

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

 Plaintiff,

 v.

LEONEL MICHEL VARGAS,

 Defendant.

No. CR-13-6025-EFS

**ORDER DENYING THE U.S. ATTORNEY'S
OFFICE'S MOTION FOR
RECONSIDERATION, AND DEFENDANT'S
MOTION TO DISMISS**

The U.S. Attorney's Office (USAO) asks the Court to reconsider its ruling granting Defendant Leonel Michel Vargas' suppression motion. ECF Nos. 112 & 106. Defendant opposes the USAO's reconsideration motion, and also asks the Court to dismiss the Indictment due to insufficient evidence. ECF Nos. 110 & 114. For the reasons set forth below, the Court denies both motions.¹

First, reconsideration is appropriate if the Court 1) is presented with newly discovered evidence, 2) committed clear error or the initial decision was manifestly unjust, or 3) if there is an intervening change in controlling law. *See United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997). This is a high standard because the "law of the case"

¹ The Court finds oral argument on these motions unnecessary. L.R. 7.1.

1 doctrine generally precludes a court from reconsidering an issue that
2 has already been decided by that court. *Id.*

3 This high standard is not met here. The USAO initially also argued
4 that Defendant's front-yard activities could be viewed by a passerby.
5 Additionally, the USAO initially provided the Court with pictures of
6 the Defendant's residence and nearby property, as well as with the
7 contested recorded video footage, and the USAO had the opportunity at
8 that time to submit additional pictures or video—it did not. The USAO
9 fails to show that its now-proffered evidence is newly discovered or
10 was unknown to it until after the Court's suppression order, or "that
11 it could not with reasonable diligence have discovered and produced such
12 evidence at the hearing." *Frederick S. Wyle Prof'l*
13 *Corp. v. Texaco, Inc.*, 764 F.2d 604, 609 (9th Cir. 1985). And the
14 USAO's factual speculations regarding the well house supporting
15 reconsideration are just that.

16 The Court abides by its initial factual and legal findings. Based
17 solely on suspicion, the government engaged in covert video surveillance
18 of Defendant's home and front yard without a warrant twenty-four hours
19 a day, seven days a week for six weeks. As articulated in the Court's
20 suppression order, that covert video surveillance violated Defendant's
21 Fourth Amendment right to be free from an unreasonable search.

22 Second, as to Defendant's Motion to Dismiss Based on Insufficient
23 Evidence, Defendant asks the Court to dismiss the Indictment because
24 the USAO acknowledges that it will not proceed to trial in light of the
25 Court granting Defendant's suppression motion. ECF Nos. 107 & 110. The
26 USAO opposes the motion, contending that it should be permitted to seek

1 an appeal of the Court's denial of its reconsideration motion. Because
2 Defendant has not identified a legal basis for the Court granting
3 dismissal based on insufficient evidence until after the government
4 closes its case, the Court finds the premature at this time.
5 Accordingly, Defendant's motion is denied at this time.

6 The filed motions having been addressed by this Order will not be
7 heard at the January 6, 2015 pretrial conference. At the January 6,
8 2015 pretrial conference before Judge Salvador Mendoza, Jr., the parties
9 shall be prepared to advise the Court as to how they intend to proceed
10 in this matter. Trial is presently set for January 20, 2015, with
11 trial-related submissions due beginning January 12, 2015. See ECF No.
12 108.

13 For these reasons, **IT IS HEREBY ORDERED:**

- 14 1. The USAO's Motion to Reconsider, **ECF No. 112**, is **DENIED**.
15 2. Defendant's Motion to Dismiss Based on Insufficient Evidence,
16 **ECF No. 110**, is **DENIED with leave to renew**.

17 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
18 Order and provide copies to all counsel.

19 **DATED** this 5th day of January 2015.

20
21 s/Edward F. Shea
EDWARD F. SHEA
22 Senior United States District Judge
23
24
25
26