

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 14-80201-CR-HURLEY/HOPKINS

UNITED STATES OF AMERICA

v.

ELITE ESTATE BUYERS, INC. d/b/a
ELITE DECORATIVE ARTS, and
CHRISTOPHER HAYES,

Defendants. /

JOINT FACTUAL STATEMENT

The undersigned parties agree that if this matter were to proceed to trial, the United States, by witness testimony, documentary evidence, and photographic materials would establish the following beyond a reasonable doubt:

The Business

At all relevant times, Christopher Hayes ("Hayes"), owned and operated Elite Estate Buyers, Inc. d/b/a Elite Decorative Arts ("Elite"), which was incorporated under the laws of the State of Florida, and was located at 1034 Gateway Boulevard, Suite 106, Boynton Beach, Florida 33426, in the Southern District of Florida. Hayes operated Elite as an auction house, which was in the business of accepting items on consignment and selling those items to winning bidders through auction. Elite and Hayes also sold consigned items directly to individuals through private sales. Hayes represented himself to be an expert in Asian antiques, including objects made from rhinoceros horn, elephant ivory, and protected coral.

Through Elite's website and Elite's employees, Hayes directed winning bidders and private buyers of items that they believed to be rhinoceros horns, and objects made from elephant ivory and protected coral to two shipping companies ("the Shippers") that were located in the vicinity of Elite's office. Together with those shipping companies, Hayes and Elite knowingly aided and abetted in the falsification of records and shipping documents related to the purchases of rhinoceros horns, objects made from elephant ivory, and protected coral, in order to avoid the scrutiny of the United States Fish & Wildlife Service ("USFWS") and United States Customs and Border Protection.

Sales of Endangered Species

1. Interstate Sale of Black Rhinoceros Horn to a Texas Resident

On or about January 30, 2012, Elite and Hayes accepted consignment of what they believed to be a raw (un-carved) Black rhinoceros horn from an individual who resided in Plantation, Florida. Elite and Hayes subsequently advertised the auction of that horn via an internet-based auction database, which stated that the horn would be sold at auction on March 18, 2012, for an "estimated price" of \$50,000 to \$60,000. The advertisement described the horn as "Lot 501, Huge Rhinoceros Horn Antique." Through an inquiry by a USFWS agent acting in an undercover capacity, Elite and Hayes were made aware that the rhinoceros horn depicted in the advertisement appeared to be from a Black rhinoceros. A photograph of Lot 501 is attached as Exhibit 1.

On March 19, 2012, Elite and Hayes sold Lot 501, not through auction, but rather through a "private" or "straight" sale for \$70,000, to an individual who Hayes knew was a resident of Texas. Between March 19, 2012, and April 12, 2012, Elite and Hayes received bank

deposits from the Texas buyer of Lot 501, totaling \$80,500 (\$70,000 sale price plus a 15% “buyer’s premium”).

2. Interstate Sale of Black Rhinoceros Horn to Undercover Agent

On May 14, 2012, Elite and Hayes received and accepted consignment of a raw Black rhinoceros horn from an individual who resided in New York, New York. Through an inquiry by a USFWS agent acting in an undercover capacity, Elite and Hayes were made aware that the rhinoceros horn depicted in the advertisement appeared to be from a Black rhinoceros. On June 24, 2012, Elite and Hayes sold the horn received from the New York resident as “Lot 600 – Antique African Huge Rhinoceros Horn,” for a winning bid of \$69,000 (\$60,000 plus a 15% “buyer’s premium” to Elite) to a USFWS agent working in an undercover capacity, who informed Elite that he resided in the Commonwealth of Virginia, and in fact participated in the auction by telephone from the Commonwealth of Virginia. A photograph of Lot 600 is attached as Exhibit 2. On June 26, 2012, Elite and Hayes received a wire transfer of \$69,000 for Lot 600 from the USFWS agent.

3. Sale and Subsequent Smuggling of Rhinoceros Horn and Elephant Ivory Items

On May 14, 2012, Elite and Hayes received and accepted what they believed was a Black rhinoceros horn with a silver base (hereinafter referred to as “the silver horn”) from an individual who Elite and Hayes knew resided in New York, New York. On June 19, 2012, Elite and Hayes advertised via an online auction database the June 24, 2012, auction sale of the following: (a) the silver horn, described as “Lot 601: Antique Rhinoceros Horn in English Silver,” the horn weight being 725 grams; and (b) a raw horn from a Black rhinoceros, described as “Lot 600: Antique African Huge Rhinoceros Horn,” for an “estimated price” of \$50,000 to \$70,000, with a “Total

weight of 2192 grams.” On June 25, 2012, Elite and Hayes sold Lot 601, along with several items made from elephant ivory (Lot: 519, described in the advertisement as “Chinese Carved Ivory Concentric Dragons Urn;” Lot: 582, described in the advertisement as “Pair Antique Chinese Carved Ivory Quan Yin Figures;” Lot: 620, described in the advertisement as “Chinese Carved Ivory Study of Elephant & Tiger;” Lot: 723, described in the advertisement as “19th Century Japanese Carved Ivory Samurai Figure Signed;” and Lot 725, described in the advertisement as “Chinese Ivory Elephant Attach Group Figure”) to an individual Elite and Hayes knew resided in British Columbia, Canada (“Canada Buyer”). Photographs of these lot numbers are attached as Exhibits 3 - 8. Canada Buyer paid Elite a total of \$37,789.50, which included a “Buyer’s Premium” of \$5,764.50, for the items purchased.

On June 26, 2012, Elite sent an email to Canada Buyer, that stated “Please also make shipping arrangements and send me the attached shipping release form,” and included contact information for one of Elite’s “Preferred” shippers. Canada Buyer sent an email reply to Elite, in which he asked “Can you refer a shipper that can ship ivory and rhino horns to Canada to me. I have contacted [the recommended shipper], he is unable to do so for me.” Elite sent a reply email in which it stated “Yes, try contacting [the second “Preferred” shipper], they should be able to help you.” On June 29, 2012, Canada Buyer sent an email to Elite which stated “Hi, I have wired the money to you! Can you please let [the second “Preferred” shipper] do the packing and shipping to me.” On July 2, 2012, Elite and Hayes received a wire transfer in the amount of \$37,779.50, from Canada Buyer. On July 10, 2012, the items purchased by Canada Buyer were shipped to an address in Richmond, British Columbia, Canada.

4. Second Interstate Sale of a Black Rhinoceros Horn to Undercover Agent

On October 15, 2012, Elite and Hayes advertised via an online auction database, the November 10, 2012, auction sale of a raw horn from a Black rhinoceros, which was displayed in a photograph. Elite and Hayes also advertised the sale of that horn on Elite's website. The advertisement described the horn as: "Lot 101 – Antique Rhinoceros Horn...pre-sale estimate \$30,000 - \$50,000. Total weight of 1807 grams." A photograph of Lot 101 is attached as Exhibit 9. On November 10, 2012, Elite and Hayes sold Lot 101 at auction for a winning bid of \$36,800 (\$32,000 plus a 15% "buyer's premium" to Elite) to a USFWS agent acting in an undercover capacity, who informed defendants that he was participating in the auction by telephone from the Commonwealth of Virginia. On November 16, 2012, Elite and Hayes received a wire transfer in the amount of \$36,800 for Lot 101.

5. Interstate Sale of Black Rhinoceros Horn to a Texas Resident

On December 14, 2012, Elite and Hayes accepted consignment and received what they believed were two horns from a Black rhinoceros to sell at Elite's March 2013 auction from a UFWS agent acting in an undercover capacity, who represented to defendants that he resided in Colorado, and who did, in fact, reside in Colorado (hereinafter "Colorado Consignor"). The combined weight of the horns consigned was approximately 3900 grams. A photograph of this horn is attached as Exhibit 10. On January 16, 2013, Elite and Hayes sold the horns received from Colorado Consignor in a private sale (not at auction) for \$55,000, to an individual Elite and Hayes knew resided in Texas. On January 23, 2013, Elite and Hayes received a wire transfer of \$55,000 for the horns.

a. Statements Made by Hayes

The USFWS undercover agent's communications with Elite employees and Hayes during and following the consignment of the raw horn were electronically recorded. During those communications, Elite employees and Hayes made the following statements:

- (1) On February 21, 2013, an employee/manager of Elite stated that Hayes sold the horns that the USFWS agent consigned to a "private buyer" for \$46,750. The Elite employee/manager indicated that Hayes made the decision to sell the horns to a private buyer, because the "provenance" was lacking, and Elite had information that USFWS was investigating the sale of Black rhinoceros horns and Hayes was concerned that if USFWS searched Elite, the horns would have been seized.
- (2) On February 27, 2013, Hayes stated that many horns are now being confiscated by USFWS and that selling the consigned horns to a private buyer was a judgment call. Hayes also indicated that if USFWS came into Elite, it would seize the horns, so he decided to sell it to a private buyer. Hayes also stated that the sale was for almost \$47,000 and he just could not let that go, given that the horns were dried and, in his experience, the horns would not have commanded that much money. Hayes stated that he "had to go to another big Asian deal in Milan," which was the reason he "had to do the deal quickly." Hayes went on to state "even though I did a private deal, if anyone tries to take these out of the country, we could have an issue. If

any issues do occur, they are going to come to me, and I will do my best to fix it, without it coming back to you.”

(3) On February 27, 2013, Hayes stated:

The horns could be going out of the country, but the law is strict and it is not supposed to go outside the United States and not even outside the State of Florida. I do not like the killing of the rhinoceros, but I sell the horns because it is done already, we are not selling new horns. But the law says you have to prove the horn was 100 years old, and with the consigned horns, there was no way we could have done that, so if USFWS came into the store, the horns would have been seized and I would have had to tell you that we have sold them in the past without issues, but this time we could not do anything.

(4) On February 27, 2013, Hayes stated that “someone” visited Elite, but he did not want to give [the USFWS undercover agent] details, because “the less you know, the better it is for you.” The USFWS undercover agent asked what he should tell USFWS if he is contacted about the horns, and Hayes stated “all you have to tell them is that you do not know a thing, that you gave them to Elite.” Hayes stated that if USFWS asked him, he would not hide anything, but he tell them he “was just so sorry and that he made a mistake” and that he “would suffer the consequence if there is one, and hope for a slap on the wrist.” Hayes also indicated that he has all the paperwork ready and “will deal with it, if need be” and “take the responsibility if there is any recourse, because he [Chris Hayes] should have written ‘100 years’ on your paper even though the state law from the 1970s, they are not going by that one.”

(5) On February 27, 2013, Hayes stated:

All I can do is try to work it out the best I can and pay a fine and do whatever has to be done and not sell any more unless the documentation is perfect. No one wants the rhinos and the elephants dead, but I feel that if someone went legitimately hunting and legally it was done, what are these families supposed to do 40, 50, 60 years afterwards, let them reap their reward now. Let's not kill anything else, but there's a fine line there, because if the horns bring big numbers, that's what have poachers killing the animals. Especially the fresh horn, they grind them up and use them in a tea bag. If the horns cross state lines, you're smuggling. There is no one in the state of Florida that buys these, very few.

(6) When asked if what they had done was illegal, an Elite

employee/manager stated "it is a grey area." To that, Hayes added "It is, but

I'd lean towards what you just said."

6. Wildlife Sold and Smuggled from the United States

Date	Type of Wildlife	Description	Price Paid	Smuggled To
January 18, 2011	Elephant Ivory	Carving (Lot 72)	\$1,600	Belgium
March 13, 2012	Elephant Ivory	Carving (Lot 265)	\$6,700	Hong Kong
April 9, 2012	Elephant Ivory	Carving (Lot 216)	\$1,000	UAE
May 31, 2012	Elephant Ivory	Carvings (Lots 129, 137, 351, 380, 404, 215, 261)	\$5,425	Thailand
July 9, 2012	Elephant Ivory	Carvings (Lots 262, 624, 264)	\$1,300	Thailand
November 29, 2012	Elephant Ivory	Carving (Lot 214, 216)	\$1,450	Russia
November 23, 2012	Elephant Ivory	Carvings (Lots 225, 239)	\$625	Thailand
January 18, 2013	Elephant Ivory	Carving (Lot 145)	\$1,700	Taiwan

Photographs of these items are attached as Exhibits 11 – 18.

7. Market Value

For the purpose of calculating the fair market value of the rhinoceros horns identified in the Information and Joint Factual Statement, the defendant agrees that the combined weight of the horns identified herein was approximately 19 lbs., with a retail market value in excess of \$400,000. Defendant agrees that the fair-market retail value for raw rhinoceros horn at the time of his illegal conduct was approximately \$25,000 per pound.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY


By:


Thomas A. Watts-FitzGerald
Assistant United States Attorney

Date:

1/14/15

By:

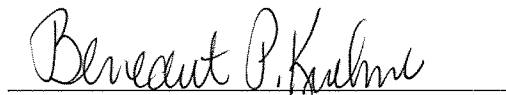

Gary N. Donner
Trial Attorney
Environmental Crimes Section

Reviewed and agreed to:

Date:

1/14/2015

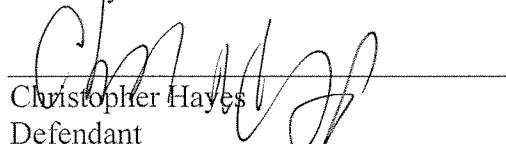
By:


Benedict Kuehne, Esq.
Attorney for Defendant

Date:

1/14/2015

By:


Christopher Hayes
Defendant