

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Criminal Action No. 02-94-2-SLR
)
ROBERT BURNS,)
)
 Defendant.)

MEMORANDUM ORDER

At Wilmington, this 6th day of October, having considered defendant's motion for reconsideration and the papers submitted in connection therewith;

IT IS ORDERED that said motion (D.I. 125) is denied for the reasons that follow:

1. The purpose of a motion for reconsideration is to "correct manifest errors of law or fact or to present newly discovered evidence." Max's Seafood Café ex-rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). Accordingly, a court may alter or amend its judgment if the movant demonstrates at least one of the following: (1) a change in the controlling law; (2) availability of new evidence not available when summary judgment was granted; or (3) a need to correct a clear error of law or fact or to prevent manifest injustice. See id.

2. Defendant does not dispute the court's factual findings. Defendant contends, however, that the court's reliance

on United States v. Herman, 589 F.2d 1191 (3d Cir. 1978) was incorrect.

3. Defendant's interpretation of the court's reliance on Herman is misplaced. Prior to citing the case, the court acknowledged that Herman was not dispositive and, rather, was invoked to demonstrate the Third Circuit's decisions in this area. Although the facts at bar are compelling, without authority from the Third Circuit, the court declines to apply the Equitable Immunity Doctrine. Having failed to present errors of law or fact, defendant's motion for reconsideration is, therefore, **denied**.

Sue L. Robinson
United States District Judge