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.

MOTION FOR DISCLOSURE OF GRAND JURY MATERIALS

COMES NOW the above named defendant, by his attorney, Robert G. LeBell, moves the Court, pursuant to Federal Rule of Criminal Procedure 6(e), for an Order disclosing Grand Jury materials as they relate to Counts 1 of the Superseding Indictment.

AS GROUNDS THEREFORE the defendant relies upon the attached Memorandum.

Dated at Milwaukee, Wisconsin, this 19th day of June, 2017.

Respectfully submitted,

/s/ Robert G. LeBell

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RONALD D. VAN DEN HEUVEL,
Defendant.

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR DISCLOSURE OF GRAND JURY MATERIALS

Ronald Van Den Heuvel and Kelly Van Den Heuvel are both charged in Count 1 of the superseding indictment. The core allegation of the superseding indictment is that Mr. Van Den Heuvel used "straw borrowers" to obtain loans from Horicon Bank. It is further alleged that Mr. Van Den Heuvel then used the loan proceeds for his own benefit and that of his own business entities. The grand jury identified nine separate loans allegedly part of the criminal conspiracy involving Mr. Van Den Heuvel and "straw borrowers". One of the loans, for $250,000, went to a company named KYHKJG, LLC, which was allegedly operated by Kelly Van Den Heuvel. This loan is described in the superseding indictment in the third overt act. This motion seeks targeted Grand Jury materials concerning only that $250,000 loan. The motion is brought pursuant to Federal Rule Of Criminal Procedure 6(e).

Based on the discovery, it appears that all of the $250,000 loan proceeds to KYHKJG went to purchase a home in De Pere, Wisconsin. The discovery further reveals that none of the $250,000 loan proceeds went to Mr. Van Den Heuvel personally, or to other of

his business interests. The $250,000 loan is unlike the other loans named by the grand jury in that it does not allege that any of the proceeds went to Mr. Van Den Heuvel or his business entities.

From the discovery, it appears that no false statements exist related to the $250,000 loan. The grand jury has not alleged any false statement, despite the fact that the indictment has itemized the $250,000 loan as one of the "overt acts" listed in the conspiracy count. Statements from the discovery include admissions by Paul Piikkila, the Horicon Banker who orchestrated the loans, was a co-defendant, and who is the government's key witness. He has stated:

1. Mr. Van Den Heuvel (not Kelly) "approached Piikkila for the KYHKJG loans";
2. Piikkila thought "that the $70,000 line of credit was to be used for maintaining the house";
3. Piikila doesn't know that "Van Den Heuvel [not Kelly] used it for other purposes";
4. Piikila "didn't see these loans [the $250,000 and the $70,000 loan] as a way to circumvent the bank".

The discovery further reveals that the proceeds of the $250,000 went to Evans Title and Horicon Bank. Neither of those entities have any connection to Mr. Van Den Heuvel. Instead, the payments to those two entities establish that the loan proceeds went for their intended purpose: to buy a home. Moreover, the discovery demonstrates that the home was fully collateralized. When Horicon Bank ultimately foreclosed on the home because KYHKJG was

behind in its mortgage payments, Horicon Bank got its money back through a sheriff's property sale. In short, the $250,000 loan to KYHKJG appears to be a simple business transaction that mirrors millions of other home purchases in 2008 and 2009 in the United States: An buyer purchases a home; He or she is unable to make the mortgage payments; The bank forecloses. This unfortunate occurrence is not a crime. It was the American experience for far too many households during the economic calamity of 2008 and 2009.

Based on the discovery disclosed, it is not clear how the grand jury could have designated the $250,000 loan as one of the overt acts in Count One of the indictment.

ANALYSIS

A court may permit disclosure of grand jury materials under Federal Rule of Criminal Procedure 6(e)(3)(E)(I) when the requesting party has demonstrated a "particularized need" for the material. Rule 6(e) provides several situations in *which the Court can order the release of grand jury materials See Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211 (1979). The movant must demonstrate that the material sought 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 [the] request is structured to cover only material so needed." *Id.* at 222; see also *United States v. Sells Engineering, Inc.*, 463 U.S. 418, 443 (1983); *Lucas v. Turner*, 725 F.2d 1095, 1101 (7th Cir. 1984). Here, each of those elements favors disclosure.

In determining whether disclosure is permitted, the court must

balance the "particularized need" of the party seeking disclosure against the need for secrecy, United States V. Proctor and Gamble Co., 356 U.S. 677 (1958) As the need for secrecy decreases, the burden of demonstrating need for the materials is reduced, *Douglas Oil Co.*, 441 U.S. 2111, at 223; see also *Dennis v. United States*, 384 U.S. 855, 870 (1966); *Illinois v. Sarbaugh*, 552 F.2d 768, 774-75 (7th Cir. 1977). The most important factor to consider in weighing the need for continued secrecy is whether the investigation has been completed. After completion of the investigation, "[O]nly 'institutional' concerns are implicated by the [requested] disclosure." *United States v. Dynavac*, Inc. 6 F.3d 1407, 1412 (9th Cir. 1993). In Dennis the court acknowledged that: "...after the grand jury's functions are ended, disclosure is wholly proper where the ends of justice require it." *Dennis* , at 870; see also *United States v. Socony-Vacuum Oil*, 310 U.S. 150, 234 (1940); *Wisconsin v. Schaffer*, 565 F.2d 961, 967 (7th Cir. 1977).

Finally, the court may regulate the disclosure of materials ordered pursuant to Rule 6(e)(3)(E)(I) to limit to the maximum extent possible the invasion of grand jury secrecy. See *Douglas Oil*, 441 U.S. at 222. The Seventh Circuit has endorsed protective orders which permitted disclosure to a single attorney; required that attorney to keep a log of all subsequent disclosures; prohibited the copying of transcripts; and required the return of all transcripts once they were no longer needed. *Illinois v. Sarbaugh*, 552 F.2d 768,778 (7th Cir. 1977).

Here, a particularized need exists for disclosure of the

requested information. The grand jury alleged as an overt act in furtherance of the conspiracy the $250,000 loan to KYHKJG. Based on the discovery however, nothing untoward occurred in relation to that loan, even according to the government's own cooperator. No obvious purpose exists, then, for leaving that allegation in the indictment. The defendant needs the requested information in order to understand the grand jury's thinking on this issue and determine whether a motion to strike and/or dismiss that portion of the superseding indictment is appropriate.

The grounds for secrecy are significantly diminished here, because the case has already been indicted, it is moving toward trial, and the grand jury has presumably completed its work on this matter. In addition, the requested information is very targeted. The defendant seeks only that information related to the $250,000 loan on November 7, 2008. Finally, the defendant has no objection to a protective order that would limit disclosure of this information to only those persons authorized by the Court.

The grand jury materials are the only means by which the defendant can determine whether a motion to dismiss or strike this portion of the indictment is appropriate. Here, the compelling need for secrecy is outweighed by the potential miscarriage of justice that could result from irregularities in the grand jury proceedings concerning the allegations in Count I of the superseding indictment.

CONCLUSION

WHEREFORE, the defendant Ronald Van Den Heuvel, moves the

court for an order requiring the government to disclose the grand jury materials regarding the overt act in Count 1 of the superseding indictment, including testimony, documents, and argument, concerning the purported fraud with respect to the $250,000 loan.

Dated at Milwaukee, Wisconsin, this 19th day of June, 2017.

Respectfully submitted,

/s/ *Robert G. LeBell*

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