UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v. Case No. 16-CR-64

RONALD H. VAN DEN HEUVEL,
PAUL J. PIIKKILA, and
KELLY Y. VAN DEN HEUVEL,

Defendants.

UNITED STATES' RESPONSE TO DEFENDANTS MOTIONS TO COMPEL DISCOVERY OF GRAND JURY MATERIALS

The United States of America, by and through its attorneys, Gregory J. Haanstad, United States Attorney for the Eastern District of Wisconsin, and Mel S. Johnson and Matthew D. Krueger, Assistant United States Attorneys for said district, hereby responds to the defendants' respective motions to compel discovery of grand jury materials related to the KYHKJG, LLC loans. *See* Doc. 105, 108. The United States has already provided discovery related to those loans and discussed the loans with defense counsel at length. Contrary to defendants' characterizations, the evidence shows that Ronald and Kelly Van Den Heuvel sought the loans for their personal benefit. This included covering Ronald Van Den Heuvel's legal obligation to support his ex-wife, who was living in the house purchased with the KYHKJG, LLC loan funds. The KYHKJG, LLC loans thus fit well within Count One's allegations of a scheme to defraud Horicon Bank by obtaining loans that benefited Van Den Heuvel through straw borrowers. Defendants' motions are based upon mere disagreement over what the evidence shows. Because that does not constitute a valid basis to breach grand jury secrecy, the motions should be denied.

BACKGROUND

The superseding indictment charges the defendants with pursuing schemes to defraud financial institutions by obtaining loans through straw borrowers. Defendants' motions seek grand jury materials regarding the scheme to defraud Horicon Bank, as charged in Counts One through Thirteen. Count One alleges that defendants Paul Piikkila, Ronald Van Den Heuvel, and Kelly Van Den Heuvel conspired to defraud Horicon Bank from January 1, 2008 through September 30, 2009, by arranging nine loans through straw borrowers. Counts Two through Thirteen charge Ronald Van Den Heuvel with bank fraud and making false statements with regard to those particular loans. Kelly Van Den Heuvel is also charged in Counts Ten and Eleven because the evidence shows that she helped arrange a $25,000 loan in the name of J.G., the family's live-in nanny.[1]

As alleged in Count One, Piikkila was a loan officer for Horicon Bank. Doc. 52, at 2. Piikkila had authority to make loans up to $250,000 on his own. *Id.* Piikkila had to obtain approval from the bank's Business Lenders Committee to make loans above that limit. *Id.* After Ronald Van Den Heuvel approached Piikkila for a loan, on or about January 17, 2008, Piikkila authorized a loan to RVDH, Inc., one of Ronald Van Den Heuvel's companies, for $250,000, the maximum of Piikkila's lending limit. *Id.* at 3. At Ronald Van Den Heuvel's request, a few months later, Piikkila sought the Business Lenders Committee approval for a $7.1 million loan to another of Ronald Van Den Heuvel's business entities. *Id.* After determining that Ronald Van

[1] Defendants state that this loan was "promptly paid back," Doc. 106, at 1. That is not necessarily exculpatory. Moreover, defendants fail to add that the loan was "paid back" with the proceeds of *another straw loan from Horicon Bank* in an effort to conceal the bad debt from bank officials.

Den Heuvel was not a good credit risk, the Committee denied the loan, and Piikkila's superiors instructed him not to make any loans to Ronald Van Den Heuvel or his business entities. *Id.* at 3.

Despite that instruction, over the next year and a half, Piikkila worked with Ronald Van Den Heuvel and, at times, with Kelly Van Den Heuvel, to make nine additional loans to straw borrowers, benefitting Ronald Van Den Heuvel and his business entities. *See id.* at 3-6. Defendants' motions concern two loans made to KYHKJG, LLC on November 7, 2008. *See id.* at 5. Defendants' recitation of the evidence related to these loans omits important, basic facts.

The evidence shows that Ronald and Kelly Van Den Heuvel formed KYHKJG, LLC shortly before the loans issued, listing Kelly Van Den Heuvel and their live-in nanny (J.G.) as the LLC's members. Those facts alone suggest that the loans were part of the defendants' effort to side-step Horicon Bank's instruction not to deal with Van Den Heuvel.

The first loan was for $250,000. As defendants explain, that loan was used to purchase a residential home in De Pere, Wisconsin. Defendants neglect to mention, however, that Kelly Van Den Heuvel and her brother owned the home, and that monthly mortgage payments were owed to Chase Bank. Defendants also neglect to mention that Ronald Van Den Heuvel's ex-wife resided in the home. Pursuant to his divorce proceedings, Ronald Van Den Heuvel was obligated to pay monthly support to his ex-wife, which included providing her with housing. To that end, before seeking the KYHKJG, LLC loans, the Van Den Heuvels were periodically making payments to Chase Bank on the mortgage. They used the $250,000 loan from Horicon Bank to pay-off the Chase Bank mortgage, through Evans Title. Although Kelly Van Den Heuvel now seeks to distance herself from this transaction, the discovery includes emails that she personally exchanged with Piikkila to arrange paying off the Chase Bank mortgage.

The second Horicon Bank loan to KYHKJG, LLC was a $70,000 line of credit. The evidence shows that the Van Den Heuvels used those funds to make some monthly payments on the $250,000 loan and for personal spending.[2] Thus, the KYHKJG, LLC loans allowed the Van Den Heuvels to (a) extinguish the Chase Bank debt, (b) use Horicon Bank's money to pay Ronald's obligations to his ex-wife, and (c) gain access to extra personal spending money. Those are clear personal benefits to the Van Den Heuvels, consistent with the conspiracy alleged in Count One. The Van Den Heuvels may not have revealed all of those details to Piikkila, but that does not make the loans any less fraudulent.

Moreover, contrary to defendants' claims, the KYHKJG, LLC loan documents contain material misrepresentations and omissions. By way of example, the loan documents represent that a "long-term tenant" had an agreement to make rental payments sufficient to cover the Horicon Bank mortgage. In truth, the "tenant" was Ronald Van Den Heuvel's ex-wife, who was not paying rent, and the Van Den Heuvels instead used the Horicon Bank line-of-credit to service the mortgage.

Defendants have received all the discovery related to the KYHKJG, LLC loans, including the evidence recounted above. In addition, undersigned counsel for the United States have discussed the evidence with defense counsel for Kelly Van Den Heuvel on several occasions. Without rehashing those discussions, undersigned counsel respectfully disagree with defendant's characterizations. In all events, there is ample evidence to conclude that the KYHKJG, LLC loans were fraudulent. The parties simply disagree about what the evidence shows.

[2] After the line of credit was exhausted, the Van Den Heuvels stopped making payments on the $250,000 loan, forcing Horicon Bank to foreclose on the property.

DISCUSSION

Federal Rule of Criminal Procedure 6(e)(2) implements the "long-established policy that maintains the secrecy of grand jury proceedings." *Hernly v. United States*, 832 F.2d 980, 983-84 (7th Cir. 1987) (quoting *United States v. Procter & Gamble Co.*, 356 U.S. 677, 681 (1958)). In accordance with Rule 6(e)(2), the United States does not disclose grand jury transcripts as part of its discovery. *See* Crim. Local R. 16(a)(2), (3). The Jencks Act requires the government to disclose a witness's prior statements after the witness has testified at trial. *See* 18 U.S.C. § 3500; Fed. R. Crim. P. 26.2. Pursuant to the Local Rule that implements the Jencks Act, the United States will provide grand jury transcripts of any witnesses the government intends to call at trial no later than one business day before trial begins. *See* Crim. Local Rule 16(a)(4). Apart from that exception, grand jury secrecy is the default position.

No other exception for disclosure under Rule 6(e) applies here. Tellingly, defendants do not request disclosure under Rule 6(e)(3)(E)(ii), which expressly addresses when a defendant may obtain grand jury material. That exception requires a defendant to "show[] that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury." Fed. R. Crim. P. 6(e)(3)(E)(ii). Count One's allegations involving the KYHKJG, LLC loans are plainly sufficient, and defendants have not suggested that they have grounds to move to dismiss Count One, let alone the indictment as a whole.

Rather, defendants seek to pierce grand jury secrecy by invoking Rule 6(e)(3)(E)(i). But that exception is ill-suited to defendants' request. It permits a court to authorize disclosure of a grand jury matter "preliminary to or in connection with a judicial proceeding." A party seeking disclosure under this exception must show a "particularized need." *Douglas Oil Co. v. Petrol Stops Nw.*, 441 U.S. 211, 222 (1979); *see Hernly*, 832 F.2d at 983-84 (grand jury "secrecy is not

broken 'except where there is a compelling necessity' for the material"). The moving party must show the requested material is "needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that [the] request is structured to cover only material so needed." *Douglas Oil*, 441 U.S. at 222. In addition, even if a party articulates a compelling need for disclosure, the court must balance that need against "not only the immediate effects upon a particular grand jury, but also the possible effect upon the functioning of future grand juries." *Id.*

Under this stringent standard, a defendant's claim that the grand jury did not have sufficient evidence to support some aspect of the indictment does not constitute a "particularized need." Indeed, courts routinely deny requests for grand jury materials that are made on that basis. *See, e.g.*, *United States v. Williams*, No. 16-CR-111-JPS, 2017 WL 1437119 (E.D. Wis. Apr. 24, 2017) (rejecting the "suggestion that because the facts in the indictment are 'scant' with respect to venue, the next step must be to examine the grand jury transcripts"); *United States v. Arms*, No. 14-CR-78-LA, 2015 WL 5022640, at *11 (E.D. Wis. Aug. 24, 2015) (rejecting request for grand jury materials when the defendant argued that there was "insufficient evidence for the grand jury to indict him"). Nor does it suffice for a defendant to claim that having the materials would aid in preparing for trial. "[A] mere possibility of benefit does not satisfy the required showing of particularized need." *In re Grand Jury Proceedings*, 942 F.2d 1195, 1199 (7th Cir. 1991).

Defendants cite just one case, from the Eastern District of California, in which a court ordered early discovery of grand jury material to a defendant. *See United States v. Way*, 2015

WL 8780540 (E.D. Cal. Dec. 15, 2015).[3] That case involved highly unique circumstances that created a compelling need for disclosure: A Supreme Court decision came down after the indictment and modified the applicable *mens rea* standard, creating the risk that the grand jury applied an incorrect legal standard. *See id.* at *1-*2. Here, there is no reason to doubt the grand jury applied the correct legal standard in finding probable cause to include KYHKJG, LLC loans in the conspiracy. Accordingly, defendants have no comparable need for disclosure in this case.

Defendants have not articulated any particularized reason why they need grand jury material. As detailed above, defendants have substantial discovery regarding the KYHKJG, LLC loans, and they have not explained why the related grand jury transcripts would add anything. At bottom, defendants' request for grand jury material is based upon their view that the evidence is insufficient to conclude that the KYHKJG, LLC loans are part of the scheme to defraud Horicon Bank. But when, as here, an indictment is "valid on its face," it is "not subject to challenge on the ground that the grand jury acted on the basis of inadequate or incompetent evidence." *United States v. Calandra*, 414 U.S. 338, 345 (1974); *see also United States v. Williams*, 504 U.S. 36, 54 (1992) (noting "that 'a challenge to the reliability or competence of the evidence presented to the grand jury' will not be heard"). Defendants can present their views of the KYHKJG, LLC loans at trial, but their views do not justify disclosing grand jury material.

Even if the defendants could articulate a particularized need, it would not be so great as to overcome the institutional interests in maintaining grand jury secrecy. Although the grand jury has concluded its investigation in this case, thereby reducing the need for secrecy, the Court

[3] The only other case cited by defendant that favored early disclosure to the defendant was *Dennis v. United States*, 384 U.S. 855 (1966), but that case involved a trial that predated the Jencks Act, and so the defendant was not given the transcripts of witnesses who testified at trial. Here, defendant will receive transcripts of any witnesses who testify at trial.

must consider "the possible effect upon the functioning of future grand juries." *Douglas Oil*, 441 U.S. at 222. Allowing disclosure of grand jury testimony here would set a dangerous precedent. In many cases, defense counsel could generate some argument that the evidence is insufficient on some aspect of the charge. If that is enough to obtain grand jury materials, disclosure would become commonplace, eroding the principle of grand jury secrecy.

CONCLUSION

For the reasons stated above, the Court should deny defendants' motions to compel discovery of grand jury materials.

Dated at Milwaukee, Wisconsin, this 14th day of July, 2017.

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By: /s/ Matthew D. Krueger

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