

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WASHINGTON

3
4
5 UNITED STATES OF AMERICA,
6 Plaintiff,

7 v.

8
9 RHONDA FIRESTACK-HARVEY, LARRY
10 HARVEY, MICHELLE GREGG, ROLLAND
11 GREGG, and JASON ZUCKER,
12 Defendants.

No. CR-13-24-FVS

ORDER DENYING JASON
ZUCKER'S MOTION TO
DISMISS BASED UPON THE
UNITED STATES' FAILURE TO
PRESERVE EVIDENCE

13 **THE DEFENDANTS** have filed a number of motions. The Court
14 considered their motions at a pretrial conference that was held on
15 April 22 and 23, 2014. This order addresses defendant Jason Zucker's
16 motion to dismiss the indictment on the ground the United States
17 failed to preserve critical evidence.

18 **BACKGROUND**

19 On two occasions during August of 2012, law enforcement officers
20 seized marijuana plants that allegedly were growing at 939 Clugston-
21 Onion Creek Road, Colville, WA. A grand jury returned an Indictment
22 on February 6, 2013. The Court held a pretrial conference on April 2,
23 2013. The United States requested permission to destroy the marijuana
24 plants. The Court authorized the United States to destroy the plants,
25 but only after counsel for the defendants had a reasonable opportunity
26

1 to inspect them. The Court entered an order that stated in part, "An
2 attorney's failure to make arrangements [to inspect] within ten days
3 of March 29, 2013, shall waive any objection to the destruction of the
4 marijuana plants." (Order Continuing Trial (ECF No. 141 at 2.)

5 Defendant Jason Zucker moves to dismiss the Indictment on the ground
6 the United States failed to preserve the plants that allegedly were
7 seized by law enforcement officers during August of 2012.
8

9 **RULING**

10 In order for a defendant to demonstrate he has been deprived of
11 due process of law by the United States' destruction of evidence, the
12 defendant must show, at a minimum, that the United States acted in bad
13 faith. *United States v. Cooper*, 983 F.2d 928, 931 (9th Cir.1993). No
14 such showing has been made by Mr. Zucker. To the contrary, the United
15 States destroyed the plants only after raising the issue at a pretrial
16 conference at which Mr. Zucker and his attorney were present.
17

18 **IT IS HEREBY ORDERED:**

19 Defendant Jason Zucker's "Motion to Dismiss for Failure to
20 Preserve" (ECF No. 201) is **denied**.
21

22 **IT IS SO ORDERED.** The District Court Executive is hereby
23 directed to enter this order and furnish copies to counsel.

24 **DATED** this 29th day of April, 2014.

25 s/ Fred Van Sickle
26 Fred Van Sickle
Senior United States District Judge