UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v. **Case No. 16 CR 64**

RONALD D. VAN DEN HEUVEL,

Defendant.

REPLY BRIEF

The defendant provides the following reply to the government's response to pretrial motions. No new argument will be asserted with respect to the motions which are unrelated to the search. The defendant reasserts the arguments set forth in the initial pleadings and disputes the government's arguments to the contrary.

The government alleges that the search warrant affidavit set forth sufficient facts to establish that the business ventures of the defendant were "permeated by fraud". The government cites a litany of cases which authorize the issuance of a search warrant under the "permeated by fraud" theory. The Seventh Circuit has addressed the same issue in *U.S. v. Bentley*, 825 F.2d 1104 (7th Cir. 1987). The *Bentley* court stated:

> "This does not mean that warrants may use open-ended descriptions. The description must be as particular as the circumstances reasonably permit. So if the fraud infects only one part of the business, the warrant must be so limited - but within that portion of the business 'all records' may be the most accurate and detailed

> description possible. E.g., *United States v. Scherer,* 523 F.2d 371, 376 (7th Cir. 1975) (upholding warrant to search business premises for 'business records relating to the purchase and sale of firearms'). See also, e.g., *Richert v. Sweeney*, 813 F.2d 907, 909 (8th Cir. 7987); *Voss v. Bergsgaard*, 774 F.2d 402, 404-06 (10th Cir. 1985); *United States v. Cardwell*, 680 F.2d 75, 78 (9th Cir. 1982); *United States v. Abrams*, 615 F.2d 541, 545 (1st Cir. 1980), How detailed the warrant must be follows directly from the nature of the items there is probable cause to seize; detail is necessary only to the extent the judicial order must limit the search and seizure to those items. When there is probable cause to seize all, the warrant may be broad because it is unnecessary to distinguish things that may be taken from those that must be left undisturbed. A generic description adequately defines the officers' authority. When the probable cause covers fewer documents in a system of files, the warrant must be more confined and tell the officers how to separate the documents to be seized from others. See *Marron v. United States*, 275 U.S. 192, 196, 48 S.Ct. 74, 76, 72 L.Ed. 231 (1927); *United States v. Roche*, 614 F.2d 6, 7 (1st Cir. 1980)." *Bentley* at 1110.

The defendant maintains that the affidavits fail to establish that the business ventures were permeated by fraud, as described in the cases cited by both the government and the defendant. Many of the allegations in support of this theory, as set forth in the affidavit, have little or nothing to do with fraudulent activity of a corporate nature or which may constitute evidence of criminal behavior. Rather, there is a recitation of alleged bad business practices which may have non-nefarious explanations.

The main focus of the search warrant was the claimed Green Box investment fraud. Schartner failed to allege how the multitude of other businesses named in the affidavit and warrant furthered or were involved in Green Box activities. Her assertions about the

following failed to demonstrate that his businesses were used solely for illegal purposes or were "permeated by fraud": he was never paid wages; he transferred motor vehicle's titles; he testified in a civil suit; he misvalued his assets; he used business funds for purposes which may have been legitimate business expenditures; the nature of his personal purchases; his accounting practices; and whether or not he wrote a check which was dishonored.

It is noteworthy that the testimony adduced during the August 11, 2017 evidentiary hearing before this court, established facts which belie the government's theory. Witnesses presented evidence that at the time of the search warrant execution the defendant and/or his corporations employed a HR Director whose job it was to oversee the employee related activities of approximately 50 workers. Furthermore, at the time the warrant was executed one or more mills were operational and apparently producing a viable commercial product. The claim by Mary Schartner that the multitude of businesses listed in the affidavit should have been within the purview of the search, was further undermined by her testimony. According to Schartner, she chose these corporations without reference to their viability, their functionality, or the defendant's temporal interests in the businesses.

The affidavit failed to establish that the defendant's operation was "solely and entirely a scheme to defraud". *U.S. v.*

Brien, 617 F.2d 299, 308 (1st Cir. 1980). In addition, the affidavit failed to adequate describe the officers seizing authority. *Bentley* at 1110. The warrant was not sufficiently confined and failed to tell the officers how to separate the documents to be seized from others. *Bentley* at 1110. The vast array of enumerated business entities and the directive to the seizing officers to seize "all papers" created a general search.

Dated at Milwaukee, Wisconsin this 25th day of August, 2017.

Respectfully submitted,

/s/ Robert G. LeBell

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