

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 16-CR-64

**RONALD H. VAN DEN HEUVEL and
KELLY Y. VAN DEN HEUVEL,**

Defendants.

**ORDER DENYING DEFENDANTS' MOTIONS TO DISCLOSE
GRAND JURY MATERIALS**

Ronald and Kelly Van Den Heuvel are charged with a scheme to defraud financial institutions in which they allegedly used straw borrowers to obtain loans for their personal benefit. The scheme allegedly involved nine fraudulent loans, including a \$250,000 loan to KYHKJG, LLC, an entity formed by the Van Den Heuvels.

The Van Den Heuvels have moved this Court for an order requiring the United States to produce all materials presented to the grand jury with respect to the \$250,000 KYHKJG loan, arguing that they legitimately used that loan to purchase a residence. The United States maintains that the \$250,000 KYHKJG loan fits within the alleged scheme to defraud because it was used for the Van Den Heuvels' personal benefit. For the following reasons, the Court finds that the Van Den Heuvels have failed to demonstrate a particularized need to break the seal of

secrecy surrounding grand jury proceedings. The Court will therefore deny the Van Den Heuvels' motions to disclose grand jury materials.

I. Background

In 2008 and 2009, Paul J. Piikkila was a loan officer for Horicon Bank, working at the branch in Appleton, Wisconsin. *See* Superseding Indictment 2, ECF No. 52. He had authority to make loans up to \$250,000 on his own, but he needed approval from the bank's Business Lenders Committee for loans above that figure.

In late 2007 or early 2008, Ronald Van Den Heuvel approached Mr. Piikkila seeking loans from Horicon Bank to himself and his business entities. Mr. Van Den Heuvel represented himself as a Green Bay businessman. At the time, he was married to Kelly Van Den Heuvel. On or about January 17, 2008, Mr. Piikkila authorized a loan to one of Mr. Van Den Heuvel's business entities. SS Indict. 3. Two months later, Mr. Piikkila sought approval for a \$7,100,000 loan to a different entity owned by Mr. Van Den Heuvel. The Business Lenders Committee refused to authorize that loan because, based on their investigation, Mr. Van Den Heuvel was not a good credit risk. Mr. Piikkila's supervisors instructed him not to make any more loans to Mr. Van Den Heuvel or his business entities.

Mr. Piikkila ignored those instructions and issued a series of loans that were used to benefit Mr. Van Den Heuvel and his businesses. Those nine loans, each of which was for \$250,000 or less, were issued to individuals who did not receive the loan proceeds and who did not regard themselves as responsible for

repaying the loans. SS Indict. 3–4. Mr. Piikkila and the Van Den Heuvels knew that those loans did not go to the straw borrowers.

Mr. Piikkila and the Van Den Heuvel's were indicted in the Eastern District of Wisconsin on April 19, 2016. Count One charges all three defendants with conspiracy to commit bank fraud and to make false statements to Horizon Bank, in violation of 18 U.S.C. § 371. Indictment 1–9, ECF No. 1. Mr. Van Den Heuvel alone is charged in Counts Two through Thirteen with substantive violations of 18 U.S.C. § 1344 (bank fraud) and 18 U.S.C. § 1014 (false statements). Indict. 7–18. Ms. Van Den Heuvel is charged along with her husband in Counts Ten and Eleven. Indict. 15–16. The grand jury returned a superseding indictment on September 20, 2016, which added six new counts against Mr. Van Den Heuvel alone for his role in a separate scheme to defraud. *See* SS Indict. 19–25.

The Superseding Indictment describes the scheme charged in Count One as well as eleven overt acts the defendants allegedly committed in furtherance of the conspiracy. The overt acts include nine loans Mr. Piikkila authorized for the benefit of the Van Den Heuvels from September 2008 through September 2009. SS Indict. 5–6. In particular, on November 7, 2008, Mr. Piikkila authorized a \$250,000 loan to KYHKJG, LLC, an entity formed by the Van Den Heuvels and operated by Ms. Van Den Heuvel. SS. Indict. 2, 5.

On June 19, 2017, the Van Den Heuvels each filed a motion seeking disclosure of grand jury materials relating to the \$250,000 KYHKJG loan. *See* Defendant Kelly Van Den Heuvel's Motion for Discovery, ECF No. 105; Ronald Van

Den Heuvel's Motion for Disclosure of Grand Jury Materials, ECF No. 108. The United States has responded to the motions, *see* United States' Response to Defendants' Motions to Compel Discovery of Grand Jury Materials, ECF Nos. 118 & 119, and Ms. Van Den Heuvel has filed a reply in support of hers, *see* Defendant Kelly Van Den Heuvel's Reply in Support of Motion for Discovery, ECF No. 131.

II. Discussion

Pursuant to Fed. R. Crim. P. 6(e), the Van Den Heuvels seek all materials, including testimony, documents, and argument, presented to the grand jury with respect to the \$250,000 loan Horizon Bank issued to KYHKJG, LLC, on November 7, 2008.

A. Legal standard

Although grand jury proceedings generally are kept secret, *see* Fed. R. Crim. P. 6(e)(2), district courts "may authorize disclosure . . . of a grand-jury matter . . . preliminarily to or in connection with a judicial proceeding," *see* Fed. R. Crim. P. 6(e)(3)(E)(i). Parties seeking disclosure pursuant to this exception must make "a strong showing of particularized need" for the material requested. *See Lucas v. Turner*, 725 F.2d 1095, 1101 (7th Cir. 1984) (citations omitted). More specifically, parties "must show that the material they seek is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that their request is structured to cover only material so needed." *Douglas Oil Co. v. Petrol Stops Nw.*, 441 U.S. 211, 222 (1979) (citing *United States v. Procter & Gamble Co.*, 356 U.S. 677 (1958) and *Dennis v.*

United States, 384 U.S. 855 (1966)). “Such a showing must be made even when the grand jury whose transcripts are sought has concluded its operations.” *Douglas Oil*, 441 U.S. at 222.

“[D]isclosure is appropriate only in those cases where the need for it outweighs the public interest in secrecy.” *Id.* at 223. “[A]s the considerations justifying secrecy become less relevant, a party asserting a need for grand jury transcripts will have a lesser burden in showing justification.” *Id.* “[I]f disclosure is ordered, the court may include protective limitations on the use of the disclosed material.” *Id.* Courts deciding whether to release grand jury materials pursuant to Rule 6(e) are “infused with substantial discretion.” *Id.*

B. Legal analysis

The Van Den Heuvels maintain that the \$250,000 KYHKJG loan was used not for any fraudulent purpose but rather to pay loan fees and to purchase a residence in De Pere, Wisconsin. According to the Van Den Heuvels, the requested materials are therefore needed “to understand the grand jury’s thinking on this issue and determine whether a motion to strike that portion of the superseding indictment is appropriate.” Defendant Kelly Van Den Heuvel’s Memorandum in Support of Motion for Discovery 7, ECF No. 107; Ronald Van Den Heuvel’s Memorandum in Support of Defendant’s Motion for Disclosure of Grand Jury Materials 5, ECF No. 108-1. The Van Den Heuvels further contend that the need for continued secrecy is significantly diminished given that the defendants have already been indicted, trial is scheduled for October 2017, and the grand jury

presumably has completed its work on this matter. Also, the Van Den Heuvels assert that their request is very targeted, as they seek information related to only the \$250,000 KYHKJG loan.

The United States argues that the Van Den Heuvels “have not articulated a particularized reason why they need grand jury material.” U.S.’s Resp. 7. According to the United States, the discovery materials provided to the defense shows that, like the other loans listed as overt acts in the Superseding Indictment, the Van Den Heuvels sought the \$250,000 KYHKJG loan for their personal benefit. The proceeds of that loan, the United States maintains, was used to pay off a mortgage for a residence that Ms. Van Den Heuvel owned and lived in as part of Mr. Van Den Heuvel’s obligation to support his wife. U.S.’s Resp. 3. The United States therefore contends that the Van Den Heuvels simply disagree with how the \$250,000 KYHKJG loan is characterized. The Van Den Heuvels’ version of events can be presented at trial, but, according to the United States, such a disagreement does not justify piercing the secrecy of grand jury proceedings.

The Court finds that the Van Den Heuvels have not met their burden of showing that the materials they seek are needed to avoid a possible injustice in another judicial proceeding. The Van Den Heuvels claim that the grand jury materials are necessary to determine whether to file a motion to strike, but it appears that the information already provided in discovery is sufficient to make that decision. Indeed, because the United States follows an open-file discovery policy, the Van Den Heuvels have had the opportunity to review every document

that was presented to the grand jury. The Van Den Heuvels have not explained why the requested materials would add anything to their analysis. Nor have the defendants argued that the Superseding Indictment is invalid on its face.

The Van Den Heuvels also claim that the grand jury materials are needed to prepare a defense to the allegations contained in the Superseding Indictment. The dispute over the \$250,000 KYHKJG loan, however, boils down to mere disagreement over whether it was legitimate (according to the Van Den Heuvels) or consistent with the alleged scheme to defraud (according to the United States). And the Van Den Heuvels have not explained why the materials already provided in discovery are insufficient to prepare this trial defense. Accordingly, the Court concludes that the Van Den Heuvels have failed to make a strong showing of particularized need for the grand jury materials requested.

Nevertheless, to ensure that there is no disruption in the trial schedule, the Court orders that all grand jury materials be produced fourteen days prior to trial. Consistent with this district's local rules, the United States was already prepared to produce to the defense grand jury transcripts at least one day prior to trial. *See* U.S.'s Resp. 5. As such, the Court does not see how providing some small additional period of time for defendants to review grand jury material will prejudice the United States or will undermine the purposes or importance of grand jury secrecy.

III. Conclusion

For all the foregoing reasons, the Court will deny the Van Den Heuvels' motions requesting disclosure of grand jury materials.

NOW, THEREFORE, IT IS HEREBY ORDERED that Kelly Van Den Heuvel's Motion for Discovery, ECF No. 105, is **DENIED**.

IT IS FURTHER ORDERED that Ronald D. Van Den Heuvel's Motion for Disclosure of Grand Jury Materials, ECF No. 108, is **DENIED**.

IT IS FURTHER ORDERED that, no later than **fourteen days** prior to trial, the United States shall **PRODUCE** to the defense all grand jury materials it intends to use at trial.

Your attention is directed to 28 U.S.C. § 636(b)(1)(A), Fed. R. Crim. P. 59(a), and E.D. Wis. Gen. L. R. 72(c), whereby written objections to any order herein, or part thereof, may be filed within fourteen days of service of this Order or prior to the Final Pretrial Conference, whichever is earlier. Objections are to be filed in accordance with the Eastern District of Wisconsin's electronic case filing procedures. Failure to file a timely objection with the district judge shall result in a waiver of a party's right to appeal. If no response or reply will be filed, please notify the Court in writing.

Dated at Milwaukee, Wisconsin, this 1st day of September, 2017.

BY THE COURT:

s/ David E. Jones

DAVID E. JONES
United States Magistrate Judge