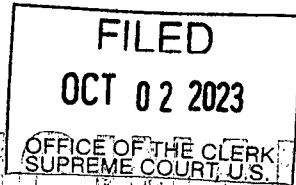


23-5717



ORIGINAL

No. 2023-_____

IN THE SUPREME COURT OF THE UNITED
STATES

RON SHAHAR

Petitioner

v.

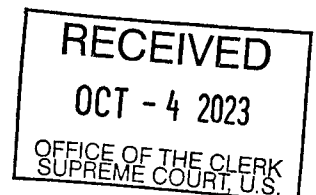
UNITED STATES OF AMERICA

Respondent

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE 9th CIRCUIT, DCA# 23-55075.

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QUESTION PRESENTED (Rule 14.1(a))

I. What is the level of proof required from the US Government when it seizes mutilated or damaged coins imported from Chinese recycling factories and dump yards, on the suspicion that the coins are forgeries, when it launches a motion to forfeit the coins or when it makes a motion for summary judgment in response to the owner complaint to return coins seized by way of warrants or other seizures, given that there is a differences in approach between the two jurisdictions that normally handle these case (Los Angeles as a port of entry) and Philadelphia (as the situs of the US Mint).

II. What qualifies as “probable cause” that is sufficient for the issuance of warrants to seize coins imported from China, given that so far no owner or Petitioner was able to progress any case to the point of receiving discovery and/or cross examining the agents that requested the warrants.

III. Can a trial court rely on an expert metallurgical opinion from someone who works in or for the US Mint, given that in the Philadelphia cases the US Mint expert report was determined to be false (at an oral hearing), and in the herein case in California the US Mint expert wrote that he performed a novel testing technique, which is doubtful whether it has industry standard recognition, and why the courts handling these cases should not appoint a neutral expert or at lease order the US prosecutors to provide the owner with samples so he can arm himself with an expert opinion of his own.

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TABLE OF AUTHORITIES

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Wealthy Max Limited v. US Treasury, 2:15-cv-05875-WB before the Hon.
Judge Wendy Bettelestone.

OPINION BELOW

The opinion of the California Court of Appeal, denying Appellant's appeal was published July 3, 2023 and is attached as Appendix A. The Order of the US District Court for the Central District of California granting the USA's motion for summary judgment as to forfeiture in case No. 20-CV-08487-MWF (RAO) was published Dec. 5, 2022 and is attached as Appendix B. There was no transcript.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S. Code § 2101 (c) and this certiorari is filed within 90 days from the 9th Circuit in the Central district of CA dated July 3, 2023 which denied Appellant's appeal from an order granting summary judgment to the US and allowing it to forfeit coins imported from China, which the US claimed are counterfeit. This procedure involved international trade and customs issues. This petition is timely for review under Rules 13.1 and 29.2 of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. United States Constitution, Amendment 4 (unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause.
2. 19 U.S.C. § 1595a(c)(1)(C) forfeiture of property (coins) as being introduced or attempted to be introduced into the United States in violation of 49 U.S.C. § 80302(b).
3. The Civil Asset Forfeiture Reform Act (CAFRA) of 2000, Pub. L. No. 106-185, 114 Stat. 202 (2000).
4. Treasury Regulations appearing at 31 CFR part 100, subpart C, are promulgated under 31 U.S.C. 5120 (the US Mint Redemption program of mutilated coins).

STATEMENT OF CASE

Petitioner with others imported mutilated and damaged coins from dump yards for recycling metal trash in China. US Customs got a confidential tip from a competitor in Los Angeles, seized the coins at the port

and took them to Mr. Larry Goldberg, (a private dealer and himself importer of coins) as a putative “expert” on numismatics to visually inspect whether they originate from the US Mint. The coins were confiscated and the USA made the Petition to dispose them as forgeries.

In response to discovery the USA objected and presented no documents at all. (USA Response 12/2/2021).

Petitioner argued that the coins are authentic, and that there was no probable cause to seize the coins and that multiple attempts by the US Mint to stop the importation of such coins from China have failed. See the cases of “One Black Porsche” and “Wealthy Max” in Pennsylvania. See also See the Report of the OIG from 2010 after a 21- month long investigation.

THE USA made a motion for summary judgment and attached an expert report which does not conform to any professional standards and states that a new technique was used.

The expert report attached for the first time in the motion for summary judgment (leaving no time to get a counter report), said that “that “Dr. Christian developed new data analytics methods for coin authentication and counterfeit detection” and that “while some pieces were within the (publicly accessible) specifications for U.S. coinage in terms of metallurgical composition and weight, the U.S. Mint demonstrated that the Questioned coins were actually made by a manufacturer other than the U.S. Mint”. Nobody knows what is the new data analytics method and why the standard and customary method was not used. Moreover, if the metallurgical composition and weight conforms to US coinage, how can there be a conclusion that they are not originating from the US Mint?

Petitioner alleged that everything in the summary judgement is factually contested, Larry Goldstein never submitted an affidavit and he himself was in conflict because of his own importations of coins (he could have been the anonymous tipper), and there is no explanation how he can “determine” from sight only, which coins are real, and which coins are forged.

Petitioner also argued that the US expert report looks sketchy and does not conform to normal and standard reports (no pictures, no explanation about the method, the control of coins, the compositions was not compared to standard Mint composition and the two graphs were unclear and bizarre (sporadic red and green dots).

Also there were issues as to missing proof of the chain of custody and possession, and as to chronology: Griffin collected samples on December 10, 2019 and sent them to the Mint in Philadelphia resulting in two testing dates on December 27, 2019 and on September 11, 2020 and signing the 4 page report on December 1, 2021 (a year after the second test and two years after the dispatch from LA to PA).

The Judge granted the motion for summary judgment of the USA, refused to appoint a neutral expert and denied request to compel the US to provide discovery.

The Circuit Court dismissed Appellant's appeal, finding nothing wrong with the fact the USA refused any type of discovery, the USA presented no evidence as to the initial probable cause, and it relied solely on an expert opinion that states the testing of the coins were made some novel procedure (that nobody knows about). Also, the Circuit court founds nothing wrong with the District Court's refusal to appoint a neutral expert or give Petitioner samples so he could get them tested by experts outside of the Mint.

Conversely, similar cases of US Customs seizures of the same kinds of coins from the same origin (the recycling factories in China) that were litigated in Philadelphia were handled differently because an actual hearing date was set up and the Judge found that the US Mint presented a false and misleading expert opinion, and those cases resulted in the US paying out of the face value of the coins. In the Philadelphia cases the US ADMITTED that the seized coins were not destroyed. Rather they were melted and used to manufacture new US minted coins.

REASONS FOR GRANTING THE PETITION

Cases of forfeiture of coins imported from China for redemption at any bank in the USA at face value (Pursuant to the US Mint Redemption Program (Treasury Regulations 31 CFR part 100, subpart C) are treated differently between those filed in California and those filed in Philadelphia resulting in opposite and conflicting results. The US Mint has waged a "war" on importers of coins from China but none of the cases filed by the USA for forfeiture of by Petitioners for return of seized coins ever reached a trial.

The US Mint is bound by its own rules to redeem the face value of any mutilated coin, provided it is authentic. Due to economics of global trading the business of recycling American waste has moved to China where factories handle loads of waste and dumps and American coins are found. The factories sell them to importers who bring them to the US and redeems them.

Despite efforts of the US CBP and Homeland Security since 2008 to prove that there is an industry of forging coins in China that is abusing the US Mint Redemption Program, to date all coins that were seized and tested were proved to be genuine and originating from the US Mint.

See the Report of the OIG from 2010 after a 21- month long investigation (explained hereafter), and the two related cases in Pennsylvania “*One Black Porsche*” and “*Wealthy Max*”.

The Mint itself is proposing amendments to Rulemaking of the redemption program (published in 2021) that would effectively stop all acceptance of coins from scrap dealers originating from China. Hundreds of objections were filed. In response to these objections the Mint decided to use customs to scare away all dealers from trying to bring coins to the USA by inundating them in litigation, attorney fees and expert costs that would make further imports uneconomical.

The Impact of prior litigation in Philadelphia “*One Black Porsche*”

A similar campaign by the US agents intended to stop the redemption of coins arriving from Chinese dumping yards at the US Mint has failed. In 2015 US agents filed a case in NJ (which was later transferred to Philadelphia) seeking civil forfeiture of similar coins valued between \$5.5-\$6 million. See *US v. One 2014 Black Porsche*, Index No. 2:15-cv-05814-JS.

The US claimed the same arguments in that case, that the coins were forged, that they did not originate from the US Mint, and that “all of the coins appeared to be corroded (having a greenish-brown patina) and mechanically deformed and/or chipped” (Compl. ¶36). They also argued that “clad coins can be reversed engineered” (Compl. ¶38), and that the “level of detail needed to make them appear genuine would be much lower” (Compl. ¶39). In ¶46 of the Complaint it was alleged that CBP laboratory analysis found “aluminum and silicon which are not found in genuine US coins”.

However, other than speculations about a possibility of reverse engineering and the same color of corrosion, the US Gov’t did not provide any evidence that the coins were indeed not genuinely originated from the US Mint.

The defendants submitted an expert report of Mr. Richard Baron who is an expert in forensic engineering and chemical compositional testing who negated all the speculations of the US Gov’t (Docket #30). Mr. Baron explained that “the detection of aluminum and silicon during chemical analysis is not uncommon, since such elements are very abundant in nature.

The detection of such elements in metallic objects that have been mutilated would even be expected, either through the transfer of these elements from contact against other materials during the scrapping (or recycling) process or from exposure to the environment (e.g., soil)".

Also, Mr. Baron explained that the "analytical techniques employed" were not disclosed, and there was no information whether the sampled coins from the block of samples originally sent to the lab, actually represented the entire block, or cherry-picked items.

As to the allegation that the coins exhibited a "greenish-brown patina", the expert explained that this is exactly what is expected from old coins composed of

75 percent copper and 25 percent nickel: "the described patina exhibited by the coins is typical for copper rich materials and is not necessarily an indication that the subject coins were intentionally exposed to chemicals in order to mask their true appearance".

A hearing was conducted before the Hon. Judge Juan Sanchez in the Eastern District of Pennsylvania on July 14, 2015 and a week later on July 21, 2015 the Government notified it was withdrawing its complaint and the entire case was dismissed with prejudice.

At the hearing the US Attorney Zack Intrater admitted several times that many of the allegations in the complaint were false or baseless. See for example in Page 100 of the Transcript:

10	THE COURT: So you concede you were factually wrong?
11	MR. INTRATER: Yes.
12	THE COURT: Okay.
13	MR. INTRATER: Yes.
14	THE COURT: About that. I think there were a couple
15	of other examples.
16	MR. INTRATER: Yes.
17	THE COURT: They gave a whole bunch of examples.
18	MR. INTRATER: Yes. Judge, I mean, you know, string
19	us up, right, but like what are we trying to do? We're
20	trying to amend the Complaint --

The attorneys for the 2 Chinese importers of the damaged coins argued successfully that their shipments of the coins were accepted by the US Mint, that the Mint did test them and decided they are authentic, sent the coins to be melted and the melted metal was used for minting fresh new coins that went into circulation. The Mint also approved the payment and issued a wire transfer. It was at the point that the District Attorneys intercepted and stopped the wire, and claimed that the coins were counterfeit.

However, when Judge Sanchez asked US Attorney Intrater what is the position of the Mint as to whether the coins were genuine or not, he admitted he has no idea. However, he insisted that the Chinese importers “fooled” the Mint.

The attorneys for the Defendants (the Chinese importers) submitted proof that prior shipments were tested by the Mint and found to be genuine US coins, and that a Report made by the OIG states that Defendant Wealthy Max’s one shipment was tested and found that the coins were genuine.

Also as to the test which the US Attorney’s Office did (not the Mint), the defense attorneys proved that it was never written that the samples were counterfeit and all it said was that .03% of the coins are laced with aluminum and silicone, but in fact all coins that come out of the Mint accumulate traces of aluminum and silicon on the outer part of the coin after coming in contact with things like cash register or vending machines, and that it is only natural that coins that are sent to be sorted in industrial scrap metal machines will accumulate a little more of these tracers.

Also during the hearing, the US Attorney Intrater admitted that it is not true what they wrote in the complaint that all coins imported from China must be coming from counterfeit sources, and it is not true what they wrote that the only source of coins that can arrive in China where US coins can be found is cars that are sent to be scrapped.

Also Mr. Intrater was unable to explain how the general and vague description of forgeries in China actually applied to the particular shipment of the defendants, and he was unable to explain how he will prove forgeries to the jury given that the coins were melted by the Mint, so there is actually no evidence to show to a jury (i.e. spoliation of evidence). In fact, Judge Sanchez told US Intrater that if indeed the melted coins were used to mint new coins, that appears to be an admission by the Government that the coins were

indeed not counterfeit, because the Government itself used them to put out into circulation and use by the public.

As stated, within a week US Attorney Intrater announced that the Government was withdrawing its forfeiture case with prejudice.

In a related case where the defendant Wealthy Max was suing the Government for the unpaid shipments, *Wealthy Max Limited v. US Treasury*, 2:15-cv-05875-WB before the Hon. Judge Wendy Bettelestone, for additional shipments worth \$3.25 Million for coins that were detained in the Ports of Los Angeles and New York.

These coins that arrives in L.A. were actually tested by the Government (CBP) and the Report dated Jan. 21, 2015 concluded that "The samples have a broad range of date, mint marks, and their weights and alloy compositions are indistinguishable from standard currency". The coins that arrived in NYC were Dollar coins and they were also tested on February 10, 2015, and the same language was written in that report.

Nevertheless, all demands to remit back the detained coins were unanswered by the CBP.

One year and 4 months after the filing of the complaint, the attorneys for Wealthy Max notified the court on March 1, 2017 that the US Government paid fully for 2 shipments and was going to pay for the 3rd in 30 days in full.

I believe the two cases, One Black Porsche and Wealthy Max show that all possible arguments of the US Government that the shipments from China are counterfeit, or connected to some criminal activity, were already litigated at length and have finalized in an embarrassing defeat to the US Attorney Offices that launched them.

At the *One Black Porsche* hearing the Chinese importers attorneys presented to the Hon. Judge Sanchez a report of the OIG from an investigation that started in 2008 of a 21-month long investigation. It is The OIA (Office of Inspector General) Report of Mint's Mutilated Coin Redemption Program, 2/16/2010.

The summary of that OIG Report appears at the web site of Coinworld.com. Here is the excerpt:

Agents from the Treasury Office of Inspector General, U.S. Secret Service, and Immigration and Customs Enforcement, along with Mint representatives, on July 15, 2008, inspected the delivery from three foreign companies of suspected mutilated coins contained in 37 crates on three tractor-trailer trucks.

The Treasury Office of Inspector General's Feb. 16, 2010, report did not identify the three companies nor the number of coins in the crates.

Of the 37 crates, 11 were randomly selected, and the contents dumped onto a vibratory conveyor belt for coin inspection.

Very few cents and 5-cent coins were found, while approximately 99 percent were dimes and quarter dollars. Two-thirds of the total coins submitted did not appear to be mutilated or damaged.

A Mint metallurgist examined 50 samples from each of the 11 crates inspected and confirmed the contents were genuine U.S. Mint coins.

See Coin World, Mint Adopts Mutilated Coin Redemption Program Changes, September 16, 2011, available at <https://www.coinworld.com/news/precious-metals/mint-adopts-mutilated-coin-redemption-program.html>.

The OIG Reports negates all possible claims that the coins seized from me were counterfeit, and I believe that the detentions and requests for warrants were made without probable cause, and without *bona fide*.

As can be seen, cases that were litigated in the Philadelphia jurisdictions resulted in the USA admitting that the coins were authentic. The herein case coming from California was treated so differently, with the USA not establishing any proof that there was any suspicion of criminal activity, not showing what probable cause there ever was, and relying on what appears to be a fake report, and an "eye testing" by a private competitor in Los Angeles (Lawrence Goldberg).

There are currently other cases pending in Texas and elsewhere which will be affected. E.g. in Plano, TX, Dkt 4:22-CV-00055,

The Court should lay out one protocol that establishes how these cases should proceed such as requirement of an oral hearing (which Petitioner was deprived of), requirement to appoint a neutral expert, requirement to give the claimant (owner) samples for he can test the samples himself, and most of all

the importance of compelling discovery upon the USA prior to disposing such a case on a summarily fashion (as did the first lower Court did).

Petitioner urges this Court to take review in order to delineate the scope of handling and disposing cases of Customs seizures of coins arriving from China for redemption at the US Mint.

CONCLUSION

For the foregoing reasons, petitioner requests that this Court grant the petition for certiorari.

Dated: Sep. 5, 2023

Respectfully submitted,
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Certificate of Service

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Dated: Sep. 6, 2023

Ron Shahar