

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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October Term, 1965

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No. 23637

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D. C. Docket No. CA-3-1171 Civil

JOHN J. KING,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the  
Northern District of Texas

Before TUTTLE, Chief Judge, BROWN and COLEMAN, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the transcript of the  
record from the United States District Court for the Northern  
District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged  
by this Court that the judgment of the said District Court in  
this cause be, and the same is hereby, reversed.

July 29, 1966

Issued as Mandate: Aug 22 1966

A true copy

Test: EDWARD W. WADSWORTH  
Clerk, U.S. Court of Appeals, Fifth Circuit  
By s/ \_\_\_\_\_

New Orleans, Louisiana

Deputy AUG 22 1966

Filed AUG 23 1966  
RAMELLE HAMILTON,  
Clerk

By s/ \_\_\_\_\_  
Deputy

[ C A P T I O N ]

MOTION FOR JUDGMENT

Now comes JOHN J. KING, Claimant herein, and moves this Court for judgment as hereinafter set forth upon the mandate and opinion of the United States Court of Appeals for the Fifth Circuit in the above entitled cause, which was styled "John J. King, Appellant, versus United States of America, Appellee," No. 23637 in said Court, and shows the Court the following:

1. A judgment of forfeiture of the Respondent military rifle with appurtenances (the "Rifle") and the Respondent revolver with appurtenances (the "Revolver") was entered by this Court on February 24, 1966.

2. Claimant appealed from said judgment of forfeiture to the United States Court of Appeals for the Fifth Circuit, where said Judgment of this Court was reversed on July 29, 1966.

3. No appeal was taken or writ of certiorari applied for in the Supreme Court of the United States from said Judgment of the United States Court of Appeals for the Fifth Circuit, and time for such action has expired.

4. The mandate of the United States Court of Appeals for the Fifth Circuit was issued on August 22, 1966 and was filed in this Court on August 23, 1966. Section 2465 of Title 28 of the United States Code, 62 Stat. 975, is applicable to this action and provides in part as follows: "Upon the entry of judgment for the claimant in any proceeding to condemn or forfeit property seized under any Act of Congress, such property shall be returned forthwith to the claimant or his agent . . . ."

5. Pursuant to Warrant of Seizure and Monition issued by this Court on September 10, 1965, the United States Marshal for the Northern District of Texas on September 10, 1965 seized the Rifle and the Revolver, and said Warrant of Seizure and Monition has not been dissolved or released.

6. Public Law 89-318, 79 Stat. 1185, approved November 2, 1965, provided for the acquisition by the United States of certain items, including the Rifle and the Revolver, which the Attorney General might determine should be acquired and preserved by the United States, subject to provisions for compensation. Claimant, through his undersigned attorney, has con-

sented to the continued possession of the Rifle and the Revolver by the United States Marshal pending the determination of the Attorney General pursuant to Public Law 89-318.

WHEREFORE, Claimant prays that Judgment be entered herein, as of August 23, 1966, to the following effect:

It is ordered, adjudged and decreed, as of August 23, 1966, that the Judgment of Forfeiture heretofore entered be and the same is vacated, and the United States Marshal for the Northern District of Texas shall forthwith return the respondent weapons, to wit, one 6.5 mm. Mannlicher-Carcano military rifle, model 91-38, serial no. C2766, with appurtenances, and one .38 special S & W Victory model revolver, serial no. V510210, with appurtenances, to Claimant, John J. King; provided, however, that pursuant to the consent of the Claimant, John J. King, said United States Marshal shall retain the possession of said respondent weapons pending such determination as the Attorney General of the United States may make pursuant to Public Law 89-318."

s/William C. Garrett

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William C. Garrett  
1800 First National Bank Bldg.  
Dallas, Texas 75202

Attorney for Claimant  
John J. King

[ C A P T I O N ]

LIBELANT'S OPPOSITION AND CROSS-  
MOTION FOR JUDGMENT

The United States of America, by and through its undersigned attorneys, respectfully opposes claimant's Motion for Judgment and moves for the entry of judgment in conformity with the Opinion and Mandate of the Court of Appeals, on the following grounds:

1. The Court of Appeals, in reversing the Order of Forfeiture entered by the District Judge, concluded that the "United States is entitled to retain possession and permanent title to the rifle and pistol. \* \* \*" 364 F.2d at 235.

2. Claimant has failed to establish his ownership of said weapons.

WHEREFORE, Libelant prays that Judgment be entered as follows:

"And Now, this \_\_\_\_\_ day of \_\_\_\_\_, 1968, the court having heretofore received the mandate of the Court of Appeals reversing the Order of Forfeiture entered February 24, 1966, and having considered Motions for Judgment filed by both Libelant and claimant, it is

Ordered and Directed that said Order of Forfeiture be and the same hereby is vacated and the libel dismissed.

It is further Ordered and Directed that the Writ of attachment issued September 10, 1965 be and the same hereby is dissolved and the custody by this court of the property seized thereunder is terminated."

MELVIN M. DIGGS  
United States Attorney

s/Kenneth J. Mighell

Assistant United States Attorney

s/William A. Gershuny  
WILLIAM A. GERSHUNY  
Attorney, Department of Justice  
Washington, D.C. 20530

Attorneys for Libelant

CERTIFICATE OF SERVICE

A copy of the foregoing Motion with memorandum attached served on claimant this 26th day of April, 1968, by mailing copy to his attorney, William C. Garrett, Esq., 1800 First Bank Bldg., Dallas, Texas 75202.

s/William A. Gershuny  
WILLIAM A. GERSHUNY  
Attorney, Department of Justice

[ C A P T I O N ]

CLAIMANT'S REPLY TO  
LIBELANT'S CROSS-MOTION  
FOR JUDGMENT

Now comes John J. King, Claimant herein, and in reply to the cross-motion for judgment filed herein by the United States of America, Libelant, would respectfully show the Court as follows:

1. The United States Court of Appeals for the Fifth Circuit, after reversing the Judgment of this Court on July 29, 1966, issued its Mandate on August 22, 1966, which Mandate was filed in this Court on August 23, 1966. On the basis of that Mandate and Section 2465 of Title 28 of the United States Code, Claimant is entitled to the judgment prayed for in Claimant's Motion for Judgment filed herein on February 21, 1968.

2. Claimant's interest in Respondent Rifle and Respondent Revolver has never been contested, although it was at issue in this action and was and is covered by the Stipulation of Facts upon which this proceeding is to be determined. The pleadings and stipulation in the record of this case conclusively establish Claimant's ownership of the weapons, subject to the possible determination to acquire such weapons by the Attorney General pursuant to Public Law 89-318.

WHEREFORE, Claimant prays that Libelant's Cross-Motion for Judgment be denied in all respects and that Judgment be entered herein, as of August 23, 1966, to the following effect:

"It is ordered, adjudged and decreed, as of August 23, 1966, that the Judgment of Forfeiture heretofore entered be and the same is vacated, and the United States Marshal for the Northern District of Texas shall forthwith return the respondent weapons, to wit, one 6.5 mm. Mannlicher-Carcano military rifle, model 91-38, serial no. C2766, with appurtenances, and one .38 special S & W Victory model revolver, serial no. V510210, with appurtenances, to Claimant, John J. King; provided, however, that pursuant to the consent of the Claimant, John J. King, said United States Marshal shall retain the possession of said respondent weapons pending such determination as the Attorney General of the United States may make pursuant to Public Law 89-318."

Respectfully submitted,

s/William C. Garrett  
William C. Garrett  
1800 First National Bank Bldg.  
Dallas, Texas 75202

Attorney for Claimant  
John J. King



[ C A P T I O N ]

ORDER

The Court having heretofore received the mandate of the Court of Appeals reversing the Order of Forfeiture entered February 24, 1966, and having considered Motions for Judgment filed by both Libelant and claimant, it is

Ordered and Directed that said Order of Forfeiture be and the same hereby is vacated and the libel dismissed.

It is further Ordered and Directed that the Writ of Attachment issued September 10, 1963, be and the same hereby is dissolved and the custody by this Court of the property seized thereunder is terminated.

SIGNED and ORDERED ENTERED, this the 16 day of July, 1968.

by Joe E. Estes  
United States District Judge