ongoing historical, traditional, cultural, and

religious importance central to the people of the Pueblo of Acoma. As such, it properly entrusted solely to the care of the traditional leaders of the Pueblo of Acoma.

21. In the EVE Auction House catalogue for Lot 68, an expert in American Indian artifacts wrote that this “very rare war shield” was either of the Acoma or Jemez Pueblos, and estimated to be from the nineteenth century or older. The description later states that these shields were used by the pueblo people from 1700 to 1850, and “with a few exceptions they were no longer manufactured after that date.”

22. Under Pueblo of Acoma law, the shield cannot be destroyed, alienated outside of the Pueblo, appropriated by someone outside of the Pueblo, or conveyed by any individual outside of the Pueblo.

23. Moreover, under Pueblo of Acoma law, the possessor of the shield would have given the shield to successive caretakers in accordance with Pueblo law and tradition for the benefit of the Pueblo of Acoma.

24. C.S. and other Acoma leaders independently stated that B.P.S. would have never sold the shield. B.P.S. was a traditional kiva leader who was responsible for many religious and cultural items, sacred duties that he took seriously and with respect.

25. Items of Acoma cultural patrimony, including the ceremonial shield, are sacred items entrusted or cared for by select societies, clans, families, or individuals governed by strict Acoma laws and customs for the collective benefit of the Pueblo.

26. B.P.S. possessed and cared for the item on behalf of the Pueblo of Acoma for the Pueblo’s benefit. However, the shield was and remains collectively owned by the Pueblo of Acoma. Pueblo of Acoma law prohibits removing the shield from the Pueblo, claiming personal

ownership of the shield, transferring the shield to anyone outside the Pueblo, or selling the shield.

27. The Archeological Resources and Protection Act, *inter alia*, prohibits the removal of an archaeological resource from public or Indian lands without a permit and the sale, purchase, exchange, transport, or receipt, of an archaeological resource, in violation of any other Federal law or State law.

28. The Archeological Resources and Protection Act at 16 U.S.C. § 470bb defines archeological resources as (1) material remains of past human life of; (2) archaeological interest; (3) over 100 years old; (4) including, but not limited to pottery, basketry, bottles, weapons, projectiles, tools, structures, pit houses, rock paintings, graves, and human skeletal materials. As demonstrated above, the Acoma Ceremonial Shield is an archaeological resource as defined by § 470bb.

29. In violation of 16 U.S.C. § 470ee(b)(2), the Acoma Ceremonial Shield was sold, purchased, exchanged, transported, received or offered for sale, purchase, or exchange after it was appropriated from Indian Land, the Pueblo of Acoma Reservation, without the permission of the Secretary of the Interior, in violation of 16 U.S.C. § 433 (the Antiquities Act of 1906- repealed on Dec. 19, 2014 and replaced by 18 U.S.C. § 1866).

30. Under 18 U.S.C. § 2314, it is a crime to transport, transmit, or transfer in interstate or foreign commerce any goods, wares, merchandise, securities or money of the value of \$5,000 or more, knowing the same to have been stolen, converted, or taken by fraud.

31. Under 18 U.S.C. § 2315, it is a crime to receive, possess, conceal, store, barter, sell, or dispose of any goods, wares, or merchandise, securities, or money of the value of \$5,000

or more, which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken.

32. The ceremonial shield was stolen, taken and removed from the Pueblo of Acoma in the 1970s and transported in interstate and foreign commerce. The shield was smuggled out of the United States and taken to its current location in Paris, France.

33. For the May 30, 2016 auction, the shield was listed for auction at 7,000 Euros, or approximately 7,784 in U.S. dollars. In June 2015, the same shield – then identified as Item 60 – was estimated to sell for 15,000 to 25,000 Euro.

34. The EVE Auction house has historically sold archeological resources and items of cultural patrimony, and has been involved in such activity since at least 2009. In particular, EVE Auction House has sold substantial numbers of cultural and religious property belonging to various tribes from the Southwest of the United States. The Hopi Tribe, on several occasions, challenged the sale of numerous cultural items in Paris by EVE Auction House to the “Conseil des Ventes Volontaires” (CVV) — a body that arbitrates if a French auction should proceed or not with an auction under French civil law. The Hopi Tribe argued that under their tribal laws, as well as numerous state and federal statutes, these cultural and religious items were unlawfully alienated, no matter how that occurred, and, that these items had been outright stolen from the persons responsible for maintaining them.

35. EVE Auction House knew of the unlawful attainment of the archeological and culturally significant items it had offered for sale, including the ceremonial shield belonging to the Pueblo of Acoma. Moreover, the Pueblo of Acoma notified EVE Auction House via letter that the ceremonial shield was cultural patrimony belonging to the Pueblo.

36. The sales of Native American cultural and religious items in Paris have generated millions of dollars. EVE Auction House has long been on notice that the Native American cultural and religious items the company offers for sale were unlawfully and improperly acquired and that the persons who possess such items and offer them for sale at auction lack legitimate title to them.

FIRST CLAIM FOR RELIEF

37. The United States incorporates by reference the allegations in paragraphs 1 through 36 as though fully set forth.

38. Title 16, United States Code, Section 470gg(b)(3) subjects to forfeiture to the United States all archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 16 U.S.C. § 470ee of Title 16 has occurred and which are in the possession of any person ... upon a determination by any court that such archaeological resources were involved in such violation.

39. Defendant Property was involved in violation(s) of Archeological Resources Protection Act (ARPA) and is thus subject to forfeiture to the United States pursuant to 16 U.S.C. § 470gg(b)(3).

SECOND CLAIM FOR RELIEF

40. The United States incorporates by reference the allegations in paragraphs 1 through 36 as though fully set forth.

41. Title 18, United States Code, Section 981(a)(1)(C) subjects to forfeiture any property, real or personal, which constitutes or is derived from proceeds traceable to a violation

of 18 U.S.C. § 2314 (transportation of stolen goods) or 18 U.S.C. § 2315 (sale or receipt of stolen goods).

42. Defendant Property constitutes the proceeds of violation(s) of 18 U.S.C. § 2314 or 18 U.S.C. § 2315 or is derived from proceeds traceable to such property and is thus subject to forfeiture to the United States pursuant to 18 U.S.C. § 981(a)(1)(C).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests:

- (1) That, pursuant to Rule G(3)(b)(ii) of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions (“Supplemental Rules”), this Court issue a Warrant of Arrest *In Rem*, in the form submitted with the United States’ Application for Warrant of Arrest *In Rem*, to the United States Attorney General or to any duly authorized law enforcement officer, as the defendant personal property is not in the possession, custody or control of the United States and is not subject to a judicial restraining order;
- (2) That the Court direct any and all persons having any claim to the Defendant Property to file and serve their Verified Claims and Answers as required by 18 U.S.C. § 983(a)(4) and Supplemental Rule G, or suffer default thereof;
- (3) That the Defendant Property be forfeited and condemned to the use and benefit of the United States of America; and
- (4) That plaintiff be awarded its costs and disbursements in this action and such other and further relief as this Court deems proper and just.

Respectfully submitted,

DAMON P. MARTINEZ
United States Attorney

A handwritten signature in blue ink, appearing to read "Stephen R. Kotz", is written over the printed name of Stephen R. Kotz.

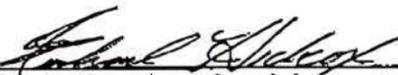
STEPHEN R. KOTZ
Assistant U.S. Attorney
P.O. Box 607
Albuquerque, NM 87103
(505) 346-7274

28 U.S.C. § 1746 DECLARATION

I am a Special Agent with the Federal Bureau of Investigation who has read the contents of the Complaint for Forfeiture *In Rem* to which this Declaration is attached; and the statements contained in the complaint are true to the best of my knowledge and belief.

I declare under penalty of perjury and the laws of the United States of America that this Declaration is true and correct, except as to matters stated on information and belief, and as to those matters I believe them to be true.

Dated: 7/20/16



Rachael Hickox, Special Agent
Federal Bureau of Investigation