



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. WESTERN UNION FINANCIAL SERVICES
CV 08-0241-PR**

PARTIES AND COUNSEL:

Petitioner: Western Union is represented by Carter Phillips, of Sidley Austin, LLP, Washington D.C., Pro Hac Vice, and Karl Tilleman, Charles Cole, and Doug Janicik of Steptoe & Johnson.

Respondent: The State is represented by Assistant Attorney General Cameron Holmes.

FACTS:

This action primarily concerns whether an Arizona warrant to seize Western Union credits for wire transfers from other states to Mexico violates the dormant foreign Commerce Clause, other constitutional provisions, and statutes.

The State sought a warrant to seize for forfeiture certain monies purportedly traceable to racketeering activities. The State's actions here expanded a five-year-old program to intercept money transferred to drug and migrant smugglers in the Phoenix metropolitan area. Specifically, the State sought to seize during a ten-day period Western Union money transfers meeting all of these criteria: (1) person-to-person transfers, except Quick Collect (bill paying) wires; (2) transfers "presented for payout and/or in the process of being paid out" at twenty-six listed locations in Sonora, Mexico; (3) in amounts of \$500 or more; and (4) sent from any of twenty-nine listed states, including Arizona.

Among other matters, the affidavit described methods used to facilitate human smuggling and narcotics trafficking through Arizona, set forth data supporting the probability that Western Union money transfers fitting the above-described criteria were traceable to racketeering activities in Arizona, and summarized information from investigative interviews with those involved in racketeering activities. However, the affidavit did not identify any particular persons, property, or transactions specifically related to illegal activities in Arizona.

The superior court issued the seizure warrant which was effective for ten days and directed Western Union, upon a recipient's attempt to get a transfer fitting the warrant's description to (1) stop payment and transfer funds to a detention account, (2) notify the intended recipient of the detention and provide that person with the seizing agency's contact information, (3) retain the funds, except those released by the seizing agency, in

the detention account for twenty-one days after the warrant expired, and (4) convey any remaining detained funds to the Maricopa County superior court clerk upon expiration of the twenty-one-day period. The Warrant also directed the seizing agency to provide Western Union, the senders, and intended recipients with "a point of contact on a twenty-four hour, seven days each week on-call basis" to permit the seizing agency to ascertain the appropriateness of the detention and to minimize delay in releasing funds "not involved in the conduct described in the affidavit."

Western Union filed an emergency motion to quash the warrant in part, contesting the State's ability to seize funds sent from another state for intended delivery in Sonora where neither the sending party nor the recipient of the wire transfer was in Arizona. The court granted Western Union's motion to quash the part of the warrant authorizing the State to seize all monies subject to Western Union person-to-person wire transfers of \$500 or more sent from any of twenty-eight states other than Arizona, ruling that such wire-transfers did not "flow through, touch or have any connection with" Arizona and were "carried out in and constitute[d] interstate and foreign commerce." The judge ruled "there are no facts to support statutory or constitutional jurisdiction to conduct the extraterritorial searches and seizures by Arizona."

The judge held that the State lacked probable cause to believe that any of Western Union's customers had committed crimes in Arizona. He ruled the seizure warrant was "a prospective, general warrant" that was "unconstitutional as applied under the Commerce Clause, Foreign Commerce Clause, Due Process Clause, and the Fourth Amendment of the United States Constitution." The judge quashed the warrant and preliminarily enjoined the State from making future attempts to seize wire-transfer funds on threat of contempt unless the court has *in personam* jurisdiction over an owner or interest holder in the funds.

The State appealed. The court vacated the lower court order, ruling: (1) A.R.S. §13-4302 does not constrain the superior court's jurisdiction to issue pre-forfeiture seizure warrants but instead applies to initiation of forfeiture proceedings. (2) Electronic credits in Western Union's computer system, representing the company's contractual obligation to senders of the wire-transfer funds, are "intangible property" subject to seizure and forfeiture as suspected proceeds of racketeering activity; *See* A.R.S. §§13-105(32); 13-2314(G)(3); (3) The superior court had *in rem* jurisdiction to seize the credits because the applicable minimum-contacts standard is satisfied; (4) although by its terms the warrant had partially expired the issues presented on appeal remain viable because the warrant still requires Western Union to deposit monies in the clerk of the superior court's detention account and, further, resolution of the motion to quash was the basis for the superior court's decision to preliminarily enjoin the State from seeking similar warrants in the future; (5) Western Union has standing to challenge the court's initial probable cause finding because it has an interest in the warrant's viability; and (6) The State met its burden to show a probable cause nexus between human smuggling and/or narcotics trafficking and the electronic credits in Western Union's computer system, as is necessary to support the seizure warrant.

The court also ruled that the warrant did not violate the particularity requirement because it precisely described the place to be searched and the *res* to be seized and did not improperly afford the State discretion to decide which electronic credits to seize. The court also determined that the warrant was not unconstitutionally prospective. The opinion also held the warrant did not violate the dormant Commerce Clause or the dormant Foreign Commerce Clause as it did not regulate commerce outside Arizona's borders. Finally, the warrant did not invade the sovereign authority of other states.

Although not contesting the opinion's probable cause finding, Western Union seeks review in this Court asserting the issues below.

ISSUES: 1. Does the opinion expand Arizona's jurisdiction to seize out-of-state wire transfers in violation of due process and statutory limitations.

2. Does the opinion permit extraterritorial regulation in violation of the U.S. Constitution's Interstate and Foreign Commerce Clauses.

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