

**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 YESSMAN VAN DEN HEUVEL,**

Defendants.

REPORT AND RECOMMENDATION

On December 14, 2016, I conducted a hearing with counsel for all parties present. One of the purposes of the hearing was to determine the bases for Mr. Van Den Heuvel's counsel's request to expend Criminal Justice Act ("CJA") funds on a license to use software that would enable him to review discovery materials produced by the United States in electronic format. For the reasons set forth below, I recommend that the requested expenditure be approved.

To set the context for Mr. Van Den Huevel's request, Assistant U.S. Attorney Matthew Krueger provided a fulsome summary of the electronic discovery produced by the United States, particularly focused on materials secured through execution of a search warrant by Brown County, Wisconsin, authorities. That search warranted resulted in the seizure of approximately 317,000 pages (hereinafter, the "seized documents") purportedly related to allegations concerning a fraud scheme involving

the Green Box Investment Fraud scheme. Of the 317,000 seized documents, 4,000 had been produced to defendants in hard copy at the time the indictment was returned, but 313,000 were being produced in electronic format only. As such, these documents may only be reviewed by a person using a proprietary software package called Relativity.

According to the government, the seized materials are largely unrelated to the bank fraud charges asserted by the United States in the instant action. Nevertheless, the government stated that it planned on using an unspecified (but relatively small) number of the seized documents in the instant criminal prosecution.

I then heard from counsel for Mr. Van Den Heuvel, Mr. Robert LeBell, who stated that he believed he was professionally obligated to review the seized documents and that failure to do so might well constitute malpractice. He resisted the notion that he should simply rely on the assurance of the government that there was nothing of interest to his defense in the seized documents, particularly given that the government planned on using some of those documents in its case against Mr. Van Den Heuvel. He further observed that review of the seized documents would be necessary to determine custom and practice and to provide context for the documents that the government planned to use.

Counsel for Ms. Kelly Van Den Heuvel, Mr. Andrew Porter, echoed the points made by Mr. LeBell and noted the overlap in timeframe between the seized documents and the bank fraud charges being pursued by the government suggested

that the documents were of potentially greater relevance than the government believed. Mr. Porter advised that, based on his assessment of the potential importance of the seized documents to his client, his office was reviewing the seized documents using the Relativity software, as his office has a license to this product. Mr. LeBell then observed that it would be particularly unfair to his client if a co-defendant had greater access to discovery materials than did his client.

I also developed information on the costs of reviewing the seized documents. Mr. LeBell stated that the costs of manual review of the seized documents (produced in hardcopy format) would be prohibitive. At ten seconds per page, it would take approximately 1,304 hours to review the seized documents by hand, and subsequent searches for particular documents would create additional costs. Alternatively, Mr. LeBell could obtain a license to Relativity, but such a license and attendant hosting fees would cost approximately \$500,000.

The solution proposed by Mr. LeBell was for him to pay a sublicensing fee of approximately \$65,000 to use the Relativity software that Mr. Porter's firm has acquired. According to Mr. LeBell, this access would put him on a level playing field with the government and would make reviewing and searching the seized documents far more cost effective. I discussed this proposal with Mr. Clarke Devereaux, and he concurred with Mr. LeBell's proposal as an efficient and fiscally responsible means for reviewing the seized documents, especially in light of the alternatives discussed above.

Accordingly, it is my recommendation that the Court approve Mr. LeBell's proposal to expend approximately \$65,000 to obtain a sublicense to Relativity so that he can efficiently review and search the seized documents. I also recommend that the Court authorize Mr. LeBell to hire an investigator who can conduct a document review at a lower rate than Mr. LeBell's CJA rate.

Dated at Milwaukee, Wisconsin, this 13th day of January, 2017.

BY THE COURT:

s/ David E. Jones _____
DAVID E. JONES
United States Magistrate Judge