

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.

**OBJECTION TO MAGISTRATE'S ORDER DENYING THE DEFENDANT'S MOTION
FOR SEVERANCE AND REQUEST FOR DE NOVO REVIEW**

COMES NOW the above named defendant, Ronald Van Den Heuvel, through Attorney Robert LeBell, and moves the Court for a De Novo review of the Magistrate Judge's Decision and Order denying the defendant's Motion for Severance entered on September 8, 2017.

AS GROUNDS THEREFORE, the defendant states the following:

The Magistrate Judge determined that joinder was proper under F.R.C.P. 8(a) in that the counts charge offenses were of the same or similar character. The court then determined that despite the risk of prejudice created by such joinder, that severance was not appropriate under F.R.C.P. 14(a). The court correctly noted that the Seventh Circuit has expressed concern that the risk of prejudice is enhanced when "joinder is based upon the 'similar character' of the indictment's single charges", citing *U.S. v. Alexander*, 135 F.3d 470, 477 (7th Cir. 1998). The defendant maintains that he has made a sufficiently strong showing of prejudice to necessitate severance. It is the defendant's position

that the jury will, despite curative or cautionary instructions, merge the proof of the one scheme into the other and infer guilt from the potential proof of one for the other.

The two separate schemes are not only different in nature, but are also many years apart. Similarly, the evidence of one scheme could not be used at a separate trial for the allegations of the remaining scheme. F.R.E. 404(b)(2) would not permit the introduction of one scheme in a separate trial of the other. Neither scheme could be used in separate trials to prove motive, intent, plan, or absence or mistake.

The defendant respectfully requests that the Court order separate trials as requested, and consistent with the arguments set forth in the initial pleadings.

Dated at Milwaukee, Wisconsin this 22nd day of September, 2017.

Respectfully submitted,

/s/ Robert G. LeBell

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