

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

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| UNITED STATES OF AMERICA |) | |
| |) | |
| |) | |
| v. |) | CRIMINAL No. 02-10-P-H |
| |) | |
| ERNEST B. WEIDUL, |) | |
| |) | |
| DEFENDANT |) | |

ORDER AFFIRMING RECOMMENDED DECISION OF THE MAGISTRATE JUDGE

The United States Magistrate Judge filed with the court on July 9, 2002, with copies to counsel, his Recommended Decision on Motion to Suppress.

The government filed an objection to the Recommended Decision on July 23, 2002. I have reviewed and considered the Recommended Decision, together with the entire record; I have made a *de novo* determination of all matters adjudicated by the Recommended Decision; and I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in his Recommended Decision, and determine that no further proceeding is necessary.

I observe that the government no longer presses the exigent circumstances argument and that it also accepts the Magistrate Judge's factual findings. Based on the record that the government created at the suppression hearing and the Magistrate Judge's findings, I agree with his conclusion that a reasonable person (including an officer) would not conclude that Ms. Malloch gave consent to the search.

It is therefore **ORDERED** that the Recommended Decision of the Magistrate Judge is hereby **ADOPTED**. The defendant's motion to suppress evidence, as clarified during oral argument to be limited to the warrantless search of the Malloch home and seizure of a Jennings J-22 .22 caliber pistol, serial number 280812, is **GRANTED**.

DATED THIS 7TH DAY OF AUGUST, 2002.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE