UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

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

RONALD H. VAN DEN HEUVEL,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR SEVERANCE OF COUNTS

Ronald H. Van Den Heuvel is charged for his role in two schemes to defraud financial institutions by using straw borrowers to obtain loans for his personal benefit. The government alleges in Counts One through Thirteen that Mr. Van Den Heuvel, his wife, and a loan officer participated in a scheme to defraud Horicon Bank by obtaining a series of loans through straw borrowers (the Horicon bank scheme). The government further alleges in Counts Fourteen through Nineteen that Mr. Van Den Heuvel alone participated in a scheme to defraud several other financial institutions by having his employee attempt to obtain loans using fraudulent employment information and backed by two vehicles that Mr. Van Den Heuvel had titled in the employee's name (the car loan scheme).

Mr. Van Den Heuvel has moved to sever the car loan counts from the Horicon Bank counts, arguing that the charges were improperly joined and, alternatively, that he will suffer unfair prejudice if the charges are all tried together. The United

States opposes the motion. For the following reasons, the Court finds that the car loan counts are properly joined with the Horicon Bank counts and that a joint trial on all counts will not unfairly prejudice Mr. Van Den Heuvel. The Court therefore will deny Mr. Van Den Heuvel's severance motion.

I. Background

The following allegations are taken from the Superseding Indictment. *See* ECF No. 52. In 2008 and 2009, Paul J. Piikkila was a loan officer for Horicon Bank, working at the branch in Appleton, Wisconsin. SS Indict. 2. 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.

One of Mr. Van Den Heuvel's business entities was a company called EARTH. In June 2013, Mr. Van Den Heuvel persuaded an EARTH employee, P.H., to apply for loans from financial institutions that would be used by Mr. Van Den Heuvel and his business entities. SS. Indict. 19. To help P.H. qualify for loans, Mr. Van Den Heuvel transferred the titles to two Cadillac Escalades from EARTH to P.H. The Escalades, however, remained in EARTH's custody and control. Mr. Van Den Heuvel also had pay stubs created for P.H. that substantially inflated his income, and he had P.H. falsely represent his job title, responsibilities, and income on loan applications. SS Indict. 20. P.H. used this fraudulent information to apply for loans from Community First Credit Union, Nicolet National Bank, and Pioneer Credit Union, offering the two Escalades as security. SS Indict. 20–25.

Mr. Piikkila and the Van Den Heuvels 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 Horicon Bank from on or about January 1, 2008, through on or about September 30, 2009, in violation of 18 U.S.C. § 371. Indictment 1–6, 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) relating to the Horicon

Bank scheme. 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, charging Mr. Van Den Heuvel alone with devising and participating in a scheme to defraud federally insured financial institutions and to obtain loans from those institutions by means of false and fraudulent pretenses and representations from on or about June 10, 2013, through on or about July 2, 2013. SS Indict. 19–25. Specifically, Counts Fourteen through Nineteen charge Mr. Van Den Heuvel with three substantive violations of § 1344 and three substantive violations of § 1014 for his role in the car loan scheme.

The matter is assigned to United States District Judge William C. Griesbach for trial and to this Court for resolving pretrial motions. Mr. Piikkila has pleaded guilty to Count One of the Indictment and is currently awaiting sentencing. *See* Change of Plea Hearing Minutes, ECF No. 39. On August 30, 2017, this Court granted Ms. Van Den Heuvel's unopposed motion to sever her trial from that of Mr. Van Den Heuvel. *See* Order Granting Defendant's Motion to Sever, ECF No. 136. Mr. Van Den Heuvel's trial is set for October 23, 2017.

On June 16, 2017, Mr. Van Den Heuvel filed a motion seeking to sever Counts Fourteen through Nineteen from Counts One through Thirteen. *See* Motion for Severance of Counts, ECF No. 100; Memorandum in Support of Motion for Severance of Counts, ECF No. 101. The United States filed its response on July 12,

2017. *See* Response of the United States to Defendant Ronald Van Den Heuvel's Motion for Severance of Counts, ECF No. 116.

II. Discussion

In moving to sever Counts Fourteen through Nineteen from Counts One through Thirteen, Mr. Van Den Heuvel argues that joinder is improper under Fed. R. Crim. P. 8(a) and that severance is necessary under Fed. R. Crim. P. 14(a). The Court will address each argument in turn.

A. Whether joinder is proper under Fed. R. Crim. P. 8(a)

The government may charge a defendant with two or more offenses in the same indictment if the offenses "are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan." Fed. R. Crim. P. 8(a). This rule is construed broadly to "allow liberal joinder in order to enhance judicial efficiency." *United States v. Nettles*, 476 F.3d 508, 516 (7th Cir. 2007) (quoting *United States v. Stillo*, 57 F.3d 553, 556 (7th Cir. 1995)). In determining whether counts are properly joined, courts must "look solely to the face of the indictment." *United States v. Lanas*, 324 F.3d 894, 899 (7th Cir. 2003)).

The United States maintains that joinder is proper under Rule 8(a) because "all 19 counts charge offenses of the same or similar character." U.S.'s Resp. 2. Mr. Van Den Heuvel contends that joinder does not lie under that provision because the two schemes did not occur over a relatively short period of time (2008–2009 vs.

2013), and the evidence as to the car loan scheme does not overlap with the evidence regarding the Horicon Bank scheme. Def.'s Mem. 2–3.

A review of the Superseding Indictment demonstrates that the car loan counts and the Horicon Bank counts are categorically related. *See United States v. Coleman*, 22 F.3d 126, 133–34 (7th Cir. 1994) (noting that the "same or similar character" prong of Rule 8(a) "is a rather clear directive to compare the offenses charged for categorical, not evidentiary, similarities"). Both schemes involve Mr. Van Den Heuvel allegedly using straw borrowers and making false statements to obtain loans from financial institutions for his personal gain. The Superseding Indictment charges ten substantive violations of § 1344 (bank fraud), eight substantive violations of § 1014 (false statements), and one conspiracy to violate those two statutes. Because all of the offenses are of like class, joinder is proper under Rule 8(a) even though the two schemes do not appear to be connected in time or by evidence. *See Coleman*, 22 F.3d at 133 ("Simply put, if offenses are of like class, although not connected temporally or evidentially, the requisites of proper joinder should be satisfied so far as Rule 8(a) is concerned."); *see also United States v. Peterson*, 823 F.3d 1113, 1124 (7th Cir. 2016) (pension-theft count properly joined with bank fraud, making false statements to banks, and money laundering counts because all involved defendant's "use of his business ventures to obtain money by dishonest means").

B. Whether severance is necessary under Fed. R. Crim. P. 14(a)

Courts have discretion to "order separate trials of counts" if it appears that the joinder of offenses would prejudice the defendant. Fed. R. Crim. P. 14(a). "The potential sources of prejudice are many." *United States v. Ervin*, 540 F.3d 623, 628 (7th Cir. 2008). For example, "the joinder may prejudice the defendant by creating a 'spill-over effect'—that is, that the jury relies on evidence presented on one set of counts when reaching a conclusion on the other set." *Id.* This risk of prejudice is enhanced when "joinder is based upon the 'similar character' of the indictment's charges." *See United States v. Alexander*, 135 F.3d 470, 477 (7th Cir. 1998). Nevertheless, in moving for severance under Rule 14, the defendant must make "a strong showing of prejudice . . . . The fact that a separate trial might offer a better chance of acquittal is not a sufficient ground for severance." *United States v. Goldman*, 750 F.2d 1221, 1225 (7th Cir. 1984) (citations omitted).

Mr. Van Den Heuvel maintains that a joint trial would be highly prejudicial to him because of the disparate nature of the car loan and Horicon Bank schemes, the significant passage of time between the two schemes, the inadmissibility of evidence of one scheme in a separate trial on the other, and the strong potential that the jury will use evidence introduced to support one scheme as proof of guilt regarding the other scheme. Def.'s Mem. 3–6. These potential sources of prejudice, according to Mr. Van Den Heuvel, cannot be alleviated by curative or cautionary jury instructions.

The Court finds that Mr. Van Den Heuvel has not made the strong showing of prejudice necessary to justify severance under Rule 14(a). The two schemes took place during distinct time periods and involved Mr. Van Den Heuvel allegedly attempting to obtain separate loans from different financial institutions. The risk of jury confusion is therefore minimal, given that the evidence to support each scheme appears to be relatively short and simple. *See Coleman*, 22 F.33d at 134–35 (affirming denial of severance motion because the evidence as to each count was "short and simple") (quoting *United States v. Lotsch*, 102 F.2d 35, 36 (2d Cir. 1939)). As such, the Court is not convinced that a jury could not keep separate the evidence used to support each scheme. Likewise, given that both schemes involved Mr. Van Den Heuvel allegedly making false statements to obtain loans for his personal benefit, the Court is not persuaded that evidence of one scheme could not be used to prove motive, intent, plan, or absence of mistake under Fed. R. Evid. 404(b)(2) with respect to the other scheme.

Mr. Van Den Heuvel's assertion that no jury instruction could cure the prejudicial effect of a joint trial is unavailing. It appears that a jury could capably sort through the evidence, and juries are presumed to follow limiting instructions to consider each count separately. "[I]nstructions of this type provide 'an adequate safeguard against the risk of prejudice in the form of jury confusion, evidentiary spillover and cumulation of evidence.'" *Peterson*, 823 F.3d at 1124 (quoting *United States v. Berardi*, 675 F.2d 894, 901 (7th Cir. 1982)). Accordingly, severance of the

car loan counts under Rule 14(a) is not necessary to provide Mr. Van Den Heuvel a fair trial in this case.

III. Conclusion

For all the foregoing reasons, the Court will deny Mr. Van Den Heuvel's severance motion.

NOW, THEREFORE, IT IS HEREBY ORDERED that Ronald H. Van Den Heuvel's Motion for Severance of Counts, ECF No. 100, is **DENIED**.

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 8th day of September, 2017.

BY THE COURT:

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