

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA	:	
	:	
vs.	:	CIVIL NO. 3:99CV2222 (PCD)
	:	
ONE PARCEL OF LAND AT	:	
560 WEST HILL ROAD, STAMFORD,	:	
CONNECTICUT	:	
	:	
Claimants: Thomas C. DeLeo	:	
First County Bank	:	

**MEMORANDUM OF DECISION RE:**  
**PETITION FOR FINDING OF PROBABLE CAUSE**

The Government, having filed a Verified Complaint of Forfeiture, now seeks a Finding of Probable Cause and the issuance of a Warrant of Arrest in Rem. The claim is that the property in question is subject to forfeiture under 21 U.S.C. § 881(a)(7) by reason of its use to facilitate violation of 21 U.S.C. § 801 et seq. The parties were heard and have now fully briefed the claim.

Claimant DeLeo contests the burden imposed on the Government before a finding in support of a forfeiture can be made. Relying on Austin v. United States, 509 U.S. 602 (1993), but noting United States v. James Daniel Good Real Property, 510 U.S. 43 (1993), DeLeo argues that an Eighth Amendment analysis is required, that is whether the forfeiture sought is excessive as a monetary punishment and thus is subject to the Excessive Fines Clause of the Eighth Amendment. Austin held that a § 881(a)(7) forfeiture could be a form of punishment, at least in part, and thus is subject to the limitation that it not be excessive monetarily if it is to pass Eighth Amendment muster. Good involved a Due Process notice of taking issue and is not applicable. The Government’s burden to

prove probable cause is by proof beyond a reasonable doubt, that was described, but not decided, to be an open question of law. United States v. One Parcel of Property Located at 194 Quaker Farms Road, Oxford, Conn., 85 F.3d 985, 990-91 (2d Cir. 1996).

Claimant argues that because the property in question is not only his residence but that of his wife and children, none of whom allegedly had any involvement in the drug dealing on which the forfeiture is claimed, the forfeiture of his entire ownership of the property should be deemed excessive and hence contrary to the Eighth Amendment. Apart from claimant's willingness to shield his alleged unlawful drug dealing behind his family, he asserts the home was purchased by "his hard labor" and not with "funds tainted by illegal activity." (DeLeo Br. at 3.) There was no testimony at the probable cause hearing on which to find the foregoing factual claims to be true. In contrast, the Government's complaint asserts as the basis for forfeiture, the use of the property to violate the law, namely growing marijuana therein. There is no evidence on which to determine that such activity was apparent or known to DeLeo's family. He is the sole owner of the property; claimant's counsel fails to dispute claimant's ownership and occupation of the property. He argues that the court should hold the government to proof by "clear and convincing evidence" before a warrant of arrest is ordered.

There is no question but that the government's burden is to prove probable cause. A level of proof is not suggested by the Second Circuit, One Parcel of Property, *supra*, where the issue was not squarely presented. Nothing in the record here provides any greater guidance on the question. Claimant has offered only that forfeiture would impact the homestead of a family which, other than himself, had nothing to do with the basement drug farm, which might be denominated an innocent

occupant defense. This mixes the question of the level of proof to be required with the unrelated question of excess. See United States v. Certain Real Property and Premises Known as 38 Whaler's Cove Drive, Babylon, N.Y., 954 F.2d 29, 36 (2d Cir. 1992).

Without sustaining the claimant's position, and even assuming, arguendo, a requirement of a higher level of proof, it is found that the evidence of the witness, Robinson, which is credited, established a marijuana growing project at 560. Though no plants were found in the basement, an apparatus for doing so, comparable in part to that which existed in claimant's brother's basement, was found and marijuana plants were found on the premises. Marijuana residue was found. Accordingly, even if a clear and convincing level of evidence was required to be met, a requirement not held here to be the law, the proof was sufficient to establish that the premises in question, 560 Westhill Road, Stamford, Connecticut, was used to grow marijuana and thus to facilitate the violation of 21 U.S.C. § 801, et seq.

Accordingly, a Warrant of Arrest in Rem shall issue with respect to the premises at 560 Westhill Road, Stamford, Connecticut.

SO ORDERED.

Dated at New Haven, Connecticut, this \_\_\_ day of October, 2000.

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Peter C. Dorsey, U.S. District Judge  
United States District Court