

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 16-CR-64

RONALD VAN DEN HEUVEL,

Defendant.

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**UNITED STATES' OPPOSITION TO MOTION TO VACATE PLEA**

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The United States of America, by and through its attorneys, Gregory J. Haanstad, United States Attorney, and Mel S. Johnson and Matthew D. Krueger, Assistant United States Attorneys, hereby submits this opposition to defendant Ronald Van Den Heuvel's motion to vacate his guilty plea. After a thorough plea colloquy, this Court accepted Van Den Heuvel's plea of guilty, made under oath, as knowing and voluntary. Van Den Heuvel's motion contradicts that guilty plea without any substantive bases. To prevent Van Den Heuvel from engaging in delay tactics and gamesmanship, the Court should deny the motion without an evidentiary hearing and proceed to sentencing on January 5, 2018.

**BACKGROUND**

On April 19, 2016, the grand jury returned an indictment charging Ronald Van Den Heuvel, Paul Piikkila, and Kelly Van Den Heuvel with a conspiracy to defraud Horicon Bank by obtaining a series of loans through straw borrowers. Doc. 1. Paul Piikkila entered a guilty plea on July 22, 2016, and has been awaiting sentencing, which is scheduled for February 7, 2018. A superseding indictment was returned on September 20, 2016, adding charges against Ronald Van

Den Heuvel for attempting to defraud several banks by having his son-in-law seek loans for him based on false representations. Doc. 52.

At their May 6, 2016 arraignment, Ronald and Kelly Van Den Heuvel initially pleaded not guilty. Over the following 17 months, the parties then engaged in substantial pretrial proceedings regarding discovery and litigation of pretrial motions. Ronald Van Den Heuvel's current counsel began representing him in August 2016 and appears to have worked closely with him. After extensive plea negotiations, on October 4, 2017, Ronald Van Den Heuvel signed a plea agreement. *See* Doc. 151.

The plea agreement provides that Van Den Heuvel “has read and fully understands the charges contained in the indictment” and “the nature and elements of the crimes with which he has been charged.” Doc. 151 ¶ 3. It provides that the “charges and terms and conditions of the plea agreement have been fully explained to him by his attorney.” *Id.* The agreement states that he “voluntarily agrees to plead guilty” to Count One, conspiracy to defraud Horicon Bank. *Id.* The plea agreement recites Count One and states that Van Den Heuvel “acknowledges, understands, and agrees that he is, in fact, guilty of the offense.” *Id.* The plea agreement then recites a detailed, three-page, single-spaced description of the facts the government would be able to prove, which the defendant “admits . . . are true and correct and establish his guilt beyond a reasonable doubt.” *Id.* ¶ 5. The plea agreement also states expressly that Van Den Heuvel agreed that he will plead guilty “freely and voluntarily because he is in fact guilty” and that “no threats, promises, representations, or other inducements have been made” to induce his guilty plea. *Id.* ¶ 42.

The plea agreement specifies the elements of the conspiracy charge to which Van Den Heuvel agreed to plead guilty. *Id.* ¶ 10. It also specifies the maximum penalties and applicable sentencing provisions. *Id.* ¶¶ 6, 11-12. The plea agreement includes an agreed-upon amount of restitution to be paid. *Id.* ¶ 13. And it specifies the rights that Van Den Heuvel would waive by pleading guilty. *See id.* ¶ 30.

The plea agreement provides several additional provisions that benefitted Van Den Heuvel. It states that the government agrees to move to dismiss the remaining counts against Van Den Heuvel and “any charges in this case against co-defendant Kelly Van Den Heuvel at the time of sentencing of Ronald Van Den Heuvel.” *Id.* ¶ 9. The plea agreement also provided that the government would not object to Van Den Heuvel remaining out of custody for a period to face charges in Case No. 17-CR-160. *See id.* ¶ 34.

Van Den Heuvel appeared for the change of plea hearing on October 10, 2017. At that time, the United States informed the Court that it would move to dismiss charges against Kelly Van Den Heuvel after Van Den Heuvel entered his plea, without prejudice, and pursuant to an agreement with Kelly Van Den Heuvel to waive the statute of limitations and Speedy Trial Act claims upon if there were a re-indictment. *See Doc. 153.* During plea negotiations, Van Den Heuvel had expressed a strong preference for the United States to dismiss the charges against his wife as soon as he pleaded guilty, rather than after his sentencing, and the United States had agreed to that course of action. The United States so moved the next day, and the Court dismissed the charges against Kelly Van Den Heuvel without prejudice. *See Doc. 153.*

At the October 10, 2017 change of plea hearing, the Court conducted a thorough plea colloquy. The Court confirmed that Van Den Heuvel’s counsel reviewed the plea agreement “as

well as the facts and the applicable law” with Van Den Heuvel. *See* Attached Transcript of Change of Plea Hearing, at 6 (hereinafter “Tr.”). His counsel agreed that he was satisfied that Van Den Heuvel was prepared to enter a “knowing and voluntary plea.” Tr. 7. Van Den Heuvel then stated: “I realize and understand what they have stated, and I agree with the plea.” Tr. 7. Van Den Heuvel was then sworn, and the Court advised him that he was testifying under oath, subject to penalties for perjury or false swearing if he failed to tell the truth. Tr. 7-8.

The Court informed Van Den Heuvel:

The other thing I want you to understand right at the outset is that you do not have to enter a plea of guilty to this crime or any crime. The purpose of today’s hearing is to make sure that if you do enter a plea of guilty, it’s the result of a knowing and voluntary decision on your part. In other words, it’s not your attorney’s decision, it’s not family’s decision, it’s your decision. Do you understand that?

Tr. 8.

Van Den Heuvel said “Yes” and then added “And I understand while intent is not required, there was none.” Tr. 8. The Court explained that he would “go through the elements of the offense later,” Tr. 8, which he did a few moments later. Before that, the Court interviewed Van Den Heuvel regarding his age, education, family status, medical condition, and ability to make decisions. Tr. 9-10. The Court confirmed that Van Den Heuvel “read over the plea agreement before [he] signed it” and “discussed it with [his] attorney.” Tr. 10. Van Den Heuvel said that his attorney has “been very good with that, and met with me for a full Saturday.” Tr. 11. Van Den Heuvel confirmed that he was satisfied with his representation and that he understood the case. Tr. 11.

The Court then addressed the elements of the offense, directing Van Den Heuvel to paragraph 10 of the plea agreement. Tr. 12. The Court explained, using lay terms, the meaning

of each element. *See* Tr. 12-13. At first, Van Den Heuvel stated that he understood the elements and added, “I also understand that there was no intent.” Tr. 13. The Court pressed the issue and explained that “intent, as I understand it, would be an element. Intent to enter into an agreement to commit a crime.” Tr. 13. The Court elaborated in the following exchange to clarify that Van Den Heuvel understood that intent was required:

Court: And bank fraud means there was an intent to defraud a bank by making false statements and having the bank—a federally insured bank provide money based on false statements. A conspiracy to commit that crime would involve the intent to enter into an agreement to accomplish that goal. You understand that?

Van Den Heuvel: I do.

Court: That’s what the Government would have to prove.

Van Den Heuvel: I do.

Tr. 14.

After that clarification, Van Den Heuvel repeatedly and without hesitation said he understood the Court’s advisements. The Court explained the penalties that could be imposed, including incarceration, a fine, restitution, a special assessment, and supervised release. Tr. 14-15. The Court explained the sentencing procedure that would follow if Van Den Heuvel pleaded guilty. Tr. 15. And the Court explained the rights that Van Den Heuvel would waive by pleading guilty, including the right to a jury trial, assistance of counsel, the government’s burden to prove its case beyond a reasonable doubt, the right to subpoena and confront witnesses, the right to present a case, the right to testify or not, and the requirement of a unanimous verdict. Tr. 17-20.

The Court then made inquiries to ensure the voluntariness of the plea:

Court: Has anyone made any promises to you other than the promises that are set forth in writing in the plea agreement in order to get you to waive your rights and a plea of guilty?

Van Den Heuvel: No. My—my wife is dismissed, right?

Court: That's in the plea agreement.

Van Den Heuvel: Ok.

Court: And you understand that's part of the plea agreement and the Government has—has made that promise. You understand that?

Van Den Heuvel: I agree.

Court: Any other promises other than those set forth in the plea agreement to get you to waive your rights?

Van Den Heuvel: No, sir.

Court: Anyone making threats against you or anyone else to get you to waive your rights and enter a plea of guilty?

Van Den Heuvel: No, sir.

Court: Are you pleading guilty to this offense because you are guilty of the offense?

Van Den Heuvel: Yes, sir.

...

Court: Ok. Very well. Mr. Van Den Heuvel, tell me then out loud and for the record, what is your plea to Court One, the charge of conspiracy as alleged in the indictment?

Van Den Heuvel: Do you want a yes or a no answer only?

Court: I want guilty or not guilty.

Van Den Heuvel: Not guilty. Guilty, excuse me.

Court: Your plea is guilty?

Van Den Heuvel: A plea of guilty.

Tr. 22-23.

The Court then verified that Van Den Heuvel agreed the Court could rely on the factual basis for the plea set forth in paragraph 5 of the plea agreement. Tr. 22-24. Van Den Heuvel stated: “I don’t have any objection to your Honor using this as it is; the bane [sic] suit as somebody that pledged a note, that’s all.” Tr. 23. Van Den Heuvel’s counsel explained that he had reviewed the facts with his client “several times” and that he agreed to them, though he “may take issue with one or more facts” but that they would not “be substantive.” Tr. 23. The Court and Van Den Heuvel agreed “Okay,” and then the Court clarified:

I’m not making a sentencing determination here. I’m only deciding whether there’s enough evidence that I can accept your plea for. And if you’re satisfied that I can rely on these facts for that purpose, I’ll listen at the time of sentencing to whatever mitigating factors there is, whatever you want to hear. What I won’t listen to is that you’re not guilty because once you’re found guilty, that’s not open to question. You understand that?”

Van Den Heuvel replied, “I do understand.” Tr. 24. The Court then found that “the plea of guilty is entered knowingly and voluntarily” and accepted the plea. Tr. 24-25.

Sentencing is scheduled for this Friday, January 5, 2018. The parties have submitted objections and responses to the PSR. Both parties have also filed sentencing memoranda. Nonetheless, just three days before sentencing, Van Den Heuvel moved to vacate his guilty plea and requested an evidentiary hearing. *See* Doc. 172.

## **DISCUSSION**

The Court should deny Van Den Heuvel’s motion to vacate the guilty plea, which he entered after an extensive Rule 11 plea colloquy. Rule 11 plea colloquies provide the key safeguards that ensure guilty pleas are made knowingly and voluntarily. “A plea of guilty is a formal and solemn step, where the defendant admits his guilt under oath after assuring the court,

also under oath, that he is ready, willing, and able to make that decision after consulting sufficiently with his lawyer and being informed about all matters that he needs to know about to make the decision.” *United States v. Graf*, 827 F.3d 581, 583-584 (7th Cir. 2016); *see* Fed. R. Crim. P. 11(b).

Given the importance of the Rule 11 plea colloquy, “[n]o defendant has an absolute right to withdraw a guilty plea.” *United States v. Underwood*, 174 F.3d 850, 852 (7th Cir. 1999) (citing *United States v. Schilling*, 142 F.3d 388, 398 (7th Cir. 1998)). If the district court accepts the defendant’s guilty plea, the guilty plea must be enforced unless the defendant “can show a fair and just reason for requesting withdrawal.” Fed. R. Crim. P. 11(d)(2)(B).

The burden of justifying withdrawal rests with the defendant. *Underwood*, 174 F.3d at 852 (citing *United States v. Coonce*, 961 F.2d 1268, 1275 (7th Cir. 1992)). “A defendant faces an uphill battle in seeking to withdraw a guilty plea after a thorough plea colloquy.” *United States v. Chavers*, 515 F.3d 722, 724 (7th Cir. 2008) (stating that “the defendant bears a heavy burden”); *see also, e.g., United States v. Logan*, 244 F.3d 553, 558 (7th Cir. 2001)). A thorough Rule 11 colloquy ensures that a guilty plea is entered into knowingly and voluntarily. *See e.g., United States v. Schuh*, 289 F.3d 968, 975 (7th Cir. 2002). Thus, “[w]hen a proper Rule 11 colloquy has taken place, a guilty plea enjoys a presumption of verity and the ‘fair and just’ Rule 11(d)(2)(B) escape hatch is narrow.” *United States v. Mays*, 593 F.3d 603, 607 (7th Cir. 2010) (citing *United States v. Roque-Espinoza*, 338 F.3d 724, 726 (7th Cir. 2003)); *Schuh*, 289 F.3d at 975 (same).

Consequently, when the defendant moves to withdraw his plea on grounds that conflict with his statements during the plea colloquy, the motion “may be rejected out of hand unless the

defendant has some compelling explanation for the contradiction.” *United States v. Peterson*, 414 F.3d 825, 827 (7th Cir. 2005); *see also, e.g., United States v. Weathington*, 507 F.3d 1068, 1072 (7th Cir. 2007) (citing *Schuh*, 289 F.3d at 975).

To obtain an evidentiary hearing on a motion to withdraw a plea, a defendant must offer “substantial evidence that impugns the validity of the plea.” *United States v. Jones*, 381 F.3d 615, 618 (7th Cir. 2004) (quoting *United States v. Redig*, 27 F.3d 277, 280 (7th Cir. 1994)). But “if no such evidence is offered, or if the allegations advanced in support of the motion are mere conclusions or are inherently unreliable, the motion may be denied without a hearing.” *Id.*; *see, e.g., United States v. Spilmon*, 454 F.3d 657, 658 (7th Cir. 2006) (affirming denial of motion to withdraw without a hearing when defendant claimed he pleaded guilty only to obtain dismissal of charges against wife). As detailed below, Van Den Heuvel’s motion does not offer grounds for an evidentiary hearing, let alone grounds that would warrant vacating his guilty plea.

**A. Van Den Heuvel’s Plea Was Knowing and Voluntary**

Van Den Heuvel first contends that his plea “was forced” and “not voluntary in that it was made to exonerate his wife.” Doc. 172, at 2. This apparently refers to the government’s agreement, laid out in the plea agreement, to dismiss charges against Kelly Van Den Heuvel. *See* Doc. 151 ¶ 9.

The Seventh Circuit rejected the same argument in *United States v. Spilmon*, 454 F.3d 657, 658 (7th Cir. 2006). *Spilmon* affirmed denial of the defendant’s motion to withdraw his plea (without an evidentiary hearing) when he claimed “he believed (in fact knew) all along he was innocent but that his love for his wife had moved him to admit his guilt so that the charges against her would be dropped.” *Id.* The Seventh Circuit explained that “[p]ackage plea

agreements,” which call for “dismissal of charges against a spouse . . . are common” and “not improper or forbidden.” *Id.* Such “package deals” are problematic only if they resulted from “duress” or “improper pressure,” such as a threat to “prosecute the defendant’s wife knowing she was innocent.” *Id.* at 658-59. So long as the government had probable cause to prosecute the spouse, there is no duress. *See id.* The Court held that the guilty plea was voluntary, and not the result of duress, because the agreement to dismiss the spouse was disclosed to the district court, and the district court verified during the plea colloquy that the defendant was pleading guilty voluntarily and had not been “improperly threatened or intimidated.” *Id.* at 659.

Just as in *Spilmon*, Van Den Heuvel’s claim should be denied without a hearing. There is no suggestion that the grand jury lacked probable cause to indict Kelly Van Den Heuvel for conspiracy to defraud Horicon Bank (Count One) and for arranging Julie Gumban to be a straw borrower (Counts Eleven and Twelve). *See* Doc. 52. Consequently, the government’s willingness to prosecute her does not constitute any improper pressure or duress on Van Den Heuvel. Moreover, the agreement to dismiss Kelly Van Den Heuvel was disclosed in the plea agreement and discussed at the plea colloquy. *See* Doc. 151 ¶ 9; Tr. at 20-21. At the plea colloquy, the district court painstakingly advised Van Den Heuvel of his rights and verified that he was pleading guilty voluntarily. Van Den Heuvel agreed that he was “pleading guilty to this offense then because [he] was guilty of the offense.” Tr. 21. Van Den Heuvel agreed that he had not received any “other promises” or “any threats.” Tr. 21. He stated directly that he pleaded guilty. Tr. 22. Van Den Heuvel agreed that the government could adduce evidence to prove he was guilty. Tr. 23. And he stated that he understood that once the Court accepted the guilty

plea, his guilt or innocence was “not open to question.” Tr. 24. The Court thus verified that Van Den Heuvel pleaded guilty voluntarily and that he is, in fact, guilty.

By now claiming to have pleaded guilty involuntarily, Van Den Heuvel is stating, in effect, that he perjured himself at the plea colloquy. That claim should be “rejected out of hand.” *Peterson*, 414 F.3d at 827.

#### **B. Van Den Heuvel Offers No Basis to Claim Actual Innocence**

Although actual innocence may be a valid ground to withdraw a plea, “‘bare protestations of innocence’ are insufficient . . . particularly after a knowing and voluntary plea made in a thorough Rule 11 colloquy.” *Chavers*, 515 F.3d at 725. “Rather, the defendant must produce some credible evidence of his innocence.” *Id.* The defendant’s self-serving assertions of innocence are not enough. *Id.*; *see also, e.g., United States v. Carroll*, 412 F.3d 787, 792 (7th Cir.2005) (holding that defendant’s denials of guilt, which contradicted his testimony during the plea colloquy, were insufficient evidence of actual innocence).

The Seventh Circuit has explained that this approach aims “to minimize the use of such motions to withdraw based on gamesmanship and strategic hindsight.” *United States v. Graf*, 827 F.3d 581, 586 (7th Cir. 2016). Critically, “a defendant is not entitled to withdraw his guilty plea simply because he later discovers a weakness in the government’s ability to prove its case at trial.” *Id.* “Such defense strategies . . . do not involve questions of legal or factual innocence,” nor do they “undermine the voluntary and knowing character of the plea when it was offered and accepted.” *Id.* Rather, “the filing of such a motion after acceptance of a plea smacks of gamesmanship.” *Id.* The Seventh Circuit explained that “[g]ranted a motion to withdraw” based on a changed assessment of the government’s case “would degrade the otherwise serious

act of pleading guilty into something akin to a move in a game of chess.” *Id.* (quoting *United States v. Hyde*, 520 U.S. 670, 677 (1997)).

Van Den Heuvel’s motion engages in precisely the type of gamesmanship that degrades the seriousness of a guilty plea. He offers no credible evidence to support his claim of “factual and legal innocence.” Van Den Heuvel instead states that he “has discovered evidence that investigators used” materials seized by the Brown County Sheriff’s Office pursuant to search warrants “in follow up interviews and investigation in the instant action.” Doc. 172, at 3-4. Van Den Heuvel fails to specifically identify any such evidence or follow up interviews or investigation. Nor does Van Den Heuvel explain why such conduct would be problematic: The parties’ stipulation does not limit the government’s use of search warrant materials for investigative purposes; the stipulation limits the government’s use of search warrant materials “in its case in chief.” *See* Doc. 134. The stipulation does, however, limit Van Den Heuvel from reasserting any challenge to the search warrants’ issuance and execution, which may be what he has in mind now. *See id.* More to the point, the government’s use of evidence from the search warrant has no relevance whatsoever to Van Den Heuvel’s guilty plea. Van Den Heuvel agreed at the plea colloquy that he was guilty and that the government could adduce evidence of his guilty. Skirmishing over the search warrant evidence is beside the point.

Likewise, Van Den Heuvel fails to explain what supposedly “recently obtained evidence” renders him innocent. To begin with, Van Den Heuvel’s cursory description of such evidence falls far short of a substantive presentation that could justify holding a hearing or withdrawing a plea. Moreover, the “evidence” he cites would not make him innocent. Steve Peters’ “monetary interest[s]” may be fodder for cross-examination but would not change the core fact that Van

Den Heuvel had Peters obtain loans for him. Doc. 172, at 3. Whether Peters' or Kelly Van Den Heuvel's "loans were repaid" has no bearing on whether Van Den Heuvel obtained the loans under false pretenses. *Id.* That some additional, unnamed Horicon Bank employees were "aware of the Bain loan," or that it was backed by certain collateral, is similarly beside the point. To have any relevance, Van Den Heuvel would have to offer evidence that the bank knew Van Den Heuvel was behind the loan and still officially approved it. And the fact that LLC owners may have had legal authorization to borrow funds says nothing about the core fraud—that Van Den Heuvel arranged for them to obtain the loans on his behalf. At most, Van Den Heuvel offers a scattershot of "facts" that he apparently believes relate to weaknesses in the government's case. But those strategic assessments cannot overcome Van Den Heuvel's sworn admission that he was, in fact, guilty of the offense. *See Graf*, 827 F.3d at 586 ("a defendant is not entitled to withdraw his guilty plea simply because he later discovers a weakness in the government's case").

As outlined above, the Court conducted a careful plea colloquy to ensure that Van Den Heuvel's plea was knowing and voluntary, based upon his actual guilt. His claims of actual innocence seek to contradict his statements, made under oath to this Court. Worse, Van Den Heuvel's claims lack substance and appear motivated by a desire to delay facing the consequences of his actions at sentencing. The Court should reject those claims and hold Van Den Heuvel to his guilty plea.

Although the Court has ample grounds to deny the motion without considering prejudice to the government, it bears noting that the lead government counsel in this case, Assistant United States Attorney Mel Johnson, is retiring from government service today, January 3, 2018.

AUSA Johnson has been the lead attorney in this case since its inception and was prepared to try the case when it was scheduled for trial in October 2017. Allowing Van Den Heuvel to proceed to a trial would require a new government attorney to expend substantial resources learning the case to prepare to try it with undersigned co-counsel.

### CONCLUSION

For these reasons, the defendant's motion to vacate his guilty plea should be denied without an evidentiary hearing. Further, the Court should proceed to sentencing on January 5, 2018, as planned.

Dated at Milwaukee, Wisconsin, this 3rd day of January, 2018.

Respectfully Submitted,

GREGORY J. HAANSTAD  
United States Attorney

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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.)

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CHANGE OF PLEA HEARING

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

APPEARANCES:

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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

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TONI HUDSON, TRANSCRIBER