



SOCIETY FOR AMERICAN ARCHAEOLOGY

April 18, 2022

The Honorable Camille D. Bibles
United States District Court
District of Arizona
123 North San Francisco Street, Suite 200
Flagstaff, AZ 86001

RE: United States v. Joshua Elton Epperson, Case 3:21-mj-04223-CDB-1
United States v. Patrick Anthony Jochim, Case 3:21-mj-04224-CDB-1
United States v. Gail Alan Herrick, Case 3:21-mj-04172-CDB-1

Dear Justice Bibles:

The Society for American Archaeology (SAA) writes to urge you, in the strongest possible terms, to reject the plea agreements reached by the US Attorney's Office with the defendants in the cases listed above, which are scheduled for final sentencing on April 19. If these agreements were to stand, it would send the terrible message that looting of archaeological resources and Native American burial sites on public lands, not only in Arizona but elsewhere, will only receive a slap on the wrist if perpetrators are caught. This will only encourage more of these illicit activities.

The SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With approximately 5500 members, the SAA represents professional and avocational archaeologists, archaeology students in colleges and universities, and archaeologists working at tribal agencies, museums, government agencies, and in the private sector. The SAA has members throughout the United States, as well as in many nations around the world.

The facts in the case are not in dispute. Between May 2020 and April 2021, the defendants engaged in planned, systematic, and illicit excavation and looting of a group of ancient homes known as Long Mesa in the Cave Creek Ranger District of the Tonto National Forest. One defendant, Epperson, was observed by agents in May 2021 digging in the site and was arrested. After he was read his Miranda rights, Epperson admitted to illegally excavating in the pueblo archaeological site with two others (Jochim and Herrick). Epperson's home was searched by Forest Service law enforcement officers, and they discovered archaeological artifacts from the site, as well as human remains and items that had been interred with those deceased persons. In all, at least 13 cubic meters of previously undisturbed archaeological resource sediments were excavated, at least two graves were desecrated, and hundreds of cultural items and

archaeological resources were plundered. According to experts, the value of the archaeological materials stolen from the pueblo site has been assessed as exceeding \$1 million. The Forest Service has estimated that costs for restoration and repair of the damage caused by the defendants will be more than \$500,000. It should also be noted that the data lost with the illegal removal of items is irreplaceable and has caused permanent damage to the archaeological record.

The Archaeological Resources Protection Act (ARPA) and Native American Graves Protection and Repatriation Act (NAGPRA) exist to prevent and punish precisely this type of criminal behavior. The archaeological record consists of the traces left behind by those who came before us—the places they lived, the lives they led, and the creations they made. Careful preservation, excavation, and interpretation of these federally and tribally curated places and resources by trained archaeologists is vital in order for us to comprehend, to the fullest extent possible, the nation's past and the stories of those who lived in what is now the United States. When looting takes place, much of the information that the sites contain is lost forever, even if the stolen objects are recovered. As for Native American burial places themselves, the emotional, cultural, and spiritual value of those sites is beyond measure. Looting these burial places is desecration of the dead and indicates profound and inhumane disrespect for Native American communities, federal lands, and federal law.

The fact that the US Attorney's Office chose to charge each defendant with only a single violation of 36 U.S.C. 261.9, and finalized plea agreements that recommend only probation, indicates an irresponsible misinterpretation and misapplication of NAGPRA and ARPA, as well as a violation of rules requiring US Attorneys to charge criminals for the "most serious readily provable offense." If accepted by the court, it would constitute a gross minimization by the justice system of the scale and gravity of the offenses committed by the defendants, along with a total disregard of the victims of these activities. Such an outcome would also undoubtedly send the message that the pillaging of irreplaceable archaeological sites, as well as burial places sacred to Native American tribes, will be treated with leniency by the federal government, in spite of the penalties called for in its own laws. Congress recognized the seriousness of looting both archaeological sites and Native American burials as they included both civil and criminal penalties for violations of ARPA and NAGPRA. Given the severity of the situation, the court needs to apply these penalties.

Given the above, the SAA strongly encourages you to reject these plea agreements and require the US Attorney's Office to arrive at new agreements that adequately reflect the intent of ARPA and NAGPRA and address the reality of the defendants' conduct. If no such agreements are possible, then the cases should be brought to trial.

We thank you for your consideration.

Sincerely,



Deborah L. Nichols, Ph.D., RPA
President