

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA,) CASE NO: 1:16-CR-0064-WCG-DEJ-1
)
Plaintiff,) CRIMINAL
)
vs.) Green Bay, Wisconsin
)
RONALD H. VAN DEN HEUVEL,) Tuesday, October 10, 2017
)
Defendant.) (1:29 p.m. to 1:58 p.m.)

CHANGE OF PLEA HEARING

BEFORE THE HONORABLE WILLIAM C. GRIESBACH,
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff: MEL S. JOHNSON, ESQ.
MATTHEW KRUEGER, ESQ.
REBECCA TAIBLESON, ESQ.
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1 Green Bay, Wisconsin; Tuesday, October 10, 2017; 1:29 p.m.

2 Call to Order

3 **THE CLERK:** The Court calls Case Number 16-CR-64,
4 *United States of America versus Ronald H. Van Den Heuvel* for a
5 change of plea hearing. May I have the appearances, please?

6 **MR. JOHNSON:** Mel Johnson and Matt Krueger and
7 Rebecca Taibleson appearing on behalf of the United States,
8 your Honor. Hello.

9 **THE COURT:** Good afternoon.

10 **MR. LE BELL:** Good afternoon, your Honor. I'm Robert
11 LeBell for Mr. Van Den Heuvel, and Mr. Van Den Heuvel is
12 present.

13 **THE COURT:** Good afternoon.

14 **PROBATION OFFICER KOEHLER:** Good afternoon, your
15 Honor. Brian Koehler on behalf of the U.S. Probation Office.

16 **THE COURT:** All right. Well, good afternoon all. My
17 understanding is that we're going to proceed to a change of
18 plea in the 16-CR-64 case, and then an arraignment in the
19 17-CR-160 case, correct?

20 **MR. JOHNSON:** Yes, sir.

21 **THE COURT:** And I have before me the written
22 plea agreement. It appears from the agreement that
23 Mr. Van Den Heuvel will be entering a plea of guilty to one
24 count of bank fraud.

25 **MR. JOHNSON:** It's actually a --

1 **THE COURT:** Wire fraud?

2 **MR. JOHNSON:** -- conspiracy count.

3 **THE COURT:** Oh, conspiracy count. Excuse me.

4 **MR. JOHNSON:** It's a conspiracy to commit bank fraud.

5 **THE COURT:** One count of the conspiracy count. The
6 other counts will then be dismissed, and also there's a
7 dismissal against Mrs. Van Den Heuvel, correct?

8 **MR. JOHNSON:** That's true, your Honor. The -- on
9 that subject, the plea agreement states that the case against
10 Mrs. Van Den Heuvel would -- would be dismissed as of the time
11 of sentencing of Mr. Van Den Heuvel.

12 **THE COURT:** Okay.

13 **MR. JOHNSON:** However, since this agreement was
14 made, we've had some talks with her counsel, and we have
15 reached an agreement to dismiss the case against her after
16 Mr. Van Den Heuvel's plea is accepted.

17 We have a written agreement that we'll sign off on,
18 and we thought it was best to file that with the Court as an
19 attachment to a motion to dismiss. The motion to dismiss
20 would essentially say we move to dismiss the charges against
21 Mrs. Van Den Heuvel based on the attached agreement.

22 **THE COURT:** Okay. Let's see. The -- what does it
23 appear that the -- the guideline calculation -- what the
24 sentence range under the sentencing guidelines is?

25 **MR. JOHNSON:** Well, let's see.

1 **THE COURT:** I see the Government is agreeing to
2 recommend a sentence at the low end of the applicable guideline
3 range.

4 **MR. JOHNSON:** Yes.

5 **THE COURT:** As determined by the Court, Defense free
6 to argue?

7 **MR. JOHNSON:** That's true.

8 **THE COURT:** And the restitution amount is set?

9 **MR. JOHNSON:** That's true as well.

10 **THE COURT:** At \$316,445.

11 **MR. JOHNSON:** The guideline range that we at least
12 expect will be the applicable guideline range is 33 to 41
13 months.

14 **THE COURT:** Okay. And anything else unusual about
15 the plea agreement we should address?

16 **MR. JOHNSON:** Well, there is an unusual provision
17 with regard to the beginning --

18 **THE COURT:** Oh.

19 **MR. JOHNSON:** -- of Mr. Van Den Heuvel's sentence if
20 he receives a sentence of incarceration. Because he has now
21 been indicted for another case which, regardless of whether you
22 decide to designate it as complex, it's a pretty complicated
23 case in the sense that there's a lot of discovery and involves
24 a number of business transactions, and -- and a lot of money
25 tracing and so forth.

1 Our agreement is that we will not ask that
2 Mr. Van Den Heuvel begin his sentence of incarceration, if you
3 sentence him for incarceration in this case, for six months or
4 until the charges in the new case are resolved, either by
5 dismissal, plea, or a verdict. Then once the case is resolved,
6 the parties have the right then to ask you to order that
7 Mr. Van Den Heuvel's sentence of incarceration, if he receives
8 one in this case, should begin at that point.

9 The idea was, Mr. LeBell can correct me if I'm wrong
10 or if he would expand on this, I think the idea was that it was
11 significant for Mr. Van Den Heuvel to not be in custody while
12 working with his Defense counsel to prepare a defense for the
13 new case, and that that would be easier if he was not in
14 custody. And so, that's an unusual provision of this plea
15 agreement.

16 **THE COURT:** Okay. Mr. LeBell, anything you want to
17 add?

18 **MR. LE BELL:** No, that -- that's a correct assessment
19 of the situation as far as the delay.

20 **THE COURT:** And you've calculated the sentence
21 guideline range pretty much the same?

22 **MR. LE BELL:** Well, I -- I wondered if I could speak
23 to Mister --

24 **THE COURT:** Uh-huh.

25 **MR. LE BELL:** -- Johnson for a second.

1 **(Attorneys confer)**

2 **MR. LE BELL:** Judge, I think there was a -- a bit of
3 a misstatement, unintentional on the part of Mr. Johnson.

4 The actual guideline calculations that are
5 contemplated by the parties are if there is a Base Level 6,
6 there's an enhancement of 12 levels for the relevant conduct,
7 the Government will be asking for a two-level role enhancement;
8 the Defense will not agree, and that'd be three points for
9 acceptance; by my calculation, that puts him at 17 which is not
10 the figure that was Mr. Johnson's statement. I think he
11 calculated it based on a different --

12 **MR. JOHNSON:** You know, to be honest with you, Judge,
13 that's what the plea agreement calls for; that'll be our
14 position.

15 **THE COURT:** Okay. But it'll be a subject of
16 argument.

17 **MR. JOHNSON:** That's true.

18 **MR. LE BELL:** Correct.

19 **THE COURT:** All right. All right. And Mr. LeBell, I
20 take it that you've gone over the plea agreement with your
21 client as well as the facts and the applicable law.

22 **MR. LE BELL:** I have, your Honor.

23 **THE COURT:** And he understands that by entering this
24 plea, he's giving up and waiving his right, not only his right
25 to a jury trial, but his right to challenge the admissibility

1 of evidence under the motions that you previously filed?

2 **MR. LE BELL:** Subject to the agreement that we sent
3 before the Court, the stipulation that the new case
4 contemplates there will be use of -- (indiscernible) use.

5 **THE COURT:** Sure. We're just talking about this
6 case.

7 **MR. LE BELL:** Correct.

8 **THE COURT:** Yeah. All right. From your
9 conversations with your client then, are you satisfied that
10 should he proceed to enter a plea of guilty to this charge
11 today, the charge of conspiracy, will be a knowing and a
12 voluntary plea?

13 **MR. LE BELL:** I am.

14 **THE COURT:** Mr. Van Den Heuvel, you've heard what the
15 attorneys have told me. Is it your intention now to enter a
16 plea of guilty to this charge?

17 **THE DEFENDANT:** I realize and understand what they
18 have stated, and I agree with the plea.

19 **THE COURT:** Okay. Please stand and raise your right
20 hand. The Clerk is going to administer the oath before I ask
21 you any further questions.

22 **(Defendant Sworn)**

23 **THE COURT:** Okay. Go ahead, you can be seated. No;
24 have a seat right there.

25 Mr. Van Den Heuvel, the rules that govern the

1 proceedings in federal court require that anyone who enters a
2 plea of guilty to a federal crime first be placed under oath.
3 And the reason we place you under oath is to create a legal
4 obligation for you to tell the truth. So, you should
5 understand now that you're under oath, you're subject to
6 penalties for perjury or false swearing if you fail to tell the
7 truth. Do you understand that?

8 **THE DEFENDANT:** I do.

9 **THE COURT:** The other thing I want you to understand
10 right at the outset is that you do not have to enter a plea of
11 guilty to this crime or any crime.

12 The purpose of today's hearing is to make sure that
13 if you do enter a plea of guilty, it's the result of a knowing
14 and voluntary decision on your part. In other words, it's not
15 your attorney's decision, it's not family's decision, it's your
16 decision. Do you understand that?

17 **THE DEFENDANT:** Yes.

18 **THE COURT:** Okay.

19 **THE DEFENDANT:** And I understand while intent is not
20 required, there was none.

21 **THE COURT:** We'll go through the elements of the
22 offense later.

23 **THE DEFENDANT:** Okay.

24 **THE COURT:** But at this point, I just want you to
25 understand those two things. Okay?

1 **THE DEFENDANT:** Yes.

2 **THE COURT:** Okay. And tell me for the record, what
3 is your name?

4 **THE DEFENDANT:** Ronald Henry Van Den Heuvel.

5 **THE COURT:** How old are you?

6 **THE DEFENDANT:** I am 63 years old.

7 **THE COURT:** And how far did you go in school?

8 **THE DEFENDANT:** I graduated with a five-year
9 electronic and electrical degree from tech school.

10 **THE COURT:** Okay. So, you have a high school diploma
11 plus a degree from a tech school?

12 **THE DEFENDANT:** That's correct.

13 **THE COURT:** Which tech school did you graduate from?

14 **THE DEFENDANT:** Northeastern Wisconsin Technical
15 Institute.

16 **THE COURT:** Okay. And you have a five-year degree in
17 electronics?

18 **THE DEFENDANT:** Electrical -- and electrical
19 engineering.

20 **THE COURT:** Okay. And you -- you're married and you
21 have children.

22 **THE DEFENDANT:** Yes. I married for 31 years, and
23 been married for 15 a second time.

24 **THE COURT:** A second marriage. And you -- have you
25 ever been diagnosed with having any kind of mental illness?

1 **THE DEFENDANT:** No, sir.

2 **THE COURT:** As you sit here today, are you under the
3 influence of anything? And by "anything," I mean alcohol,
4 drugs, medications, anything at all that would interfere with
5 your ability to understand these proceedings or to make a
6 decision?

7 **THE DEFENDANT:** I'm a Type 1 diabetic, but nothing
8 else. And I don't drink alcohol; I haven't for 35 years.

9 **THE COURT:** Okay. And being a Type 1 diabetic
10 doesn't interfere with your ability to make decisions or
11 understand.

12 **THE DEFENDANT:** Not at all.

13 **THE COURT:** All right. You read over the plea
14 agreement before you signed it?

15 **THE DEFENDANT:** Yes, I did.

16 **THE COURT:** And you discussed it with your attorney.

17 **THE DEFENDANT:** Yes, I did.

18 **THE COURT:** Did you have enough time to discuss it
19 with your attorney?

20 **THE DEFENDANT:** He's been very good with that, and
21 met with me for a full Saturday --

22 **THE COURT:** Okay.

23 **THE DEFENDANT:** -- understood it, and was --

24 **THE COURT:** And that wasn't the first time you've
25 discussed this case with your attorney either.

1 **THE DEFENDANT:** No.

2 **THE COURT:** I mean, the state case has a long
3 history, and I -- I take it you've gone over many other areas
4 with your attorney; is that right?

5 **THE DEFENDANT:** A very complicated case. I don't
6 understand where I assigned all the notes from Mr. Tak and the
7 straw borrower, so it was complicated. I didn't understand it.
8 Okay? Mr. LeBell helped me, and I do understand it now.

9 **THE COURT:** Okay. You're satisfied with the
10 representation that he's provided you up until this point; is
11 that fair?

12 **THE DEFENDANT:** I couldn't have paid better.

13 **THE COURT:** Okay. We'll go over some of the
14 provisions of the agreement that you signed, make sure that the
15 record reflects your understanding of it, okay?

16 **THE DEFENDANT:** Okay.

17 **THE COURT:** First of all, that is your signature on
18 the agreement? On the last page there.

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** And by signing it, you -- that's your
21 indication of your assent to the terms of the agreement; is
22 that right?

23 **THE DEFENDANT:** That's correct.

24 **THE COURT:** Okay. I'm going to begin, and want you
25 to turn to, if you want to read along, the elements or the

1 pieces that make up this crime.

2 They're listed in Paragraph 10 that appears on
3 Page 9. And let me say at the outset, the -- the elements --
4 it's essential you understand the elements of the offense
5 because this tells you what the Government would have to prove
6 in order for you to be found guilty of this offense if the case
7 were to go to trial.

8 The charge of conspiracy as charged in the indictment
9 has three elements. The first element that the Government
10 would have to prove is that the conspiracy as charged in Count
11 One existed.

12 Now, "conspiracy" is simply an agreement between two
13 or more persons to commit a crime. And the conspiracy alleged
14 in the indictment is the conspiracy -- the agreement allegedly
15 to engage in essentially bank fraud or wire fraud. That's the
16 agreement that is alleged to have occurred between January 1st
17 of 2008 and September 30th of 2009.

18 And the second element the Government would have to
19 prove is that you knowingly became a member of the conspiracy
20 with the intent to advance the conspiracy. In other words, to
21 accomplish its objective.

22 And then the third element is that at least one of
23 the coconspirators, or one of the conspirators committed an
24 overt act in an effort to advance the goals of the conspiracy.

25 In other words, a conspiracy can just be an agreement

1 that exists in the minds of people. An agreement obviously
2 doesn't have to be written; it can be oral. But in order for
3 you to be charged with criminal conspiracy as charged in the
4 indictment, the Government would have to prove not only that
5 such a -- such an agreement existed, but that one or more of
6 the parties to the conspiracy, one or more of the conspirators,
7 went further and committed an overt act in an effort to advance
8 the goals of the conspiracy.

9 Those are the elements that make up this crime. Do
10 you understand them?

11 **THE DEFENDANT:** I do. I also understand that there
12 was no intent.

13 **THE COURT:** Well --

14 **THE DEFENDANT:** I know. I agree. And I do
15 understand that.

16 **MR. LE BELL:** Could I -- could I have just a second?

17 **THE COURT:** Yes. Because intent, as I understand it,
18 would be an element. Intent to enter into an agreement to
19 commit a crime.

20 **(Defense attorney confers with Defendant)**

21 **THE COURT:** And we're not going to play games here.

22 **THE DEFENDANT:** Yes, your Honor.

23 **THE COURT:** You understand.

24 **THE DEFENDANT:** I do understand.

25 **THE COURT:** The Government would have to -- am I

1 correct the underlying crime is bank fraud? Or --

2 **MR. JOHNSON:** That's correct.

3 **THE COURT:** And bank fraud means there was an intent
4 to defraud a bank by making false statements and having the
5 bank -- a federally insured bank provide money based on false
6 statements. A conspiracy to commit that crime would involve
7 the intent to enter into an agreement to accomplish that goal.
8 You understand that?

9 **THE DEFENDANT:** I do.

10 **THE COURT:** That's what the Government would have to
11 prove.

12 **THE DEFENDANT:** I do.

13 **THE COURT:** All right. Now, the penalties for this
14 offense are listed in Paragraph 6 that starts on Page 8. The
15 maximum term of imprisonment; in other words, the greatest
16 punishment that could be imposed is five years in prison.
17 There is also a maximum of \$250,000 fine. There is a \$100
18 special assessment, and a maximum of three years of supervised
19 release.

20 Supervised release in the federal system is like
21 extended supervision in the state system, or what we used to
22 call parole. A person who is sentenced to federal prison, upon
23 their release from prison, is placed under supervision of the
24 Court with a Probation officer conducting the supervision
25 subject to conditions imposed by the Court.

1 If they violate the conditions of supervision,
2 they're -- they can be revoked and sent back to prison. Do you
3 understand that?

4 **THE DEFENDANT:** Yes, I do.

5 **THE COURT:** There is also -- this is a kind of
6 offense for which the Court would order restitution for any
7 losses, and it appears that as part of the plea agreement,
8 you're agreeing that the amount of restitution in this case,
9 and this is in Paragraph 29; the amount of the restitution that
10 the parties are agreeing to to be paid to Horicon Bank is
11 \$316,445.79. Do you understand that?

12 **THE DEFENDANT:** I do.

13 **THE COURT:** Okay. Now, if you proceed to enter a
14 plea of guilty to this crime today, and if I accept that plea,
15 I will find you guilty. There will be no trial. The next
16 hearing we would have in this case would be the sentencing
17 hearing.

18 The first thing I do at the sentencing hearing is I
19 determine what the sentence range is for someone in your
20 position under the United States Sentencing Guidelines. And
21 you heard me discuss with the attorneys what it looked like the
22 sentence range was in this case.

23 Do you understand the guidelines and how they work?
24 And you discussed them with your attorney? In other words, I'm
25 to determine the offense severity score and then I'm to look to

1 see whatever your criminal history is, whether you've been
2 convicted of a crime.

3 Those two variables then, the criminal -- the offense
4 severity score and your criminal history category, those will
5 point me to a sentence range in which your sentence would fall
6 under the guidelines. Do you understand that?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** Okay. And you understand that in
9 determining what the offense severity score is, I look at not
10 only the one count you're pleading guilty to, but I also look
11 for relevant conduct. And the relevant conduct here would be
12 other -- other crimes perhaps that also resulted in similar
13 losses.

14 In fact, is the \$314,000, is that based upon the --
15 all of the counts?

16 **MR. JOHNSON:** Yes, it is.

17 **THE COURT:** Okay. So, under the sentencing
18 guidelines, you're not being found guilty of other counts, but
19 they come in for purposes of finding what the relevant conduct
20 in determining the appropriate sentence is. Do you understand
21 that?

22 **THE DEFENDANT:** I do.

23 **THE COURT:** Okay. A couple of things you should
24 understand. As you heard from the attorneys, they're in --
25 they have a disagreement over how the guidelines apply in this

1 case; what the sentence range is.

2 Do you understand that they'll make their arguments
3 to me, but ultimately, I'll make my own determination as to
4 what the sentencing guidelines are in your case? Do you
5 understand that?

6 **THE DEFENDANT:** I do understand you have final say.

7 **THE COURT:** All right. And of course it's a legal
8 question what the guideline range is, but I'll -- I'll make my
9 determination, Probation will make a recommendation, I'll
10 listen to the arguments, and then I'll decide what the range
11 is.

12 What you should understand is that if my
13 determination of what the sentence range is is different than
14 what you or the attorneys expect it to be, that's not grounds
15 to withdraw your plea. Do you understand that?

16 In other words, I'm going to make my own
17 determination as to what the guideline range is. Do you
18 understand?

19 **THE DEFENDANT:** I do understand that.

20 **THE COURT:** The other thing you should understand is
21 that the guidelines are guides to the Court; they're not
22 mandatory sentencing instructions. So, I have to consider the
23 guidelines, but I'm also free to sentence either above or below
24 the guidelines as long as I give good reasons for doing that.
25 Do you understand that as well?

1 **THE DEFENDANT:** I do; Mr. LeBell told me that.

2 **THE COURT:** Okay. Then the other thing, as I said
3 before, by entering a plea of guilty, you will be giving up or
4 waiving your right to a jury trial and the rights that go with
5 a jury trial. Do you understand what a jury trial is?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** Can you tell me in your own words what a
8 jury trial is?

9 **THE DEFENDANT:** A jury is a jury of my peers selected
10 by the legal councils. They can release some of the
11 indictments, accept some of the indictments, have me guilty of
12 one or more of the indictments, or admonish (phonetic) me of
13 all of them.

14 **THE COURT:** Okay. Essentially, I think you know what
15 a jury trial is. Let me -- let me say it in the terms we -- to
16 give you a full description just so the record is clear. Okay?

17 A jury trial is the procedure that we use to resolve
18 cases when the parties do not reach agreement. You're right; a
19 jury consists of 12 citizens drawn from the district. To
20 select a jury, we bring in more than 12. In a case like this,
21 we'd probably bring in close to 50.

22 From that larger number, we qualify a number by
23 asking them questions to make sure they can be fair and
24 impartial, and that they have no interest in the outcome of the
25 case.

1 Throughout the trial, including during the selection
2 of the jury, you are present along with your attorney. You
3 have the continued right to the assistance of counsel
4 throughout the trial. You would participate in the jury
5 selection process by submitting questions that I can put to the
6 jurors to test their qualifications.

7 Once we qualify the required number of jurors, a list
8 with their names on it gets passed back and forth between the
9 attorneys and they take their strikes to get down to the 12
10 that are then seated in the jury box over here.

11 The Government then proceeds to try to prove its
12 case. Its obligation, of course, the Government's obligation
13 is to prove guilt beyond a reasonable doubt. The Government
14 tries to do that by calling witnesses who testify from the
15 witness stand over here under oath. Again, you are present in
16 court so you can watch them testify, look them in the eye so to
17 speak. Through your attorney you can cross-examine them;
18 challenge their testimony, elicit other facts.

19 After the Government has completed its -- and that's
20 called your right to confront the witnesses against you, of
21 course.

22 After the Government has completed its evidence, you
23 may but are not required to put on a defense. You don't have
24 to put on a defense because the Government has the burden of
25 proof, and its burden is to prove guilt beyond a reasonable

1 doubt. But if you choose to, you can call witnesses. If there
2 are witnesses whose testimony you wish to introduce that don't
3 want to come to court, you can get a court order or a subpoena
4 that compels them to come so that you can present that
5 testimony as well.

6 You would also of course have the right to testify in
7 your own behalf; tell your side to the jury -- tell the jury
8 your side of the story and have them consider that in deciding
9 whether the Government had met its burden in proving guilt
10 beyond a reasonable doubt.

11 On the other hand, you would not have to testify.
12 And if you elected not to testify, I would tell the jury that's
13 your right; they can't hold it against you or treat it as
14 evidence in any way.

15 And then after all the evidence were in, I would
16 instruct the jury on the elements of the offense. I'd tell
17 them what they have to find in order to find you guilty, but
18 I'd also tell them that you are presumed to be not guilty and
19 they may not return a verdict of guilty unless all 12
20 unanimously agree that the Government had proven your guilt
21 beyond a reasonable doubt.

22 Those are the rights you're giving up by entering a
23 plea of guilty. Any questions about those rights?

24 **THE DEFENDANT:** No, sir.

25 **THE COURT:** Has anyone made any promises to you other

1 than the promises that are set forth in writing in the plea
2 agreement in order to get you to waive your rights and enter a
3 plea of guilty?

4 **THE DEFENDANT:** No. My -- my wife is dismissed,
5 right?

6 **THE COURT:** That's in the plea agreement.

7 **THE DEFENDANT:** Okay.

8 **THE COURT:** And you understand that's part of the
9 plea agreement and the Government has -- has made that promise.
10 You understand that?

11 **THE DEFENDANT:** I agree.

12 **THE COURT:** Any other promises either than those that
13 are set forth in the plea agreement to get you to waive your
14 rights?

15 **THE DEFENDANT:** No, sir.

16 **THE COURT:** Anyone making any threats against you or
17 anyone else to get you to waive your rights and enter a plea of
18 guilty?

19 **THE DEFENDANT:** No, sir.

20 **THE COURT:** Are you pleading guilty to this offense
21 then because you are guilty of the offense?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Okay. Do you have any questions about
24 anything I've asked you or anything in the plea agreement
25 before I ask you for your plea?

1 **THE DEFENDANT:** No, sir.

2 **THE COURT:** Mr. Johnson, anything else you think I
3 should inquire into before I ask Mr. Van Den Heuvel for his
4 plea?

5 **MR. JOHNSON:** No, your Honor.

6 **THE COURT:** Mr. LeBell?

7 **MR. LE BELL:** I have no other questions.

8 **THE COURT:** Okay. Very well. Mr. Van Den Heuvel,
9 tell me then out loud and for the record, what is your plea to
10 Count One, the charge of conspiracy as alleged in the
11 indictment?

12 **THE DEFENDANT:** Do you want a yes or a no answer
13 only?

14 **THE COURT:** I want guilty or not guilty.

15 **THE DEFENDANT:** Not guilty. Guilty, excuse me.

16 **THE COURT:** Your plea is guilty?

17 **THE DEFENDANT:** A plea of guilty.

18 **THE COURT:** In order to accept the plea, I need to be
19 sure not only that it's made knowingly and voluntarily, and
20 that it's made with a waiver of rights, and a knowledge of the
21 elements and the potential penalties, and all that, I also need
22 to be sure that there's a factual basis for the plea.

23 The Government has set forth in Paragraph 5 a summary
24 of the evidence that it believes it would be able to introduce
25 in support of your -- its case if this case were to go to

1 trial.

2 Do you have any objection to my relying upon the
3 Government's summary of evidence set forth in Paragraph 5 for
4 the purpose of accepting your plea here today?

5 Any objection to my relying upon the facts set forth
6 in Paragraph 5 in order to make sure there's a factual basis
7 for this plea?

8 **THE DEFENDANT:** Every word, your Honor?

9 **THE COURT:** I -- the question is, do you have
10 objection to my relying on the summary of evidence. If there
11 are qualifications, you can let me know.

12 This is the evidence that the Government believes it
13 would be able to introduce if the case went to trial. While
14 you do not have to agree that all that evidence is true, you
15 might have a different version, but the Government says this is
16 the evidence it would have. There's a factual basis there.

17 If you want to give me a different factual basis,
18 I'll listen to it, but I have to make sure that there's a basis
19 upon which a finding of guilt can be made here.

20 **THE DEFENDANT:** Okay. I --

21 **THE COURT:** Do you have any objection to my
22 relying --

23 **THE DEFENDANT:** -- I don't have any objection to your
24 Honor using this as it is; the bane suit as somebody that
25 pledged a note, that's all.

1 **MR. LE BELL:** Judge, maybe I can qualify. I've gone
2 over this with Mr. Van Den Heuvel several times, and -- and I
3 think his position is this, that the facts as set forth which
4 were carved out by all the parties laboriously agreed to by
5 Mr. Van Den Heuvel are sufficient to satisfy the elements of
6 the offense charged, and he may take issue with one or more
7 facts. I sincerely doubt they're going to be substantive.

8 **THE COURT:** Okay.

9 **THE DEFENDANT:** Okay.

10 **THE COURT:** And what I -- I will -- I'm not making a
11 sentencing determination here. I'm only deciding whether
12 there's enough evidence that I can accept your plea for. And
13 if you're satisfied that I can rely on these facts for that
14 purpose, I'll listen at the time of sentencing to whatever
15 mitigating factors there is, whatever you want to hear. What I
16 won't listen to is that you're not guilty because once you're
17 found guilty, that's not open to question. You understand
18 that?

19 **THE DEFENDANT:** I do understand.

20 **THE COURT:** Okay. Very well. I am satisfied and
21 I'll find that the plea of guilty is entered knowingly and
22 voluntarily, Mr. Van Den Heuvel understands the elements of the
23 offense, the maximum penalties, the application of the
24 sentencing guidelines, he understands the rights he's giving up
25 by entering this plea of guilty, and he's freely and

1 voluntarily waived those rights and entered his plea of guilty.
2 There is a factual basis that supports it.

3 I accept the plea of guilty and upon my acceptance of
4 that plea, I find the Defendant, Ronald Van Den Heuvel, guilty
5 of conspiracy as charged in Count One of the indictment in
6 violation of 18 USC, Section -- Section -- let's see, this
7 would be 1344?

8 **MR. JOHNSON:** No, this would be 371, your Honor.

9 **THE COURT:** I see; 371, the conspiracy. The wire
10 fraud is 1344, bank fraud.

11 But that's the offense then that he's found guilty of
12 this 10th day of October 2017.

13 And we'll schedule this matter for sentencing -- I've
14 been asked to place it on the calendar the week of January 1st.
15 How about January 5th, Friday that week? Is this a -- is this
16 a lengthy sentencing? It seems that most of the issues are
17 resolved; it sounds like it's mostly argument? Restitutions
18 result.

19 **MR. JOHNSON:** I -- I'd expect that. I wouldn't
20 expect it to be a particularly lengthy sentencing. Although
21 knowing -- also knowing Mr. LeBell, I suppose everybody will
22 have considerable things to say, but --

23 **THE COURT:** 9:30 in the morning, would that work?

24 **MR. LE BELL:** Sure.

25 **MR. JOHNSON:** That's fine, your Honor.

THE COURT: 9:30 on the 5th. All right.
(This proceeding was adjourned at 1:58 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



October 24, 2017

TONI HUDSON, TRANSCRIBER