

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,	:
Plaintiff,	:
	:
-vs-	: Civil No. 3:99cv2221 (PCD)
	:
ONE PARCEL OF PROPERTY LOCATED :	
AT 45 ST. CHARLES AVENUE,	:
STAMFORD, CONNECTICUT	:
WITH ALL APPURTENANCES	:
AND IMPROVEMENTS	:
THEREON,	:
Defendant.	:

**RULINGS ON MOTION TO SET ASIDE DEFAULT JUDGMENT, MOTION FOR
DECREE OF FORFEITURE AND MOTION FOR RECONSIDERATION**

On January 9, 2003, the day scheduled for jury selection, plaintiff was found to have violated this Court's Trial Preparation Order ("TPO") dated September 11, 2002 requiring submissions of fact and law in three parts by claimant James Deleo. At that time, only a single submission was provided by claimant. As a consequence, and by operation of the TPO, the Government's claims of fact and law were deemed admitted by default.

Claimant submitted, two weeks after the default was granted, his Part C TPO compliance. He also filed the present motion to set aside the default entered. Counsel for claimant provides a litany of excuses as to why he could not timely comply with the TPO submission deadlines, including, *inter alia*, a refusal by chambers to explain the operation of the TPO, describing it instead as "self-explanatory," and an understanding that he need only submit two parts notwithstanding a statement to the contrary by the Government.

Claimant's handling of the matter was unacceptable, wasteful of both this Court's and the Government's time on a matter that has been pending for approaching four years. The filing of a motion to reconsider a June 15, 2001 order denying a motion to suppress evidence coincident with a deadline for TPO compliance manifests claimant's lack of appreciation for the advanced nature of the present proceeding. Contrary to the implication of claimant's argument, claimant is not absolved from a failure to respect deadlines by a telephone call to chambers asking for what amounts to a request for legal advice as to which party has the burden of proof in a forfeiture case, thus which party is obliged to initiate TPO compliance. Such requests for *ex parte* interpretations of orders are improper and will not be countenanced. Notwithstanding the unacceptable handling of the matter, in light of counsel's misguided attempts to contact chambers, apparent confusion as to the TPO and ultimate filing of Part C of the TPO, claimant has shown good cause to set aside the default only in that a party's default should be slow to be granted. No forfeiture shall enter at this time.

Claimant also moves for reconsideration of the order denying his motion to suppress. Reconsideration is granted and the prior ruling is adhered to. Claimant argues that the recent decision of *Kirk v. Louisiana*, 536 U.S. 635, 122 S. Ct. 2458, 153 L. Ed. 2d 599 (2002), requires a different outcome. *Kirk*, a *per curiam* decision, does not expand the law of search and seizure. It simply restates the proposition that "police officers need either a warrant or probable cause plus exigent circumstances in order to make a lawful entry into a home. . . . [A] ruling to the contrary, and consequent failure to assess whether exigent circumstances [a]re present . . . violate[s] *Payton* [*v. New York*, 445 U.S. 573, 590, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980)]." *Kirk*, 122 S. Ct. at 2459. Unlike *Kirk* in which no finding was made as to whether exigent circumstances justified a sweep, both

probable cause and exigent circumstances for a sweep were found to justify the sweep in the present case, specifically to ensure evidence was not destroyed by claimant's brother whose whereabouts were unknown at the time. Such unquestionably constitutes the sort of exigent circumstance justifying a sweep, *see Schmerber v. California*, 384 U.S. 757, 770-771, 86 S. Ct. 1826, 1835-36, 16 L. Ed. 2d 908 (1966). As *Kirk* is inapposite to the facts of the present case, there is nothing to justify claimant's attempt to reargue the motion to suppress evidence resolved over eighteen months ago.

Claimant's motion to set aside default (Doc. No. 60) is **granted**. Claimant's motion for reconsideration (Doc. No. 41) is **granted** and the prior ruling is **adhered to**. The ruling made in open court on January 9, 2003 granting the Government's motion for entry of default (Doc. No. 44) is **vacated** and the motion is **denied**. The Government's motion for a decree of forfeiture (Doc. No. 55) is **denied**. This case is now deemed trial ready and will be scheduled for the next available jury selection. If it is the mutual opinion of the parties that a settlement conference would be beneficial, the parties shall notify this court by February 26, 2003 to arrange scheduling of such conference.

Dated at New Haven, Connecticut, February ___, 2003.

Peter C. Dorsey
United States District Judge