

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 16-CR-64

RONALD H. VAN DEN HEUVEL,
PAUL J. PIIKKILA, and
KELLY Y. VAN DEN HEUVEL,

Defendants.

UNITED STATES' STATUS REPORT

The United States of America, by and through its attorneys, Gregory J. Haanstad, United States Attorney for the Eastern District of Wisconsin, and Mel S. Johnson and Matthew D. Krueger, Assistant United States Attorneys for said district, hereby submits this status report in advance of the August 31, 2016 status conference in this case. The United States reports the following to inform the Court's decisions regarding discovery and scheduling:

A. Indictment's Bank Fraud Charges

The indictment charges that, from approximately January 1, 2008, through approximately September 30, 2009, the defendants pursued a scheme to fraudulently obtain loans from Horicon Bank based on false representations, mainly as to the actual borrowers. Doc. 1. Horicon Bank had instructed defendant Paul Piikkila, a loan officer, not to make any loans to defendant Ronald Van Den Heuvel or his business entities. *Id.* at 3. To skirt that prohibition, the defendants arranged to have a series of loans made to straw borrowers for the benefit of Ronald and Kelly Van Den Heuvel. *Id.* at 3-4. Piikkila thereafter went to work for one of Van Den Heuvel's companies.

The charges arise out of seven loans given by Horicon Bank to individuals or businesses associated with Ronald and Kelly Van Den Heuvel. Count One of the indictment charges a conspiracy between the defendants to commit bank fraud and influence the actions of a federally insured financial institution through false representations, in violation of 18 U.S.C. § 371. Counts Two through Thirteen charge certain of the defendants with executions of the scheme in violation of 18 U.S.C. § 1344 or making false statements to influence a federal insured financial institution in violation of 18 U.S.C. § 1014.

B. Bank Fraud Discovery Provided to Date

The United States provided defendants with a disc containing the core discovery related to the indicted bank fraud in May 2016 at the time of the arraignment. The United States also provided an index describing the materials. The disc contained approximately 16,000 pages. About 9,000 of those pages are bank records and deposit or withdrawal items from banks other than Horicon Bank where Van Den Heuvel, his companies, or witnesses had accounts.

On May 20, 2016, Kelly Van Den Heuvel requested additional discovery on ten subjects. *See* Doc. 25-1. As explained in the United States' May 31, 2016 submission, the United States responded to those requests to the extent they called for information subject to discovery. *See* Doc. 26. The United States produced supplemental discovery on May 26, 2016, and June 9, 2016, along with a letter detailing its responses to Kelly Van Den Heuvel's requests. *See* Exhibit 1. This supplemental discovery contained approximately 700 pages.

The United States' letter of June 9, 2016, informed defense counsel that it had become aware that the Federal Deposit Insurance Corporation ("FDIC") maintained a separate file pertaining to its administrative investigation into Piikkila's actions as a Horicon Bank lender in making the loans at issue here. *See* Exhibit 1, at 2. This administrative file is largely duplicative

of the FDIC Office of Inspector General's ("OIG") file that led to this prosecution and that had been already been provided in discovery. Out of an abundance of caution, however, on August 10, 2016, the United States produced the FDIC administrative file. It consists of approximately 2,500 pages.

Also on August 10, 2016, the United States produced reports and photographs from the Brown County Sheriff's Office regarding the execution of search warrants in July 2015. Kelly Van Den Heuvel had requested these from the United States. The August 10, 2016 production also included several documents related to the FDIC OIG's interactions with Horicon Bank and Associated Bank that inadvertently were omitted from prior productions. The August 10, 2016 production consisted of approximately 500 pages.

In total to date, the United States has produced approximately 19,000 pages related to the indicted Horicon bank fraud charges. As noted, approximately 9,000 of those pages are records from banks other than Horicon Bank.

C. Piikkila's Electronic Files from Post-Horicon Work for Van Den Heuvel

On July 22, 2016, Piikkila pleaded guilty to Count One of the indictment. *See* Doc. 41. Piikkila has agreed to cooperate with the United States and provided copies of his electronic files from his time working for Van Den Heuvel's company. In total, he provided approximately 12,200 electronic files, which include emails as well as attachments (e.g., MS Word documents). To reduce the burden on defendants to review the files, the United States offered to run certain agreed-upon keyword search terms and produce the results in discovery. Defendants instead requested that they receive all of the files.

Accordingly, the United States produced all of the files on August 16, 2016, in a format that allows the files to be loaded into a review database and searched with keywords. The United

States' own searching of the files has identified very few files that have any potential relevance to the indicted bank fraud charges. This is unsurprising, given that the files were generated when Piikkila was no longer employed at Horicon Bank and after the loans at issue were made.

D. Ronald Van Den Heuvel's Changes of Counsel

Pertinent to the status of this case is Mr. Van Den Heuvel's two changes of counsel. Mr. Van Den Heuvel was originally represented by Nancy DePodesta, who received the original discovery in this case. On June 27, 2016, the Court granted Ms. DePodesta's motion to withdraw as counsel. Doc. 30.

On July 15, 2016, the Court appointed Krista Halla-Valdes as counsel. The United States provided her with all discovery that had been produced by that date. On August 9, 2016, the Court granted Ms. Halla-Valdes' motion to withdraw as counsel.

On or about August 9, 2016, Robert LeBell accepted appointed as Mr. Van Den Heuvel's counsel. The United States has provided him with all discovery that has been produced to date.

E. Materials from Brown County Sheriff's Office Search Warrants

As discussed at prior status conferences, Kelly and Ronald Van Den Heuvel have requested copies of all materials seized by the Brown County Sheriff's Office pursuant to search warrants.

By way of background, in July 2015, the Brown County Sheriff's Office executed search warrants on Ronald Van Den Heuvel's business locations and residence. The supporting affidavits established probable cause to believe that Ronald Van Den Heuvel was committing securities fraud and theft in violation of state law. The affidavits described how Mr. Van Den Heuvel fraudulently represented his waste reclamation businesses, including Green Box NA Green Bay, LLC ("Green Box"), to induce loans and investments that he used for other purposes,

including personal expenses. The search warrants authorized the seizure of records and electronic devices related to those offenses.

In executing the search warrants, the Brown County Sheriff's Office seized a substantial volume of material, both hard copy files and electronic devices. The nature and the complexity of the alleged theft and securities fraud violations, as well as the volume of material involved, required substantial resources and time to review the seized material.

The Brown County Sheriff's Office has given federal law enforcement agents access to the seized material as there is a parallel federal investigation into the theft and securities fraud alleged in search warrant affidavits.

With that access, the United States provided copies of materials that it had identified as potentially related to the bank fraud charges with its initial discovery. *See* HOR_003304-004162. The United States also offered to facilitate access to other materials seized by Brown County that the defendants may be interested in. *See* Exhibit 1, at 2.

In late June 2016, the Brown County District Attorney initiated discussions with counsel for defendants Ronald and Kelly Van Den Heuvel, counsel for Green Box, and the United States regarding the return or sharing of materials that Brown County Sheriff's Office had seized pursuant to the search warrants. Discussions continued through July and August 2016 to ensure that Mr. Van Den Heuvel had representation, to assess the proper parties and places to receive the material (e.g., Green Box versus Mr. Van Den Heuvel), and to address logistics.

On or about August 9, 2016, the Brown County Sheriff's Office returned to Ronald and Kelly Van Den Heuvel and Green Box the hard copy materials deemed not to have evidentiary value. These returned materials amounted to approximately 20 pallets of documents and 32 file cabinets.

In addition, all but one of the electronic devices (e.g., computers, external drives, tablets) seized by the Brown County Sheriff's Office have been made available for the defendants' retrieval. Ronald and Kelly Van Den Heuvel have retrieved the electronic devices seized from their residence. On or about August 16, 2016, most of the electronic devices seized from Green Box were retrieved by a Green Box representative. One computer seized from the Green Box office has not been made available for return yet, as law enforcement agents had encountered difficulties in processing it.

Law enforcement agents have retained a substantial number of hard copy documents that may have evidentiary value. These documents are being scanned and will be produced to defendants on a rolling basis in formats that allow the materials to be searched with keywords in a review database. Although it is difficult at this point to estimate the total number of pages to be scanned, the documents filled 7 pallets and may total as many as 950,000 pages. The first production will be made this week, consisting of approximately 22,000 pages. Additional, larger productions are expected to occur in the next few weeks.

F. Discussion

Based on conversations with defense counsel, the United States understands that defendants will request additional time to review the bank fraud discovery and to receive and review the materials seized by the Brown County Sheriff's Office before setting a motions schedule and trial date. The United States does not oppose such a request and will continue working to produce the search warrant materials as expeditiously as possible.

For several reasons, however, the United States does not believe that the defendants' review of the search warrant materials should result in a lengthy delay of a trial. First, although the documents are voluminous, the vast majority are unlikely to have any conceivable bearing on

this case. The bank fraud indicted here occurred from 2008 through 2009. The search warrant materials, by contrast, include materials that span the period until the warrant was executed in 2015. In addition, the bank fraud indicted here concerns a discrete set of loans with a particular bank, Horicon Bank. The search warrant materials, by contrast, concern a much wider array of subjects. Indeed, the United States' review of the materials to date has revealed very few documents that are relevant to the bank fraud case. And to the extent that others are identified, the United States is willing to specifically identify them for defense counsel.

Second, the documents are the defendants' own records. Thus, the defendants should be able to identify records that may bear on their defense more readily than if these were records from a third party.

Finally, the materials will be available to be loaded in a database that will allow keyword searching. This will allow the defendants to search the documents in focused ways—just as the United States would do—for particular issues, events, and witnesses.

Dated at Milwaukee, Wisconsin, this 30th day of August, 2016.

GREGORY J. HAANSTAD
United States Attorney

By: /s/ Matthew D. Krueger

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June 9, 2016

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Re: *United States v. Van Den Heuvel*, No. 16-CR-64

Dear Andrew:

We write in further response to your May 20, 2016 discovery requests and enclose additional requested material along with an updated index. On May 26, 2016, we provided supplemental discovery in response to certain requests. In advance of the May 31, 2016 status conference, the United States filed a response that also addressed your requests. *See* Doc. 26. For the sake of clarity, we address each request below.

1. You requested missing pages from the deposition of William Bain (DEPOS_000001). The May 26, 2016 production included a copy of the complete deposition transcript (DEPOS_81-86).
2. You requested documents provided by Samuel Kaufman, referenced at HOR_000098. The May 26, 2016 production included those documents (HOR_005173 – 005523).
3. You requested grand jury transcripts of witnesses who testified before the grand jury. Such transcripts are generally not disclosed as part of this Office's discovery policy. *See* Crim. Local R. 16(a)(2), (3). Pursuant to Criminal Local Rule 16(a)(4), "[g]rand jury transcripts of any and all witnesses the government intends to call at trial will be made available to the defense no later than 1 business day before the commencement of the trial."
4. You requested copies of subpoenas issued by the government. Subpoenas generally are not disclosed as part of this Office's discovery policy and are not otherwise discoverable. *See* Crim. Local R. 16(a)(2), (3).

5. You requested copies of the Brown County search warrants and affidavits. The Brown County Sheriff's Office executed six search warrants to search properties associated with Van Den Heuvel on July 2, 2015. (Two of the warrants covered different office suites within the same building; hence, the United States previously referred to "five" search warrants.) Those warrants and the supporting affidavits are available to the public. As a courtesy, we have enclosed copies in the enclosed discovery. (BCSO_000001 – 000153).

You also requested "Copies of all Materials Seized." As explained in the United States' May 31, 2016 filing, much of the material seized by the Sheriff's Office is not related to this prosecution and therefore is not subject to discovery. Seized material that the United States believes is related to this prosecution has already been produced. *See* HOR_003304 – HOR_004162.

As discussed at the May 31, 2016 status conference, please let us know what other seized materials you believe are needed for your defense. We continue to expect that the Sheriff's Office will be prepared to return electronic devices and hard copy materials deemed not to have evidentiary value by mid-July 2016, if not sooner. At that point, the Van Den Heuvels will regain custody of those materials. But the Sheriff's Office will likely retain a significant amount of hard copy material deemed to have evidentiary value. Federal law enforcement agents are presently working with the Sheriff's Office as there is now a parallel federal investigation into the conduct alleged in the search warrant affidavits. If you are interested in certain materials, we can work with state and federal law enforcement agents to make copies available. It is important that we communicate, however, because given materials may not be immediately accessible as law enforcement agents process it. For example, some materials may be sent off-site to be scanned, rendering them inaccessible for a period of time.

6. You requested "[a]ny other materials related to Brown County or other law enforcement investigation, including additional materials obtained, investigative notes, witness statements, court documents, and agreements between the state and witnesses." To the extent that such materials pertain to this prosecution, the vast majority has been produced in the initial production and the May 26, 2016 production.

We recently became aware that the Federal Deposit Insurance Corporation ("FDIC") has a separate file pertaining to its administrative investigation into Paul Piikkila's actions as a Horicon Bank lender in making the loans at issue here. That investigation resulted in prohibition proceedings against Piikkila pursuant to Section 8(e)(1) of the FDI Act. We believe that file is largely duplicative of the FDIC's investigative file that led to this prosecution, which has been produced. Out of an abundance of caution, however, we have requested and are reviewing the administrative file, and will produce any materials that are subject to our discovery policy.

7. You requested court documents, depositions transcripts, and files for specified lawsuits. We have determined that any such materials in our possession have been included in discovery. If you obtain additional materials from Horicon Bank or elsewhere, we would request copies of those materials pursuant to Criminal Local Rule 16(a).

8. You requested a copy of Ronald Van Den Heuvel's proffer of April 14, 2016. It is our understanding that you have independently obtained a copy already.

9. You requested copies of any agreements between the government and any individuals who provided statements/proffers. Copies of proffer agreements were provided on May 26, 2016. *See* USAO_000001-000006.

10. You requested criminal histories of individuals the government intends to call as witnesses. Copies of our criminal history checks are enclosed in today's production. *See* USAO_000007 – 000041.

Lastly, we have enclosed an investigative report that reflects recently obtained information about the amount of loss suffered by Horicon Bank. *See* HOR_005524 - 005525. It provides a more precise accounting and explains why the loss amount (\$553,554) is less than alleged previously.

If you have any questions about these matters, please do not hesitate to contact me.

Very truly yours,

GREGORY J. HAANSTAD
United States Attorney

By: /s/ Matthew D. Krueger

MEL S. JOHNSON
MATTHEW D. KRUEGER
Assistant United States Attorneys

MDK/nz
Enclosures (CD – Discovery 6/9/16 and updated index)

cc: Attorney Nancy De Podesta (w/enclosures – CD and index)
Attorney Daniel Sanders (w/enclosures – CD and index)