

CAROL C. FITZGERALD
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DAVID L. CATTOOR,)
)
 Defendant.)
)
 _____)

CR-N-92-45-HDM(PHA)

MINUTES OF THE COURT

DATE: May 22, 1992

PRESENT: HONORABLE PHYLLIS HALSEY ATKINS U.S. MAGISTRATE JUDGE

Deputy Clerk: Jeanne Lange Reporter/Recorder: Oma Rose

U.S. Attorney by: Jeffrey B. Setness

Counsel for Defendant: Dennis (Mike) Evans

Pretrial Services Officer: None Appearing

Probation Officer: None Appearing

PROCEEDINGS: Entry of Plea of Guilty to Count 2 of Indictment filed
March 11, 1992 and Sentencing

Defendant is present.

The Court reviews the potential conflict of interest of Mr. Evans' representation of co-defendant Clifford Heaverne. The Court finds there to be minimal conflict due to the circumstances.

Government counsel states essential elements and provable facts of crime charged.

Court advises defendant of his rights and consequences of guilty plea.

Plea bargain set forth, all parties concur.

Defendant pleads guilty to count 2 of Indictment filed March 11, 1992.

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MAR 1 1 1992

1 LELAND E. LUTFY
United States Attorney
2 JOHN E. HAM
Assistant United States Attorney
3 701 E. Bridger Avenue, Suite 800
Las Vegas, Nevada 89101
4 (702) 388-6336

CAROL C. FITZGERALD, CLERK
BY *CAF* DEPUTY

6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 -oOo-

10 UNITED STATES OF AMERICA

11 PLAINTIFF

12 VS

13 RAYMOND D. YOWELL,
14 ALLEN MOSS,
IAN D. ZABARTE,
15 DAVE CATTOOR,
CLIFF HEAVERNE and
16 RICHARD HICKS

17 DEFENDANTS

CRIMINAL INDICTMENT

18 CR-S-91- 64 (DGLRL)

19 VIOLATION: 18 U.S.C. § 371 -
Conspiracy; 18 U.S.C. § 47 - Use of
Aircraft to Hunt Wild Horses; 18 U.S.C. §
2 - Aiding and Abetting

20 THE GRAND JURY CHARGES THAT:

21 COUNT ONE
Conspiracy

22 A. INTRODUCTION

23 At all times material herein:

24 1. The Duckwater Indian Reservation was designated an Indian Reservation
25 for the use and benefit of the Shoshone Indians by Proclamation of the Secretary of the
26 Interior, dated November 13, 1940, pursuant to the Indian Reorganization Act of 1934 (Title

|

1 25, United States Code, Section 461 et. seq.). Said Proclamation particularly described and
2 established the location and boundaries of the Duckwater Indian Reservation.

3 2. The Reservation occupies approximately three thousand two hundred
4 forty (3,240) acres within Nye County, Nevada, and has no wild, unbranded horses, mares or
5 colts running at large thereon.

6 3. The Secretary of the Interior through the Bureau of Land Management
7 (BLM) administers the public land and ranges and their resources contiguous to the
8 Duckwater Indian Reservation, pursuant to the Federal Land Policy and Management Act of
9 1976 (Title 43, United States Code, Section 1702 et seq.), and is responsible for the
10 management and protection of wild, unbranded horses running at large on public land and
11 range pursuant to the 1971 Wild, Free Roaming Horse and Burro Act (Title 16, United States
12 Code, Section 1331 - 1340).

13 4. The Western Shoshone National Council (hereinafter referred to as the
14 "Council") is an assembly of Western Shoshone Indian communities, bands, organizations,
15 tribes and governments with its principal office at Duckwater, Nevada. The Council is not
16 itself a tribe nor is any land deeded to or held in benefit for the Council by any treaty,
17 proclamation, or executive order of the United States.

18 5. The Council consists of a chief, subchief, secretary-treasurer, and a
19 representative from each of the member entities.

20 6. The Western Shoshone Wildlife and Plant Resource Commission is an
21 entity established by and which functions under the direction of the Council.

22 7. **RAYMOND D. YOWELL** is a resident of Nevada and chief of the
23 Council.

24 8. **ALLEN MOSS** is a resident of Nevada, subchief of the Council and a
25 commissioner for the Western Shoshone Wildlife and Plant Resource Commission.
26

1 9. **IAN D. ZABARTE** is a resident of Nevada and commissioner for the
2 Western Shoshone Wildlife and Plant Resource Commission.

3 10. **RICHARD HICKS** is a resident of Nevada.

4 11. **DAVE CATTOOR** is a resident of Utah.

5 12. **CLIFF HEAVERNE** is a resident of Nevada.

6 13. The provisions of Title 18, United States Code, Section 47 (Use of
7 Aircraft or Motor Vehicles to Hunt Certain Wild Horses or Burros), and Title 16, United
8 States Code, Sections 1331 through 1340 (Wild Free-Roaming Horse and Burro Act) as
9 administered pursuant to 43 CFR Chapter 11, Sections 4720 through 4740.1 (October 1, 1989
10 Edition) govern the authorized use of helicopters to capture wild, unbranded horses, running
11 at large on public land or ranges. (Title 16, United States Code, Sections 1331 through 1340)

12 14. On or about August, 1990, and continuing thereafter through on or about
13 December 2, 1990, in the State and Federal District of Nevada,

14 **RAYMOND D. YOWELL,**
15 **ALLEN MOSS,**
16 **IAN D. ZABARTE,**
17 **RICHARD HICKS,**
18 **DAVE CATTOOR and**
19 **CLIFF HEAVERNE**

20 defendants herein, did knowingly, willfully and unlawfully conspire, confederate, combine and
21 agree among themselves and each other to commit the following offense against the United
22 States, to wit: to use an aircraft for the purpose of capturing and killing wild, unbranded
23 horses, mares and colts running at large on public land or range, in violation of Title 18,
24 United States Code, Section 47.
25
26

1 **B. MANNER AND MEANS OF THE CONSPIRACY**

2
3 The manner and means by which the objectives of the foregoing conspiracy were
4 to be accomplished included but were not limited to the following:

5 15. It was part of the conspiracy that, at the request of the Council,
6 **RICHARD HICKS** devised a plan which the Council adopted, to capture wild, unbranded
7 horses running at large on public land or range, in part by using a helicopter and selling said
8 horses for slaughter.

9 16. It was further part of the conspiracy that the Council authorized that a
10 contract be entered into for the services of a helicopter and pilot to be used in capturing said
11 wild, unbranded horses.

12 17. It was further part of the conspiracy that **IAN ZABARTE**, acting under
13 the authorization of the Council, entered into a contract with **CLIFF HEAVERNE** and **DAVE**
14 **CATTOOR** to obtain the services of a helicopter and pilot to be used in capturing said wild,
15 unbranded horses.

16 18. It was further part of the conspiracy that **RICHARD HICKS, DAVE**
17 **CATTOOR** and others did act as a ground crew to aid and assist the helicopter operated by
18 **CLIFF HEAVERNE**, in hunting, for purposes of capturing and killing, wild, unbranded horses
19 running at large on the public land and ranges, which were herded onto and held at the
20 Duckwater Indian Reservation.

21 19. It was further part of the conspiracy that defendants did cause said wild,
22 unbranded horses to be sold and shipped by truck to Great Western Meats in Morton, Texas,
23 to be slaughtered and processed.

24 . . .

25 . . .

1 **B. OVERT ACTS**

2
3 In furtherance of the conspiracy and to effect the objects of the conspiracy, the
4 following overt acts, among others, were committed in the District of Nevada:

5 20. On or about August 4, 1990, the Council authorized **ALLEN MOSS** to
6 negotiate with **DAVE CATTOOR** to obtain the services of a helicopter and pilot to round up
7 wild, unbranded horses on public land and ranges.

8 21. On or about August, 1990, **ALLEN MOSS**, on behalf of the Council,
9 contacted **DAVE CATTOOR** and requested that **DAVE CATTOOR** enter into an agreement
10 with the Council to provide a helicopter and pilot to assist in the round-up of wild, unbranded
11 horses running at large in areas near the Duckwater Reservation.

12 22. On or about August 10, 1990, **IAN D. ZABARTE**, on behalf of the
13 Council and as Commissioner of the Western Shoshone Wildlife and Plant Resource
14 Commission, signed an agreement with **DAVE CATTOOR** and **CLIFF HEAVERNE** to obtain
15 the services of, in part, a helicopter and labor to "capture wild horses from the Duckwater
16 range."

17 23. On or about August 11 and 12, 1990, **RICHARD HICKS** and **DAVE**
18 **CATTOOR** participated in and supervised a ground crew which assisted the helicopter piloted
19 by **CLIFF HEAVERNE**, to hunt for purposes of capturing and killing wild, unbranded horses
20 on public land and range and hold said horses in corrals on the Duckwater Indian
21 Reservation.

22 24. On or about August 13, 1990, **RAYMOND D. YOWELL**, **ALLAN MOSS**
23 and **IAN D. ZABARTE** did instruct **RICHARD HICKS** to load onto trucks, to be shipped for
24 slaughter to Great Western Meats in Morton, Texas, the wild, unbranded horses and mares
25

1 held in corrals on the Duckwater Reservation, some of which had been captured with the
2 assistance of a helicopter.

3 25. On or about August 13, 1990, **RICHARD HICKS** did order, supervise
4 and assist in loading onto trucks said wild, unbranded horses and mares to be shipped for
5 slaughter to Great Western Meats in Morton, Texas.

6 26. On or about August 15, 1990, **IAN D. ZABARTE** sent a telephonic
7 facsimile instructing **Kathy Hems** of Great Western Meats in Morton, Texas, to process the
8 wild, unbranded horses and mares shipped for slaughter to Great Western Meats in Morton,
9 Texas, from the Duckwater Indian Reservation.

10 27. On or about December 2, 1990, **RAYMOND D. YOWELL** submitted a
11 claim on behalf of the Western Shoshone National Council to the Bureau of Land
12 Management, for costs incurred, including the use of a helicopter and labor, to gather, sell
13 and ship "wild mustang horses in the Duckwater Area."

14 In violation of Title 18, United States Code, Section 371.

15
16 **COUNT TWO**
17 Use of Aircraft to Capture Wild Horses;
18 Aiding and Abetting

19 28. Paragraphs 1 through 12 of this Indictment are incorporated and
20 realleged as if fully set forth herein.

21 29. On or about August 11 and 12, 1990, in the State and Federal District
22 of Nevada,


23 **RAYMOND D. YOWELL,**
24 **ALLEN MOSS,**
25 **IAN D. ZABARTE,**
26 **RICHARD HICKS,**
DAVE CATTOOR and
CLIFF HEAVERNE

1 defendants herein, did knowingly, intentionally and unlawfully use an aircraft to hunt, for the
2 purpose of capturing and killing, wild, unbranded horses, mares and colts running at large on
3 the public land and ranges, in violation of Title 18, United States Code, Section 47 and Title
4 18, United States Code, Section 2.

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6
7 **DATED:** this 11 day of March, 1992.

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9
10 **A TRUE BILL:**

11 
12 FOREPERSON OF THE GRAND JURY

13
14 
15 **LELAND E. LUTFY**
16 **United States Attorney**

17 
18
19 **JOHN E. HAM**
20 **Assistant United States Attorney**

CAROL E. FITZGERALD
CLERK
BY ME
DEPUTY

United States District Court

DISTRICT OF NEVADA MAY 22 4 46 PM '92

UNITED STATES OF AMERICA

V.

DAVID L. CATTOOR
P.O. Box 289
Nephi, UT 84648

RECEIVED
AND FILED
JUDGMENT IN A CRIMINAL CASE

Case Number: CR-N-92-45-HDM (PHA)

(Name and Address of Defendant)

Dennis (Mike) Evans
Attorney for Defendant

THE DEFENDANT ENTERED A PLEA OF:

guilty nolo contendere] as to count(s) two of the Indictment filed 3/11/92, and
 not guilty as to count(s) _____

THERE WAS A:

finding verdict] of guilty as to count(s) two

THERE WAS A:

finding verdict] of not guilty as to count(s) _____
 judgment of acquittal as to count(s) _____
The defendant is acquitted and discharged as to this/these count(s).

THE DEFENDANT IS CONVICTED OF THE OFFENSE(S) OF:

Use of Aircraft to Hunt Wild Horses in violation of Title 18, U.S.C.,
Section 47 and
Aiding and Abetting in violation of Title 18, U.S.C., Section 2

IT IS THE JUDGMENT OF THIS COURT THAT:

Defendant is fined in the amount of \$500.00 and a Special Assessment Fee of \$10.00, payable immediately.
Defendant is placed on supervised probation for a period of one year with a special condition that defendant shall not commit any offense in violation of Bureau of Land Management law.

ENTERED & SERVED

MAY 27 1992

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA
BY ME DEPUTY

In addition to any conditions of probation imposed above, IT IS ORDERED that the conditions of probation set out on the reverse of this judgment are imposed.

He
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CONDITIONS OF PROBATION

Where probation has been ordered the defendant shall:

- (1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;
- (2) associate only with law-abiding persons and maintain reasonable hours;
- (3) work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. (When out of work notify your probation officer at once, and consult him prior to job changes);
- (4) not leave the judicial district without permission of the probation officer;
- (5) notify your probation officer immediately of any changes in your place of residence;
- (6) follow the probation officer's instructions and report as directed.

The court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

IT IS FURTHER ORDERED that the defendant shall pay a total special assessment of \$ 10.00 pursuant to Title 18, U.S.C. Section 3013 for count(s) two as follows:

IT IS FURTHER ORDERED THAT counts one of the Indictment are DISMISSED on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall pay to the United States attorney for this district any amount imposed as a fine, restitution or special assessment. The defendant shall pay to the clerk of the court any amount imposed as a cost of prosecution. Until all fines, restitution, special assessments and costs are fully paid, the defendant shall immediately notify the United States attorney for this district of any change in name and address.

IT IS FURTHER ORDERED that the clerk of the court deliver a certified copy of this judgment to the United States marshal of this district.

The Court orders commitment to the custody of the Attorney General and recommends:

May 22, 1992
Date of Imposition of Sentence

Phyllis Halsey Atkins
Signature of Judicial Officer Phyllis Halsey Atkins

U.S. Magistrate Judge
Name and Title of Judicial Officer

5/22/92
Date

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____ at _____ Date

_____, the institution designated by the Attorney General, with a certified copy of this Judgment in a Criminal Case.

United States Marshal

By _____
Deputy Marshal


Court accepts guilty plea, finding the plea made freely, voluntarily and knowledgeable.

Court finds factual basis for defendant's plea of guilty to count 2.

Sentence is imposed. (written order to follow).

11:45 a.m. Court adjourns.

CAROL C. FITZGERALD, CLERK


By: Jeanne Lange, Deputy