

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.

MEMORANDUM IN SUPPORT OF MOTION TO VACATE PLEA

The defendant seeks to withdraw his plea of guilty in the above captioned matter. On October 10, 2017, the defendant plead guilty to Count 1 of the superceding indictment (Conspiracy to Commit Bank Fraud). He now states that there is a "fair and just reason" for such allowance. *U.S. v. Milquette*, 214 F.3d 859, 861 (7th Cir. 2000). An evidentiary hearing is requested to address the issue presented.

The defendant maintains that his plea was not knowingly and voluntarily made; that he asserts both factual and legal innocence; that there has not been an unreasonable amount of time between the guilty plea and the instant motion; and that the government will not be prejudiced if the relief sought is granted.

Various courts have opined that motions to withdraw guilty pleas should be granted "liberally" when made before sentencing. ("Motions to withdraw guilty pleas made before sentencing should be liberally construed in favor of the accused and should be granted freely". *U.S. v. Loughery*, 908 F.2d 1014 (D.C. Cir. 1990). See also

U.S. v. Hickok, 907 F.2d 983 (10th Cir. 1990)). The Seventh Circuit has indicated that evidentiary hearings on motions to withdraw pleas before sentencing should be freely granted. *U.S. v. Fountain*, 777 F.2d 351, 358, n.3 (7th Cir. 1985 and *U.S. v. Trussel*, 961 F.2d 685, 689 (7th Cir. 1992) (as long as the defendant's motion presents a "fair and just" reason for doing so). The allowance of such motion, when based upon an assertion that the plea was not knowingly or voluntarily made, is based upon an assessment of the totality of the circumstances. *U.S. v. Hernandez*, 731 F.3d 666, 670 (7th Cir. 2013).

The defendant maintains that the plea was forced and precipitated, in large measure, in order to exculpate and free his wife and co-defendant. He now claims that his plea was not voluntary in that it was made to exonerate his wife, despite his own factual and legal innocence. Additionally, he has conducted further review of the available discovery and has concluded that evidence from the search warrant of his building was used by investigators to conduct follow up investigations and interviews, and thereby obtain evidence which would be used at trial. The documents seized from the search warrant of his businesses were the subject of a suppression motion. The parties stipulated to withdraw the search warrant challenge through an agreement that no evidence seized would be used at trial. However, the defendant now maintains that he has discovered evidence that investigators used the

evidence in follow up interviews and investigation in the instant action.

His assertion of factual and legal innocence is made, in part, upon his claim that he recently obtained evidence to support the following: Steve Peters had a monetary interest in ST Papers businesses which adversely impacted his credibility and impartiality; that Peters' and Kelly's loans were repaid; that there were additional individuals at Horicon Bank who were aware of the Bain loan; that the Bain loan was fully collateralized with a loan assignment from Tak; that the alleged "straw borrowers" were authorized as LLC owners to borrow on behalf of the corporation; and that some of the proceeds of the loans were implicitly authorized by bank officials. Therefore he asserts there were no violations of the law nor did he violate the law. Both a legal and factual defense exists.

The defendant maintains that, had he known of this newly discovered information, he would not have entered his plea of guilty, in that the information constitutes a legal and factual defense. He asserts that the information directly affects the credibility of the government's witnesses and that some of the information obtained through investigator's interviews and investigation occurred as a derivative use of the evidence seized during the search warrant.

The passage of time between the plea and the filing of this motion has not prejudiced the government. It is not believed that any evidence has been degraded or rendered unusable during this period, or that circumstances have changed which impact adversely on the government's ability to prosecute the action.

Dated at Milwaukee, Wisconsin this 2nd day of January, 2018.

Respectfully submitted,

/s/ Robert G. LeBell

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