

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 02-6805
	:	
\$46,000 IN UNITED STATES CURRENCY	:	
Defendant	:	

**MEMORANDUM ORDER**

AND NOW, this    day of September, 2003, upon consideration of the Motion to Reconsider the Order Granting Claimant’s Motion to Suppress Evidence filed on July 16, 2003 by United States of America (Docket Entry No. 22), the Memorandum in Opposition to Plaintiff’s Motion to Reconsider, filed by Miguel Martinez (“Claimant”) (Docket Entry No. 23), and the oral argument presented at the September 2, 2003 hearing, it is hereby ORDERED that the Motion to Reconsider is DENIED for the reasons that follow.

This is a civil forfeiture action brought by the United States of America (“Government”) against \$46,000 in United States Currency (“Defendant Currency”) pursuant to 21 U.S.C. § 881(a)(6). The Defendant Currency was seized by federal agents on March 9, 2002 in Philadelphia, Pennsylvania from a vehicle driven by Claimant. Claimant filed a Claim of Ownership alleging that he is the owner of the Defendant Currency. On February 14, 2003, Claimant filed a Motion to Suppress evidence seized from Claimant on March 9, 2002. An evidentiary hearing was conducted on Claimant’s Motion to Suppress on March 10, 2003 and Proposed Findings of Fact and Conclusions of Law were submitted by both parties on March 28, 2003. (Docket Entries Nos. 14 and 15) In response to this Court’s Order of May 20, 2003 both

parties filed supplemental briefs. (Docket Entries Nos. 18 and 19) In its written Order of June 30, 2003, this Court granted Petitioner's Motion to Suppress and denied the Government's request for permission to reopen the suppression hearing to present testimony regarding the training and reliability of the dog conducting the sniff of Claimant's vehicle. Order of June 30, 2003, n. 12. (Docket Entry 21) The Government then filed the instant Motion to Reconsider, requesting the record be reopened so as to permit the Government to present evidence in further support of the reliability of the drug dog and the positive drug dog alert. Docket Entry No. 22 at 2.

All motions for reconsideration to the United States District Court for the Eastern District of Pennsylvania are filed pursuant to Local Civil Rule 7.1(g) and Fed. R. Civ. P.59(e). Procedurally, Local Civil Rule 7.1(g) provides that a motion for reconsideration must be filed within ten days after the entry of the court order, excluding Saturdays, Sundays and holidays. Prousi v. Cruisers Div. Of KCS Int'l, Inc., 1999 U.S. Dist. LEXIS 10446 n.1 (E.D.Pa. June 29,1999). This Court granted Defendant Currency's Motion to Suppress Evidence by Order (Document No. 21, filed June 30, 2003), and the Government filed its Motion to Reconsider on July 16, 2003 (Document No. 22, filed July 16, 2003). The Court acknowledges that the Government's motion is timely.

A motion for reconsideration will be granted if: (i) there is new evidence not previously available; (ii) there is an intervening change in controlling law; or (iii) there is a need to correct a clear error of law or to prevent a manifest injustice. See General Instrument Corp. v. Nu-Tek Elecs. & Mfg., 3 F. Supp. 2d 602, 606 (E.D. Pa. 1998), *aff'd.*, 197 F.3d 83 (3d Cir. 1999); see also Evans v. United States, 173 F. Supp. 2d 334, 335 (E.D. Pa. 2001); Environ Products, Inc. v.

Total Containment, Inc., 951 F. Supp. 57, 62 n.\* (E.D. Pa. 1997); Cohen v. Austin, 869 F. Supp. 320, 321, (E.D. Pa. 1994). The Third Circuit has repeatedly articulated the purpose of a motion for reconsideration is “to correct manifest errors of law or fact or to present newly discovered evidence.” See, e.g., Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985).

The Government has not argued that information about the training and reliability of the drug dog was unavailable prior to the Court’s order of June 30, 2003. Rather, the Government admits to disclosing the evidence throughout the discovery period and prior to the evidentiary hearing. (Docket Entry No.22 at 2) Consequently, the information is not newly discovered evidence and cannot be considered in support of its motion for reconsideration. Because the Government presents no new, previously unavailable evidence and asserts no intervening change in the controlling law, this Court will proceed with its analysis under the third justification for reconsideration--the need to correct a clear error of law or to prevent a manifest injustice.

Reconsideration may be granted where the court’s decision is “clearly erroneous” as a matter of law. See Peterkin v. Horn, 179 F. Supp. 2d 518 (E.D.Pa. 2002) (granting reconsideration because of new Third Circuit Decision requiring different conclusion). The key to success on a motion is to show that there were facts or legal issues properly presented but overlooked by the court in its decision. Seidman v. American Mobile Systems, 965 F. Supp. 612, 629 n.2 (E.D.Pa. 1997) (reconsideration denied: “the Court does not find that prohibiting counsel from having a third bit at the apple to be such a draconian result as to rise to the level of a manifest injustice”). The Government does not argue any clear error of law nor does it establish that the Court overlooked facts or legal issues properly presented. Indeed, in oral argument on the Motion for Reconsideration, the Government acknowledged that the Court’s

decision to grant the Motion to Suppress was legally correct in light of the evidence presented at the Motion to Suppress. N.T. 9/2/03, at 24.

The Government argues only that the Court should reconsider its decision to preclude supplemental testimony on the dog's training and qualifications. In the view of the Government, this testimony was not tendered at the Suppression Hearing as a consequence of the "inexperience of the part of government counsel" (Docket No. 22 at 2) and reconsideration of the Court's denial of the request to reopen the Suppression Hearing should be granted in the interests of justice. Reconsideration can be granted "in the interest of justice" where the sole basis for the court's initial decision was the failure of the party to respond timely to an adversary's motion. United States v. Premises Known as 717 So. Woodard Street, 804 F. Supp. 716, 719 (E.D.Pa. 1992). That is not the case here nor is the Court persuaded by the notion that holding the Government counsel accountable for his inexperience would result in a manifest injustice that would warrant reconsideration. In J/H Real Estate Inc. v. Abramson, 951 F. Supp. 63 (E.D.Pa. 1996), the court found that a motion for reconsideration should be denied in the "interest of justice" where a moving party has not presented any newly discovered evidence nor alleged a manifest error of law or fact. In so doing, it relied on the decision in Karr v. Castle, 768 F. Supp. 1087, 1093 (D.Del. 1991), *aff'd without opinion sub nom. U.S. v. Carper*, 22 F.3d 303 (3d Cir. 1994), *cert. denied*, 513 U.S. 1084 (1995). The Third Circuit affirmed Karr without opinion and has not affirmatively adopted an interest of injustice exception. Despite this, if we apply the exception, the result is the same. The Government had a full opportunity to present its evidence at the evidentiary hearing; that counsel's inexperience caused a failure to do so does not merit a reconsideration of the Order Granting Claimant's Motion to Suppress Evidence. "The procedural

mechanism afforded by the motion for reconsideration seeks to balance the need for finality in decision making with a recognition that courts sometimes make mistakes.” Brambles U.S.A., Inc. v. Blocker, 735 F. Supp. 1239, 1241 (D.Del. 1990). The Court finds that the dominant consideration under the “interests of justice” standard as applied to the circumstances of the instant case is the need for finality in judicial decisions reached after the parties have had a full opportunity to present all relevant evidence, argument, and authority.

In reaching this determination, this Court is guided by the clear and unambiguous direction provided by the Third Circuit Court of Appeals in U.S. v. Coward, 296 F.3d 176 (3d Cir. 2002) and U.S. v. Kithcart, 218 F.3d 213 (3d Cir. 1999). The question of whether the Government may supplement a suppression hearing record rests within the discretion of the District Court. This discretion, however, is not unguided and “courts should be extremely reluctant to grant reopenings.” Kithcart, 218 F.3d at 219 (quoting U.S. v. Blankenship, 775 F.2d 735 (6<sup>th</sup> Cir. 1985)). In addition to considering prejudice and a number of other factors, the District Court must evaluate the Government’s explanation for its failure to provide the evidence initially, and “....determine if it is both reasonable and adequate to explain why the government initially failed to introduce that evidence which may have been essential to meeting its burden of proof.” Kithcart, 218 F.3d at 220. The Government offers two reasons for its failure to present testimony as the drug dog’s qualifications and reliability: it failed to apprehend the importance of the testimony as to its burden at the Motion to Suppress and, second, counsel for the Government was inexperienced in handling Motions to Suppress. As this Court discussed in its June 30, 2003, Order granting the Motion to Suppress, the training, qualifications and reliability of the drug dog were central to the determination of probable cause. The absent proof does not relate to

some technical or collateral element of the Government's burden at a Motion to Suppress. It is at the heart of the Government's burden; it is the reason Claimant was taken into custody and probable cause does not exist without competent evidence as to the drug dog's qualifications and reliability. Accordingly, the Government should not have "misapprehended or misunderstood the nature of the proof it had to adduce at the outset." Kithcart, Id. at n. 6. Finally, with respect to the "inexperience" of the prosecutor, this Court notes that suppression counsel has been employed by the United States Attorney's Office for **fifteen years** (N.T. 9/02/03, at 13), and in all other respects, counsel appropriately cited relevant precedent, was aware of all other elements of proof necessary to sustaining the Government's burden at a Motion to Suppress, and diligently and professionally represented the interests of the Government. See Coward, 296 F.3d at 181.

For these reasons, the Motion for Reconsideration is DENIED.

BY THE COURT:

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