No. 18-1147

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

RONALD H. VAN DEN HEUVEL,
Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Wisconsin
Case No. 16-CR-64
The Honorable Judge William C. Griesbach

BRIEF IN SUPPORT OF MOTION TO WITHDRAW AS DEFENDANT'S APPOINTED APPELLATE COUNSEL PURSUANT TO *ANDERS V. CALIFORNIA*, 386 U.S. 738 (1967) AND REQUIRED SHORT APPENDIX

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Short Caption: United States v. Van Den Heuvel

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Ronald H. Van Den Heuvel

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Thomas W. Patton and Johanna M. Christiansen, Federal Public Defender's Office for the Central District of Illinois; Robert G. LaBell; Krista Halla-Valdes; and Nancy L. DePodesta

(3) If the party or amicus is a corporation: N/A

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

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Attorney's Signature: s/ Johanna M. Christiansen Date: August 9, 2018

Attorney's Printed Name: Johanna M. Christiansen

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☒ **No** ☐

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PREFACE

After carefully examining the record on appeal and researching the relevant law, counsel has concluded that the appeal presents no legally non-frivolous questions. In reaching this conclusion, counsel has thoroughly scrutinized the record, including the indictment, the record documents, a transcript of the change of plea hearing, the presentence investigation report, and the sentencing hearing transcript for any arguable violation of the United States Constitution, the applicable federal statutes, the Federal Rule of Criminal Procedure, or the United States Sentencing Guidelines. Because counsel has concluded that no non-frivolous issues are presented by this appeal, she requests leave to withdraw as counsel and submits this brief in accordance with *Anders v. California*, 386 U.S. 738 (1967)

JURISDICTIONAL STATEMENT

1. The jurisdiction of the United States District Court for the Eastern District of Wisconsin was founded upon 18 U.S.C. § 3231. A grand jury sitting in the aforementioned district charged RONALD H. VAN DEN HEUVEL by superseding indictment with one count of conspiracy to defraud the United States in violation of 18 U.S.C. § 371; ten counts of bank fraud in violation of 18 U.S.C. § 1344; and eight counts of making a false statement in violation of 18 U.S.C. § 1014.

2. The jurisdiction of the United States Court of Appeals for the Seventh Circuit is founded upon 28 U.S.C. § 1291 and 18 U.S.C. § 3742, and is based upon the following particulars:

i. Date of entry sought to be reviewed: Sentence imposed on January 5, 2018; Judgment in a Criminal Case entered on January 9, 2018.

ii. Filing date of motion for a new trial: n/a;

iii. Disposition of motion and date of entry: n/a;

iv. Filing date of notice of appeal: January 19, 2018.

ISSUES PRESENTED FOR REVIEW

I. Whether Van Den Heuvel can raise any argument regarding the motion to suppress because it has been waived for direct appeal in this case?

II. Whether any argument challenging Van Den Heuvel's conviction would be frivolous where he entered into an unconditional, knowing, and voluntary plea of guilty, pursuant to a plea agreement, and the district court substantially complied with Federal Rule of Criminal Procedure 11 when accepting his plea?

III. Whether the district court abused its discretion by denying Van Den Heuvel's motion to adjourn the sentencing hearing?

IV. Whether the district court erred by denying counsel's motion to withdraw as attorney?

V. Whether any argument challenging Mr. Van Den Heuvel's sentence would be frivolous where his sentence was not imposed in violation of the law, was not the result of an incorrect application of the guidelines, and was not unreasonable?

STATEMENT OF THE CASE[1]

I. Factual Background and Preliminary Proceedings.

At all times relevant to this case, Paul Piikkila was employed as a loan officer at Horicon Bank in Appleton, Wisconsin. (R. at 151, p. 6.) He had the authority to make loans up to $250,000. (R. at 151, p. 6.) Any loans above that amount had to be approved by the bank's Business Lenders Committee. (R. at 151, p. 6.) Defendant-Appellant Ronald H. Van Den Heuvel is the owner of several businesses in the Green Bay area. (R. at 151, p. 6.) In late 2007 or early 2008, Van Den Heuvel approached Piikkila about he or his businesses receiving loans from Horicon Bank. (R. at 151, p. 6.) On January 17, 2008, Piikkila authorized a loan of $250,000 from the bank to RVDH, Inc., one of Van Den Heuvel's businesses. (R. at 151, p. 7.) Van Den Heuvel signed the note for the RVDH, Inc. loan (R. at 151, p. 7.)

On March 20, 2008, Van Den Heuvel asked Piikkila for another loan, this time for $7,100,000 to Source of Solutions, L.L.C., another one of his businesses. (R. at 151, p. 7.) Piikkila proposed the loan to the loan committee but the committee refused to approve it. (R. at 151, p. 7.) Piikkila tried to restructure the loan several times but the committee refused all attempts. (R. at 151, p. 7.)

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[1] The following abbreviations are used herein: Record on appeal: "R. at __;" Appendix: "App. at __;" Change of Plea hearing transcript: "COP Tr. at __;" Other Hearing Transcripts: "[date] Tr. at __;" and Presentence Investigation Report: "PSR. at __."

Piikkila's supervisors at the bank instructed him that the bank would not make any further loans to Van Den Heuvel or his businesses. (R. at 151, p. 7.)

However, to avoid this ban on lending, Van Den Heuvel requested Piikkila make loans in the names of other people for the benefit of Van Den Heuvel or his companies. (R. at 151, p. 7.) The first loan occurred on September 12, 2008, when Piikkila approved a loan of $100,000 to S.P. (R. at 151, p. 7.) Of that amount, $40,000 was immediately transferred to two of Van Den Heuvel's businesses. (R. at 151, p. 7.) The remaining $60,000 was transferred to Nicolet Bank to pay off an earlier loan S.P. had obtained for Van Den Heuvel. (R. at 151, p. 7.) S.P. admitted that he, Piikkila, and Van Den Heuvel understood that none of the money from the loan was going to S.P. and he had no obligation to pay back the loan because Van Den Heuvel was responsible for payment. (R. at 151, p. 7.)

The second loan occurred on January 2, 2009, when Piikkila approved a loan of $240,000 to W.B., Van Den Heuvel's former business partner and brother-in-law. (R. at 151, p. 7.) The majority of the loan proceeds were dispersed to pay off earlier loan debts at other banks that Van Den Heuvel had incurred, either in his own name or W.B.'s name. (R. at 151, p. 7.) The money that was left after paying off older loans was used by Van Den Heuvel to pay off his own personal or business debts. (R. at 151, p. 7.)

The third loan was made on February 11, 2009, to S.P. for $30,000. (R. at 151, p. 7.) All of the proceeds from that loan were transferred to business entities belonging to Van Den Heuvel. (R. at 151, p. 7.) The fourth loan was made on May 15, 2009, also to S.P. (R. at 151, p. 7.) The amount of that loan was $129,958 and it consolidated the amounts remaining due on the two earlier loans obtained in S.P.'s name. (R. at 151, p. 7.) The fifth loan was also made on May 15, 2009, but this one was in J.G.'s name. (R. at 151, p. 7.) J.G. was the nanny for Van Den Heuvel's children. (R. at 151, p. 7.) The loan amount was $25,000 and it was immediately distributed to make a payment on the latest S.P. loan, to make a payment on the W.B. loan, and to transfer money to RVDH, Inc. and to a company called KYHKJG. (R. at 151, p. 7.) KYHKJG was a company owned by Van Den Heuvel's wife, Kelly. (R. at 151, p. 7.)

The sixth loan was made on September 11, 2009, when Piikkila approved a loan of $240,000 to Source of Solutions. (R. at 151, p. 7.) The loan application was signed by D.S. who had served for years as an administrative assistant to Van Den Heuvel. (R. at 151, p. 7.) However, none of the loan proceeds went to Source of Solutions. (R. at 151, p. 7.) The proceeds were transferred to Van Den Heuvel's other businesses, used to pay for the Van Den Heuvels' personal expenses, payments to employees, and payments against the other Horicon loans. (R. at 151, p. 7-8.) D.S. received a $5,000 payment from the loan. (R. at

151, p. 7.) Piikkila received a payment from the loan because he personally covered a short-fall in one of Van Den Heuvel's other accounts at Horicon Bank. (R. at 151, p. 8.)

The seventh loan occurred on September 25, 2009, when Piikkila approved a $10,000 loan to Tissue Technology, another business owned by Van Den Heuvel. (R. at 151, p. 8.) Of this amount, $1,000 was deposited into Tissue Technology and $9,000 was withdrawn as cash. (R. at 151, p. 8.)

Van Den Heuvel's motive in arranging these loans was to obtain large quantities of money to use for his own purposes. (R. at 151, p. 8.) Each loan was justified by a general business purpose such as purchasing equipment or operating capital. (R. at 151, p. 8.) However, most of the loan proceeds went to pay off Van Den Heuvel's old loans or personal expenses. (R. at 151, p. 8.) Van Den Heuvel admitted that he was responsible for these loans but they were taken out by straw borrowers because the bank refused to loan him or his businesses any money. (R. at 151, p. 8.) When collateral was offered as security for the loans, it was collateral owned or controlled by Van Den Heuvel, not the straw borrowers. (R. at 151, p. 8.) The value of the collateral was often inadequate as security for the loans. (R. at 151, p. 8.)

With the exception of the J.G. loan, which was paid off by the proceeds from the Source of Solutions loan, none of the loans were paid off. (R. at 151, p.

8.) The bank attempted to use collateral to collect the amounts due but had to write off all of the loans for a total loss of $316,445.79. (R. at 151, p. 8.)

As a result of these actions, on April 19, 2016, the government obtained an indictment against Van Den Heuvel, Kelly, and Piikkila charging one count of conspiracy to defraud the United States in violation of 18 U.S.C. § 371 (Count 1); seven counts of bank fraud in violation of 18 U.S.C. §§ 2 and 1344 (Counts 2, 4, 6, 8, 10, 12, and 13); and five counts of false statement in violation of 18 U.S.C. §§ 2 and 1014 (Counts 3, 5, 7, 9, and 11). (R. at 1.)

On September 20, 2016, the government obtained a superseding indictment adding three additional counts of bank fraud and three additional counts of false statement against Van Den Heuvel. (R. at 52.) The original charges remained the same and Kelly and Piikkila were not named in the new charges. The additional charges were based upon a scheme executed by Van Den Heuvel in June and July of 2013. (R. at 52.) In this scheme, the government alleged Van Den Heuvel persuaded his employee P.H. to apply for a $50,000 loan to be used by Van Den Heuvel and his businesses. (R. at 52.) To help P.H. qualify for the loans, Van Den Heuvel transferred titles to two Cadillac Escalades owned by one of his businesses (but driven by himself and his wife as personal vehicles) to P.H. (R. at 52.) Van Den Heuvel also created false pay stubs for P.H. and caused him to falsely represent his job title and income in order to qualify

for a loan. (R. at 52.)

II. Motion to Suppress and Stipulation.

On July 2, 2015, the Brown County, Wisconsin Sheriff's Department executed a series of search warrants at Van Den Heuvel's residence and businesses. (R. at 98.) The purpose of the warrants was to search for evidence of state crimes, related primarily to Van Den Heuvel's business "Green Box." (R. at 99.) The search resulted in the seizure of five truckloads of business records and other evidence. (R. at 99.) Although the seized evidence contained some evidence of the Horicon Bank scheme, the government assured the court that most of the investigation in to the Horicon Bank scheme was complete prior to July of 2015. (5/31/16 Tr. at 10-11; 6/27/16 Tr. at 7; 6/30/16 Tr. at 6; 8/31/16 Tr. at 10; 10/3/16 Tr. at 9; 12/14/16 Tr. at 34-36; R. at 121, 126.)

On June 16, 2017, Van Den Heuvel filed a motion to suppress all evidence taken during the execution of the search warrants in July of 2015. (R. at 98.) He asserted that the warrants were overbroad, did not state with sufficient particularity which crimes they would aid in prosecution, and items seized were outside the scope of the warrants. (R. at 99.) By this time, the government indicated that separate federal charges regarding the Green Box evidence could be forthcoming.[2] (6/27/16 Sealed Tr. at 5.) The government responded to the

[2] In fact, on September 19, 2017, an indictment was filed regarding the Green Box

motion to suppress by stating that most of the evidence seized in the Brown County search would not be used in the instant case. (R. at 121.) The government also reiterated that most of the material seized as part of the Brown County warrants was irrelevant to the instant case. (R. at 126.)

The parties held a suppression hearing in front of the magistrate judge on August 11, 2017. (R. at 127.) However, on August 30, 2017, the parties entered into the following stipulation:

> It is hereby stipulated by and between the parties, through their respective counsel, after full consultation with and with the approval of the defendants, as follows:
>
> 1. That the defendants shall withdraw all motions challenging the July 2, 2015 searches filed in case No. 16-CR-64, subject to the provisions in paragraphs 2, 3, and 4.
>
> 2. That the government agrees not to use any evidence seized in the July 2, 2015 searches in its case in chief. However, such evidence can be used in cross-examination of the defendants consistent with applicable case law.
>
> 3. That the government agrees that the defendants can raise all search warrant issues in any other civil or criminal matters, that the defendants have preserved such issues and that the instant stipulation shall not constitute a waiver of such issues for other future litigation.
>
> 4. That the defendants cannot reassert a challenge to the issuance of the search warrants used to search on July 2, 2015 or their execution at any later time in case 16-CR-64.

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investigation in Eastern District of Wisconsin Case Number 1:17-cr-00160-WCG-DEJ charging Van Den Heuvel with 10 counts of wire fraud in violation of 18 U.S.C. §§ 1343, 1349, and 2; and four counts of money laundering in violation of 18 U.S.C. §§ 1957 and 2. This indictment remains pending.

(R. at 134.) The magistrate judge did not issue a ruling on the motion to suppress and the matter was dropped.

III. Plea Agreement and Change of Plea Hearing.

On October 4, 2017, Van Den Heuvel entered into a written plea agreement with the government and agreed to plead guilty to Count 1 of the superseding indictment, which charged a conspiracy to defraud the United States in violation of 18 U.S.C. § 371. (R. at 151.) In the plea agreement, he admitted he was guilty of the offense charged in Count 1 and admitted the factual basis as stated in the first section of this brief. (R. at 151, p. 2-8.) The government agreed to dismiss the remaining counts of the indictment against him at sentencing. (R. at 151, p. 9.) The government also agreed "to move to dismiss any charges in this case against co-defendant Kelly Van Den Heuvel at the time of sentencing of Ronald Van Den Heuvel." (R. at 151, p. 9.)

Regarding the guidelines calculations, the parties agreed the base offense level would be 6 under § 2B1.1. (R. at 151, p. 11.) The parties also agreed that there would be a 12 level enhancement for the amount of loss. (R. at 151, p. 11.) The government indicated it believed a two level increase for Van Den Heuvel's aggravating role in the offense was appropriate. (R. at 151, p. 11.) Van Den Heuvel did not agree with this provision. (R. at 151, p. 11.) The government also agreed to the full reduction for acceptance of responsibility but "only if the

defendant exhibits conduct consistent with the acceptance of responsibility." (R. at 151, p. 11.) The government also agreed to recommend a sentence at the low end of the applicable guidelines range as determined by the court. (R. at 151, p. 12.)

The parties agreed Van Den Heuvel would pay restitution of $316,445.79 to Horicon Bank. (R. at 151, p. 13.) The plea agreement contained an advisement of all of the rights Van Den Heuvel was waiving by pleading guilty, including the waiver of "any claims he may have raised in any pretrial motion." (R. at 151, p. 14.) Finally, Van Den Heuvel acknowledged he was pleading guilty because he was guilty and agreed no inducements or promises had been made aside from those in the plea agreement. (R. at 151, p. 17.)

The district court held a change of plea hearing on October 10, 2017. (COP Tr. at 2.) The court disclosed the existence of the plea agreement on the record. (COP Tr. at 2.) The court informed Van Den Heuvel that he was pleading guilty to one count of conspiracy and the other counts would be dismissed. (COP Tr. at 3.) The court indicated that, as a result of Van Den Heuvel's guilty plea, the case against Kelly would be dismissed. (COP Tr. at 3.) The court reviewed the other agreements including the agreement to recommend a low-end of the guidelines sentence, the agreement about restitution, and the agreements about the guidelines calculations. (COP Tr. at 4.)

Van Den Heuvel was placed under oath by the clerk and the district court explained that if he gave false answers, he would be subject to perjury charges. (COP Tr. at 7-8.) The court advised him that he had the right to plead not guilty and the following colloquy occurred:

> THE COURT: 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?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Okay.
>
> THE DEFENDANT: And I understand while intent is not required, there was none.
>
> THE COURT: We'll go through the elements of the offense later.
>
> THE DEFENDANT: Okay.

(COP Tr. at 8.) The district court discussed Van Den Heuvel's competency by questioning him on his education level and mental and physical health. (COP Tr. at 8-10.) Van Den Heuvel indicated he had discussed the plea with his attorney at length. (COP Tr. at 10.) He stated that the case was "very complicated" and that he originally did not understand the straw borrower information but his defense attorney explained it to him. (COP Tr. at 11.)

The district court then reviewed the plea agreement with Van Den Heuvel. (COP Tr. at 11-12.) The court explained the elements of the offense and had the

following discussing regarding intent:

> THE COURT: Those are the elements that make up this crime. Do you understand them?
> THE DEFENDANT: I do. I also understand that there was no intent.
> THE COURT: Well -
> THE DEFENDANT: I know. I agree. And I do understand that.
> [DEFENSE COUNSEL]: Could I - could I have just a second?
> THE COURT: Yes. Because intent, as I understand it, would be an element. Intent to enter into an agreement to commit a crime.
> (Defense attorney confers with Defendant)
> THE COURT: And we're not going to play games here.
> THE DEFENDANT: Yes, your Honor.
> THE COURT: You understand.
> THE DEFENDANT: I do understand.
> THE COURT: The Government would have to - am I correct the underlying crime is bank fraud? Or -
> [GOVERNMENT COUNSEL]: That's correct.
> THE 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?
> THE DEFENDANT: I do.

(COP Tr. at 13-14.) The court explained the penalties associated with the charge, including restitution. (COP Tr. at 14-15.)

The court then discussed the sentencing guidelines and the sentencing procedure with Van Den Heuvel. (COP Tr. at 15-17.) The court reviewed the rights he would be giving up by pleading guilty including the right to a jury trial, the right to compel the attendance of witnesses, the right to testify on his own behalf, and the right not to testify. (COP Tr. at 17-20.) The court then discussed

whether the plea was voluntary:

> THE 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 enter a plea of guilty?
> THE DEFENDANT: No. My - my wife is dismissed, right?
> THE COURT: That's in the plea agreement.
> THE DEFENDANT: Okay.
> THE COURT: And you understand that's part of the plea agreement and the Government has - has made that promise.
> You understand that?
> THE DEFENDANT: I agree.
> THE COURT: Any other promises either than those that are set forth in the plea agreement to get you to waive your rights?
> THE DEFENDANT: No, sir.
> THE COURT: Anyone making any threats against you or anyone else to get you to waive your rights and enter a plea of guilty?
> THE DEFENDANT: No, sir.
> THE COURT: Are you pleading guilty to this offense then because you are guilty of the offense?
> THE DEFENDANT: Yes, sir.

(COP Tr. at 20-22.) The court then turned to the factual basis for the guilty plea by stating:

> THE COURT: Any objection to my relying upon the facts set forth in Paragraph 5 [of the plea agreement] in order to make sure there's a factual basis for this plea?
> THE DEFENDANT: Every word, your Honor?
> THE COURT: I - the question is, do you have objection to my relying on the summary of evidence. If there are qualifications, you can let me know.
> This is the evidence that the Government believes it would be able to introduce if the case went to trial. While you do not have to agree that all that evidence is true, you might have a different version, but the Government says this is the evidence it would have. There's a factual basis there.

> If you want to give me a different factual basis, I'll listen to it, but I have to make sure that there's a basis upon which a finding of guilt can be made here.
>
> THE DEFENDANT: Okay. I -
>
> THE COURT: Do you have any objection to my relying -
>
> THE DEFENDANT: - I don't have any objection to your Honor using this as it is; the bane[3] [sic] suit as somebody that pledged a note, that's all.
>
> DEFENSE COUNSEL: Judge, maybe I can qualify. I've gone over this with Mr. Van Den Heuvel several times, and - and I think his position is this, that the facts as set forth which were carved out by all the parties laboriously agreed to by Mr. Van Den Heuvel are sufficient to satisfy the elements of the offense charged, and he may take issue with one or more facts. I sincerely doubt they're going to be substantive.
>
> THE COURT: Okay.
>
> THE DEFENDANT: Okay.
>
> THE COURT: And what I - I will - 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?
>
> THE DEFENDANT: I do understand.
>
> THE COURT: Okay. Very well. I am satisfied and I'll find that the plea of guilty is entered knowingly and voluntarily, Mr. Van Den Heuvel understands the elements of the offense, the maximum penalties, the application of the sentencing guidelines, he understands the rights he's giving up by entering this plea of guilty, and he's freely and voluntarily waived those rights and entered his plea of guilty. There is a factual basis that supports it.

(COP Tr. at 22-25.) The district court accepted the plea. (COP Tr. at 25.)

[3] This reference to a "bane suit" is actually a reference to the loan taken out by "W.B." or William Bain. (R. at 167, p. 8.)

IV. Presentence Investigation Report and Sentencing Memoranda.

The United States Probation Office prepared the Presentence Investigation Report on December 1, 2017. (PSR at 1.) The probation officer used the 2016 version of the sentencing guidelines to calculate the guidelines range. (PSR at 15.) The base offense level was six under § 2B1.1(a)(2) because the statutory maximum sentence for a violation of 18 U.S.C. § 371 is five years. (PSR at 15.) The officer agreed with the parties' calculation of the amount of loss to the bank and assessed a 12 level enhancement for loss between $250,000 and $550,000 under § 2B1.1(b)(1)(G). (PSR at 15.)

The officer assessed a two level enhancement for Van Den Heuvel's role in the offense under § 3B1.1(c) finding that he had organized and directed others, used four different straw borrowers, and was the manager of at least one of the borrowers. (PSR at 16.) The officer determined Van Den Heuvel should receive a three level reduction for acceptance of responsibility and the total offense level was 17. (PSR at 16.) Van Den Heuvel had no criminal history points and the applicable guidelines range was 24 to 30 months. (PSR at 30.)

On December 28, 2017, the probation officer provide an addendum to the PSR indicating that Van Den Heuvel had filed objections to the PSR. (R. at 167, p. 9.) He did not object to the guidelines calculations but made several objections to factual allegations in the PSR. (R. at 167, p. 9-12.) In general, he objected to

any facts that were not contained in the factual basis contained in the plea agreement. (R. at 167, p. 9-12.) He also objected to the proposed conditions of supervised release that restricted his ability to obtain lines of credit or work in certain occupations without prior approval from the probation office. (R. at 167, p. 12.)

Van Den Heuvel, through counsel, filed a sentencing memorandum on December 28, 2017. (R. at 170.) He argued in mitigation that his good works as an upstanding member of the community should be considered when imposing a sentencing this case. (R. at 170, p. 1.) He had been gainfully employed for his entire adult life in various businesses. (R. at 170, p. 5-6.)

Van Den Heuvel argued that he was very close to his wife and two children, who would suffer enormously if he were to go to prison. (R. at 170, p. 6-8.) His wife has suffered from breast cancer and has had several surgeries. (R. at 170, p. 8.) He argued that the stress of this case and the possibility of him serving prison time could cause the breast cancer to return. (R. at 170, p. 9.) He asserted that some of the funds he received for the loans involved in the offense went toward legitimate corporate obligations and were necessary to maintain the businesses. (R. at 170, p. 9-10.) He noted that he continued to accept "full responsibility for his actions" and acknowledged "funds from the loans were improperly obtained and that proceeds were misused." (R. at 170, p. 10.)

The government filed a sentencing memorandum on January 2, 2018. (R. at 173.) The government asked for a sentence of imprisonment, noting Van Den Heuvel's significant role in the offense. (R. at 173.) The government stated Van Den Heuvel qualified for a three level reduction for acceptance of responsibility. (R. at 173.)

V. Motion to Withdraw Guilty Plea, Motion to Withdraw Attorney, and Motion for Continuance.

On December 12, 2017, Van Den Heuvel filed a *pro se* motion to continue the sentencing hearing. (R. at 163.) He alleged that he found additional exculpatory information while reviewing discovery and other documents. (R. at 163, p. 1.) He claimed that the officer responsible for the Brown County search warrants perjured herself to obtain the warrants, the search warrants were overbroad, certain seizures pursuant to the search warrants breached attorney/client confidentiality, and that Brown County was negligent in handling the search warrants and evidence. (R. at 163, p. 1-2.) He also alleged that his businesses had been destroyed by law enforcement and the government had been negligent in failing to turn over all of the documents seized. (R. at 163, p. 3-4.)

On December 27, 2017, defense counsel filed a motion to adjourn the sentencing proceedings that were scheduled for January 5, 2018. (R. at 165, p. 1.) The motion stated that, "There are matters which are currently being reviewed

by the defendant which may have impact on the disposition of this matter." (R. at 165, p. 1.) The district court denied this motion the day it was filed, finding that the reason for and the length of the adjournment were too "indefinite" and "vague" for the motion to be granted. (R. at 169.) The court indicated defense counsel could refile the motion and "indicate specifically why he needs additional time and how much time he needs." (R. at 169.)

On January 2, 2018, Van Den Heuvel, through counsel, filed a motion to withdraw his guilty plea. (R. at 171.) In his memorandum in support of the motion, he stated there was a "fair and just reason" to withdraw the plea because his plea was not knowingly and voluntarily made because it was "forced and precipitated, in large measure, in order to exculpate and free his wife and co-defendant." (R. at 172, p. 1-2.) He asserted both "factual and legal innocence" based on his further review of discovery and concluded that "evidence from the search warrant . . . was used by investigators to conduct follow up investigations and interviews . . . to obtain evidence that would be used at trial. (R. at 172, p. 1-2.) There were no documents submitted with either the motion or the memorandum in support of the motion.

The government filed a response to the motion to withdraw on January 3, 2018. (R. at 177.) It argued that Van Den Heuvel's claims of innocence directly conflicted with his sworn statements at the change of plea hearing. (R. at 177.)

The government also pointed out that the documents containing information about the Tak promissory note and the Bain loan were not new because they had been provided to Van Den Heuvel as discovery in April of 2016. (R. at 177.)

On January 3, 2018, defense counsel filed a renewed motion to adjourn the sentencing hearing, which was still scheduled for January 5, 2018. (R. at 176.) Van Den Heuvel had made inquiries in the last month with various lawyers who represented him in civil cases. (R. at 176, p. 1.) As a result of those inquiries, he received "38 bankers boxes and six CD and/or thumb drives" containing materials generated during civil representation of him and his companies. (R. at 176, p. 1.) A description of the documents was included as follows:

> A preliminary review of the documents has revealed evidence that a civil litigant (Tak) assigned a multimillion dollar note to Horicon Bank and that such assignment fully collateralized all of the Horicon loans which are the subject of the indictment. Furthermore, he maintains that the documents support the position that bank officials were aware of this collateralization and approved of same. The preliminary review also has uncovered corporate records of the defendant's corporations which he believes supports these assertions. The lawyers noted above represented the defendant, EARTH (one of the defendant's corporations), or Green Box (another one of the defendant's corporations). In the course of the civil litigations and associated representation, documents were created which it is believed would demonstrate that he did not cause others to act as a "straw borrower" and that the loans were made with the full approbation of banking officials, and not just co-defendant Paul Piikkila.

(R. at 176, p. 2.) Defense counsel asked for an extension of 120 days to review the documents. (R. at 176, p. 3.)

On January 4, 2018, defense counsel filed a motion to withdraw as counsel. (R. at 180.) The motion stated that defense counsel was moving to withdraw because of "a breakdown in communications has occurred to the extent that further competent representation cannot be provided." (R. at 180.) No additional argument or evidence was provided in the motion.

VI. Sentencing Hearing and Judgment in a Criminal Case.

The district court held a sentencing hearing on January 5, 2018. (R. at 181.) The court first addressed defense counsel's motion to withdraw. (App. at 3.) Defense counsel indicated that he did not want to discuss the issue in open court because of the potential waiver of attorney/client privilege. (App. at 3-4.) Counsel asked for the hearing to be held *ex parte* so the government could not hear the reasons for the motion. (App. at 4.) The court asked Van Den Heuvel if he was willing to waive attorney/client privilege so defense counsel could explain the breakdown in communications. (App. at 4.) Van Den Heuvel offered to explain it to the court and briefly discussed the Brown County search warrant evidence. (App. at 5.)

At this point, defense counsel asked Van Den Heuvel if he was waiving attorney/client privilege. (App. at 5.) Van Den Heuvel said he was not waiving it for "everything we talked about for two years, no." (App. at 5.) The government indicated that it opposed the motion but added that it was not

uncommon for the government to be excused from such discussions regarding defense representation. (App. at 6.) The court asked defense counsel if he would prefer to discuss the matters in chambers outside the presence of the government and off the record. (App. at 7.) Defense counsel said, "Yes, I would." (App. at 7.) Mr. Van Den Heuvel said, "I'd love to talk to you in your chambers." (App. at 7.) The transcript reflects that the recess in chambers occurred from 9:38 a.m. until 10:01 a.m. (App. at 8.) After the *ex parte* hearing, the court made the following ruling on the record:

> For the record, I will say that I'm going to deny the motion to withdraw. There was a discussion in chambers. Although there's a claim of a breakdown in communication, I see no reason why - well, first of all, we're at the sentencing stage. So, there's been an awful lot of communication prior to today. And in fact, at the time of the plea hearing, Mr. Van Den Heuvel was asked if he was satisfied with the representation of his attorney. And at that time, he said he definitely was satisfied and, in fact, if I recall correctly, "It was as good as I could've paid for." He was satisfied with the representation of counsel at that point.
>
> As we got closer to sentencing, he's become dissatisfied. Mr. Van Den Heuvel believes he now has found evidence of - exculpatory evidence in the massive amounts of material that had been seized by the Brown County Sheriff's Department in connection with a different investigation. From what his description is, none of it - it deals more with motive and whether he had other access to other monies and other funds so that he wouldn't have had to defraud Horicon bank.
>
> I don't think it would be relevant, but in any event having entered a plea of guilty under oath, waiving his rights after being advised fully on the elements of the offense, the burden of proof, and all the other material, I'm satisfied that the plea was knowingly and voluntarily entered. The motion to withdraw at this point seems to me more of a delaying tactic. It appears that there is

> certainly conflict, but I'm convinced that even if I were to grant this motion and appoint new counsel, the conflict would still exist.
>
> The fact is Mr. Van Den Heuvel is unwilling to admit what he previously admitted in the plea hearing. And I don't find a breakdown in communication that would prevent [defense counsel] from fully and adequately representing him here today at the sentencing. He has spent more than a year and a half with this defendant. He has spent a great deal of time reviewing documents in discovery and in conversations with his client. He's certainly capable of bringing up all mitigating factors that may bear on sentencing. And he's certainly capable of communicating that to the Court.
>
> In the event that Mr. Van Den Heuvel is correct and [defense counsel] overlooked matters, made an error, Mr. Van Den Heuvel is free to seek postconviction relief and he's free to appeal. And there'd be no doubt that a different attorney would be appointed to represent him on appeal and that attorney can investigate the so-called exculpatory evidence and if the view is that a postconviction motion should be filed, that would be filed. But I'm satisfied that at least as of today, the motion to withdraw should be denied and I hereby deny it.

(App. at 8-10.)

The court then considered the motion to withdraw the guilty plea. (App. at 10.) The court indicated it had read the transcript of the plea colloquy and determined it was a thorough colloquy during which Van Den Heuvel "fully understood what he was doing and that any decision he made was a free and voluntary decision on his part." (App. at 10.) The court stated that the fact that the plea agreement contained an agreement to dismiss the charges against his wife was not coercion. (App. at 11.) The court said it made certain Van Den

Heuvel understood and agreed to the elements of the offense and voluntarily pled guilty to them. (App. at 11.)

The court turned to the motion to adjourn sentencing. (App. at 11.) The court noted that no documentation has been produced regarding the reasons for needing to adjourn the sentencing hearing and was only a vague assurance that a delay would allow him to prove his innocence. (App. at 12.) The court concluded:

> Well, he's pled guilty. He did so freely and voluntarily. And let me say this too. The parties have talked about the complexity of this case. This is not a complex case. Lying to get a loan is a pretty obvious and simple and straightforward thing. And certainly, the person that gets the loan, the person involved knows what he intended, knows what he did, knows what he said. Certainly, the bank to which the loan application is made is aware of what's going on.
>
> The fact that Mr. Van Den Heuvel knew these things - and these are seven loans that are laid out clearly in the indictment, the applications for the loans are there. The individuals who served as straw borrowers are listed. What's there had really nothing to do - and the evidence that was seized from him by the Brown County Sheriff really doesn't bear on these cases. These cases arose independently, were charged separately, and were charged before that without any of that information really being in the hands of the FBI and the investigators in this case.
>
> So, for those reasons, I find no reason to allow the motion to vacate the plea. That motion is denied. The motion to adjourn sentencing is also denied.

(App. at 12-13.) The court then considered the presentence report. (App. at 13.) The government indicated that it would no longer recommend the reduction for acceptance of responsibility. (App. at 13.)

Defense counsel stated that Van Den Heuvel continued to have objections to some of the facts contained within the PSR. (App. at 14.) Counsel said that Van Den Heuvel wanted to make a statement regarding his disagreements. (App. at 14.) The court said he could make a statement under oath and subject to cross-examination. (App. at. 15.) The court said this would be considered testimony and he would give allocution later. (App. at 15.) Van Den Heuvel and agreed to take the stand. (App. at 16.) Defense counsel began direct examination but became uncomfortable with the possibility that Van Den Heuvel's testimony would be damaging because it would contradict his statements under oath at the change of plea hearing. (App. at 17-18.) The court asked Van Den Heuvel if he wanted to testify in the narrative and he agreed. (App. at 20.)

Van Den Heuvel indicated his objection to the report was the classification of the borrowers as "straw borrowers." (App. at 21.) He claimed the each one of the straw borrowers had signed an operating agreement with his companies allowing them to borrow money on behalf of the company. (App. at 21.) He also claimed that the Horicon Bank's board of directors knew about the loans and knew about the collateral being used for the loans. (App. at 21.) He claimed that all of the straw borrowers made a significant amount of money from the companies. (App. at 22.) He said he did not intend to hurt the bank or anyone else and intended to pay all of the money back. (App. at 22.) He claimed all of

the loans were for the benefit of the companies and he did not personally get any of the money. (App. at 22.) He said he did not understand when he was saying when he admitted he intentionally defrauded the bank. (App. at 23.) He said that he was a successful businessman and did not need to steal money. (App. at 24.)

On cross-examination, the government pointed out that Van Den Heuvel's testimony was contradicted by statements given by the straw borrowers, Piikkila, and bank officials. (App. at 28.) The government asked if they were lying. (App. at 28.) Van Den Heuvel said he was not saying that but pointed out that approval must have been obtained within the bank from someone other than Piikkila. (App. at 29.) Van Den Heuvel maintained that all the evidence was there to show that he and his companies were behind the loans and the bank officials were not watching close enough. (App. at 30.)

The court indicated it had considered the testimony and adopted the factual findings of the PSR. (App. at 30.) The court found that Van Den Heuvel's testimony was inconsistent with his admissions under oath during the guilty plea proceedings. (App. at 30.) The court also found Van Den Heuvel no longer qualified for acceptance of responsibility. (App. at 30.) With that change, the total offense level was 20, the criminal history category was I, and the guidelines range was 33 to 41 months. (App. at 30-31.)

The government argued in aggravation and requested a sentence at the low end of the guidelines. (App. at 34-37.) Defense counsel then spoke in mitigation and argued that Van Den Heuvel made the wrong choices when trying to keep his businesses from failing. (App. at 39.) He pointed out Van Den Heuvel's contributions to the community and involvement with his church and family. (App. at 39.) Van Den Heuvel wanted to have successful companies and make the world better with his environmental ideas. (App. at 40.) Defense counsel asked for either probation or a year and a day in prison and asked the court to consider the collateral consequences to Van Den Heuvel and his family if he were to be incarcerated. (App. at 40-42.)

The district court then allowed Van Den Heuvel to provide allocution. (App. at 43.) He indicated he was trying to invest in cleaning landfills and had a patent to do it. (App. at 43.) Van Den Heuvel apologized to the bank's employees for hurting the bank. (App. at 43.) The court discussed the general factors it was considering when sentencing Van Den Heuvel and made the following findings regarding the appropriate sentence. The court found that the offense was serious and involved a significant amount of money. (App. at 46.) The court considered the impact on the bank's reputation and the bank's employees. (App. at 46-47.) The court said there were many positive things

about Van Den Heuvel, including his family support, education, intelligence, and position in the community. (App. at 47.)

The court noted that the conduct in this case was not impulsive, a mistake, or poor judgment. (App. at 47.) Rather, the conduct was a long-running scheme involving many participants to obtain money Van Den Heuvel could not get otherwise. (App. at 48.) The court considered Van Den Heuvel's most recent assertions that he was not guilty, which were contrary to his guilty plea. (App. at 48.) The court noted the number of straw borrowers and companies used to make this fraud occur and more difficult to detect. (App. at 49.) The court said that Van Den Heuvel continued with the scheme after he was told by his accountants that it was illegal. (App. at 50.)

The court considered the needs of Van Den Heuvel's family and his close relationship with them but had to balance those considerations with the serious nature of the crimes. (App. at 51-52.) The court considered the fact that Van Den Heuvel did not have any criminal history but noted that was common in white collar fraud cases. (App. at 53.) The court said protection of the public was important because Van Den Heuvel was a threat to the property of others. (App. at 53.) The court imposed a sentence of 36 months in prison. (App. at 54.) The court also imposed a three year term of supervised release, a $100 special assessment, and restitution in the amount of $316,445.47. (App. at 54.)

The court noted there had been some objections to the financial and employment conditions of supervised release. (App. at 54.) The court read all of the mandatory and standard conditions of supervised release on the record. (App. at 54-56.) Regarding the objected to conditions, the court stated:

> He is not to open any new lines of credit which includes the leasing of any vehicle or other property without - or taking any loan from a bank or using existing credit resources without the prior approval of his agent. Again, after his obligations are met, that - his financial obligations are met, that condition will be waived.
>
> He is not to hold employment with fiduciary responsibilities during the supervision term without first notifying the employer of his conviction. He shall not hold self-employment having fiduciary responsibilities or otherwise - or is otherwise involved in initiating or conducting financial transactions without the approval of his probation officer. Those last - that last condition goes directly to the risk he poses to property of others and it's what brought them here before the Court.

(App. at 56-57.) The court ordered the remaining counts of conviction dismissed. (App. at 59.)

The district court issued a written order denying the motions to vacate plea, adjourn sentencing, and withdrawal of counsel on January 8, 2018. (App. at 61.) The court filed the judgment in a criminal case on January 9, 2018. (R. at 184.) Van Den Heuvel filed a notice of appeal on January 19, 2018. (R. at 187.)

SUMMARY OF ARGUMENT

Van Den Heuvel cannot raise any argument regarding the motion to suppress because it has been waived for direct appeal in this case. He waived the issue by withdrawing the motion in the district court and by entering into a unconditional guilty plea.

Any argument challenging Van Den Heuvel's conviction would be frivolous where he entered into an unconditional, knowing, and voluntary plea of guilty, pursuant to a plea agreement, and the district court substantially complied with Federal Rule of Criminal Procedure 11 when accepting his plea. The Rule 11 colloquy in this case was thorough and adequately advised Van Den Heuvel. Furthermore, the district court did not err by denying Van Den Heuvel's motion to withdraw the guilty plea. He was not coerced into the plea because it contained an agreement to dismiss charges against his wife and he did not provide any evidence that he was actually innocent of the conspiracy he pled guilty to.

The district court did not abuse its discretion by denying Van Den Heuvel's motion to adjourn the sentencing hearing and did not err in denying counsel's motion to withdraw as attorney. Both motions were made a few days prior to sentencing and were not supported by evidence or adequate reasons for granting.

Any argument challenging Van Den Heuvel's sentence would be frivolous where his sentence was not imposed in violation of the law, was not the result of an incorrect application of the guidelines, and was not unreasonable. The district court did not err by imposing a term or the conditions of supervised release.

ARGUMENT

I. Van Den Heuvel cannot raise any argument regarding the motion to suppress because it has been waived for direct appeal in this case.

A. Standard of Review.

This Court reviews the district court's legal conclusions regarding a motion to suppress *de novo*. *United States v. Koerth*, 312 F.3d 862, 865 (7th Cir. 2002). Review of the court's underlying factual findings and credibility determinations is for clear error. *Id.*

B. Legal Argument.

Van Den Heuvel indicated multiple times during the district court proceedings that he wished to challenge the Brown County search warrants. He has indicated to counsel that he wishes to continue challenging the search warrants in this appeal. This is not a non-frivolous issue for appeal because he waived it by both withdrawing the motion by stipulation and by entering into a unconditional plea agreement.

Regarding the stipulation, Van Den Heuvel agreed to withdraw the motion to suppress and the government agreed not to use evidence obtained from the Brown County search warrant in its case-in-chief. By making this strategic decision to enter into a stipulation with the government, Van Den Heuvel abandoned his ability to challenge the contents of the stipulation on appeal. *See United States v. Lockwood*, 789 F.3d 773, 780 (7th Cir. 2015).

Abandoned issues are waived and waived issues are unreviewable. *Id.; citing United States v. Fluker,* 698 F.3d 988, 998 (7th Cir. 2012). Therefore, Van Den Heuvel has waived any ability to raise a challenge to the Brown County search warrants in this appeal.

Second, Van Den Heuvel entered into an unconditional plea agreement with the government. "An unconditional plea waives all non-jurisdictional defects occurring prior to the plea, including Fourth Amendment claims." *United States v. Villegas,* 388 F.3d 317, 322 (7th Cir. 2004). This includes the argument that the district court failed to rule on a motion to suppress. *United States v. Washington,* 93 Fed. Appx. 981, 985 (7th Cir. 2004). Van Den Heuvel's guilty plea waived his ability to continue to challenge the motion to suppress and there is no non-frivolous regarding this issue on appeal.

II. Any argument challenging Van Den Heuvel's conviction would be frivolous where he entered into an unconditional, knowing, and voluntary plea of guilty, pursuant to a plea agreement, and the district court substantially complied with Federal Rule of Criminal Procedure 11 when accepting his plea.

A. Introduction.

In *United States v. Knox,* this Court noted that where a defendant does not move to withdraw a guilty plea in the district court, counsel need not address the voluntariness of the plea in an *Anders* brief if, after consultation with the defendant and advisement of any risks associated with the withdrawal of the

plea, the defendant indicates that he does not wish to challenge his plea on appeal. *United States v. Knox,* 287 F.3d 667, 671 (7th Cir. 2002). Following this Court's direction, counsel communicated with Van Den Heuvel to determine whether he wished to seek the withdrawal of his guilty plea. He indicated he wants to withdraw his plea because he believes he was coerced into pleading guilty and is actually innocent of the charges. Therefore, counsel has addressed whether Van Den Heuvel's guilty plea was knowing and voluntary.

B. Standard of Review.

The standard of review applicable to whether a guilty plea is knowing and voluntary is "whether, looking at the totality of the circumstances surrounding the plea, the defendant was informed of his or her rights." *United States v. Mitchell,* 58 F.3d 1221, 1224 (7th Cir. 1995). This Court reviews the district court's factual findings about the existence of a fair or just reason to withdraw the plea for clear error and the court's ruling on the motion to withdraw for an abuse of discretion. *United States v. Chavers,* 515 F.3d 722, 724 (7th Cir. 2008). If the district court conducted a thorough Rule 11 colloquy, the defendant seeking to withdraw his guilty plea faces an "uphill battle." *United States v. White,* 597 F.3d 863, 867 (7th Cir. 2010).

C. The Rule 11 colloquy in this case was thorough and adequately advised Van Den Heuvel.

In *United States v. Garcia,* this Court addressed the requirements for a valid plea of guilty under Federal Rule of Criminal Procedure 11. *United States v. Garcia,* 35 F.3d 1125, 1132 (7th Cir. 1994). To comply with the requirements of Rule 11, the district court must advise the defendant of his constitutional rights, the charges against him, and the minimum and maximum penalty. *Id.* These safeguards help ensure that the defendant's plea is knowing and voluntary. *Id.*

In the present case, the district court explained the nature of the charges, the maximum sentence possible, the sentencing guidelines, restitution, and the special assessment. (COP Tr. at 12-16.) The court informed Van Den Heuvel he had the right to plead not guilty and he was giving up his right to be tried by a jury, to confront and cross-examine witnesses, the right against compelled self-incrimination, and the right to testify at trial. (COP Tr. at 18-20.) The district court warned Van Den Heuvel that he was being questioned under oath and his answers could be used against him in a prosecution for perjury. (COP Tr. at 7-8). It appears from the record Van Den Heuvel was adequately advised prior to pleading of the rights he was waiving and the consequences of his plea.

Additionally, subparagraph (b)(3) of Rule 11 requires that an adequate factual basis be shown for the plea. *United States v. Nash*, 29 F.3d 1195, 1199 n. 1 (7th Cir. 1994). However, the test for whether there is a sufficient factual basis is

subjective. *United States v. Musa*, 946 F.2d 1297, 1303 (7th Cir. 1991). The district court need not engage in a colloquy with the defendant to establish a factual basis for a guilty plea. *Id.* Rather, the district court may find the factual basis for a plea from anything that appears in the record including the government's proffer. *Id.*

Van Den Heuvel hedged at the change of plea hearing when asked by the district court if he was admitting all of the facts set out in the written plea agreement. However, considering the record as a whole, there is a factual basis for the guilty plea to conspiracy. A plea of guilty admits the essential elements of the offense. *United States v. Paulette*, 858 F.3d 1055, 1059 (7th Cir. 2017). A defendant may also admit more than the elements of the crime by agreeing to facts in the plea agreement and the facts admitted in the plea agreement are conclusive. *Id.* at 1060. The factual statement contained in the written plea agreement, signed by Van Den Heuvel, provided a more than adequate factual basis for the plea. Furthermore, Van Den Heuvel never specifically contested any of the facts contained in the plea agreement and reaffirmed them in his pre-sentence pleadings. Therefore, there is an adequate factual basis for the guilty plea.

Finally, any variance from the procedures required by Rule 11 that does not affect substantial rights "shall be disregarded." Fed. R. Crim. P. 11(h).

Moreover, a "violation would be harmless when the defendant already knew the information omitted by the judge - when, for example, his own lawyer had told him about cross-examination, or the written plea agreement had specified the maximum punishment." *United States v. Driver,* 242 F.3d 767, 769 (7th Cir. 2001). The district court did not make any variance from the procedures required by Rule 11 but, even if it had, all of the provisions of Rule 11 were also covered in Van Den Heuvel's written plea agreement.

Considering the colloquy at the change of plea hearing in this case and the plea agreement, the totality of the circumstances indicate Van Den Heuvel was appropriately informed of his rights in accordance with the mandates of Rule 11. The district court engaged in a discussion with him regarding the underlying conduct, informed him of his rights, and discussed the sentencing consequences of the plea. The court discussed the various rights he would be giving up by pleading guilty and explained to him the consequences of giving up those rights. The court also determined Mr. Van Den Heuvel was competent to enter a guilty plea and had not been forced or coerced into doing so. Therefore, there is no non-frivolous issue to be raised regarding the knowing and voluntary nature of the guilty plea.

D. The district court did not err by denying Van Den Heuvel's motion to withdraw the guilty plea.

A defendant may be allowed to withdraw his guilty plea after the court accepts it but before sentencing if he "can show a fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B). Whether to allow withdrawal is "left to the sound discretion of the district court," and reversals are rare. *United States v. Graf,* 827 F.3d 581, 583-84 (7th Cir. 2016). A motion to withdraw a guilty plea is unlikely to have merit if it seeks to dispute the defendant's sworn assurances to the court. *Id.* at 584.

Appropriate grounds to withdraw a plea include the defendant's actual or legal innocence, or the involuntary or unknowing nature of the plea. *United States v. Mays,* 593 F.3d 603, 607 (7th Cir. 2010). However, sworn statements are not "trifles" that a defendant can just "elect to disregard." *United States v. Stewart,* 198 F.3d 984, 987 (7th Cir. 1999). Van Den Heuvel asserted two reasons to withdraw his guilty plea - coercion and innocence. Each will be discussed in turn.

1. Van Den Heuvel was not coerced into the plea because it contained an agreement to dismiss charges against his wife.

As discussed above, Van Den Heuvel has indicated to counsel that he wishes to argue on appeal that his guilty plea was not knowing and voluntary because he was coerced into entering the plea. He would like to argue that

because the guilty plea included the condition that the government would dismiss the charges against his wife, that it was not knowing and voluntary.

"Package" plea agreements in which dismissal of charges against a spouse is part of the agreement are common. *United States v. Spilmon,* 454 F.3d 657, 658 (7th Cir. 2006). Such package deals may require special scrutiny by the district court "because they present unique opportunities for coerced pleas." *Id.* Because of this possibility, the government must disclose any package deals to the district court during the plea colloquy. *United States v. Bennett,* 332 F.3d 1094, 1101 (7th Cir. 2003). Upon disclosure, the district court must make a detailed examination as to the voluntariness of the defendant's guilty plea to the package deal. *Id.*

The record in the present case indicates the government and the district court fullfilled the requirements. The plea agreement clearly stated that Van Den Heuvel's guilty plea would result in the dismissal of the charges against his wife. The district court confirmed the condition with both the government and Van Den Heuvel at the plea hearing. In fact, Van Den Heuvel himself asked the court twice to confirm the case against his wife would be dismissed after the guilty plea. He indicated both in his plea agreement and at the change of plea hearing that his guilty plea was not the results of threats or promises not contained in the plea agreement. The government moved to dismiss the charges against his wife the day after Van Den Heuvel pled guilty. (R. at 153.) The motion was granted

five days later, without prejudice. (R. at 154.) There is no indication in any of the record that Van Den Heuvel was coerced into pleading guilty and this is not a possible issue for appeal.

2. Van Den Heuvel did not provide any evidence that he was actually innocent of the conspiracy he pled guilty to.

Van Den Heuvel also wants to argue that he is actually innocent of the charge he pled guilty to at the change of plea hearing. If the defendant can show he is actually or legally innocent of the charges, that provides a fair and just reason for withdrawing the plea. *Mays*, 593 F.3d at 607. But bare protestations of innocence are insufficient to withdraw a guilty plea, 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.*

Van Den Heuvel made several claims of innocence in his motion to withdraw his guilty plea. He argued S.P. had a legal interest in a business that adversely impacted his credibility. However, credibility issues are for trial and do not prove innocence. He also argued that some of the loans were repaid. This is not proof of innocence because failure to pay a loan illegally obtained is not an element of either conspiracy or bank fraud. He argued that individuals at Horicon Bank were aware of the Bain loan and aware that it was fully collateralized. Again, this is not a challenge to the elements of the offense of

conspiracy because there were seven fraudulent loans in total, all of which were admitted to by Van Den Heuvel in his guilty plea to conspiracy. He also argued that bank officials must have known that he had his businesses were behind the loans. However, there is no evidence of this in the record and the negligence of bank officials does not prove Van Den Heuvel is not guilty of conspiracy to defraud the bank.

The motion to withdraw the guilty plea was not supported by any evidence or affidavit tending to show that he was actually innocent of the charges. *See United States v. Stoller,* 827 F.3d 591, 598 (7th Cir. 2016). Given that is the defendant's burden to overcome admissions made during the plea colloquy, the absence of evidence to support the motion to withdraw is important. *United States v. Redmond,* 667 F.3d 863, 870 (7th Cir. 2012). A defendant seeking to withdraw his plea cannot obtain relief by contradicting statements made freely under oath at the change of plea hearing. *Nunez v. United States,* 495 F.3d 544, 546 (7th Cir. 2007). When a defendant states at the change of plea hearing that his guilty plea had not been induced through undisclosed promises or threats, this assurance is presumed to be truthful. *United States v. Moody,* 770 F.3d 577, 581 (7th Cir. 2014); *United States v. Kilcrease,* 665 F.3d 924, 928-29 (7th Cir. 2012).

The district court concluded that Van Den Heuvel's argument that he was actually innocent was in direct contradiction of his statements at the change of

plea hearing. In addition, he offered no evidence to prove his statements and counsel has found none in the record. Van Den Heuvel has indicated that his trial counsel was ineffective for failing to admit the documents into the record. However, to the extent this issue rests on information outside of the record and ineffective assistance of counsel, such issues are best left for collateral review where an evidentiary foundation can be developed. *Massaro v. United States,* 538 U.S. 500, 504-05 (2003). Therefore, there is no argument on appeal that Van Den Heuvel's guilty plea was involuntary.

Considering the totality of the circumstances in this case, it is clear that Van Den Heuvel understood the charges he faced, the possible punishment, and the consequences of pleading guilty. The district court's explanation, coupled with the statements in his plea agreement and at the change of plea hearing, was sufficient to ensure that he knew and understood the nature of his guilty plea and was not coerced. *United States v. Blalock,* 321 F.3d 686, 689 (7th Cir. 2003). Therefore, there is no non-frivolous issue to be raised on appeal regarding Van Den Heuvel's guilty plea.

III. The district court did not abuse its discretion by denying Van Den Heuvel's motion to adjourn the sentencing hearing.

A. Standard of Review.

This Court reviews the district court's denial of a motion to adjourn or continue sentencing for an abuse of discretion and actual prejudice. *United States*

v. Harris, 718 F.3d 698, 703 (7th Cir. 2013).

B. The motion to adjourn the sentencing hearing was properly denied.

Defense counsel filed a motion to adjourn sentencing approximately three weeks prior to sentencing. This motion was denied by the district court because it contained no specifics as to why more time was necessary and how much more time was needed. Counsel filed a second motion to adjourn two days before sentencing. This time, counsel provided more detailed reasons as to why Van Den Heuvel wanted more time and asked for 120 days. The district court denied the motion as well, finding it was not based on a need to prepare for sentencing but was a delay tactic.

To demonstrate an abuse of discretion in this context, a defendant must show that he was actually prejudiced by the court's refusal to grant the continuance. *United States v. Rinaldi*, 461 F.3d 922, 928-29 (7th Cir. 2006). Without a showing of actual prejudice, there is no basis to challenge the denial of a continuance. *United States v. Collins,* 796 F.3d 829, 835 (7th Cir. 2015). Van Den Heuvel cannot show actual prejudice from the denial of a continuance in this case. He and his attorney were well prepared for sentencing, having filed sentencing memoranda, objections to the PSR, and multiple supporting documents. Both defense counsel and Van Den Heuvel were given multiple opportunities to speak and argue on his behalf and their arguments were

considered and ruled upon by the district court. The reasons mentioned for needing more time were based on documents that Van Den Heuvel knew about months prior to pleading guilty. There is no prejudice in this case.

IV. The district court did not err in denying counsel's motion to withdraw as attorney.

A. Standard of Review.

Generally, when reviewing the denial of a motion to substitute counsel, this Court considers "the adequacy of the district court's inquiry into the defendant's motion." *United States v. Zillges,* 978 F.2d 369, 372-73 (7th Cir. 1992). "Unless the complaint underlying a request for substitution of counsel is sufficiently detailed, the court may not rule on the motion without conducting a proper hearing at which both attorney and client testify as to the nature of their conflict." *Id.* at 372.

B. The district court did not err in denying the motion to withdraw.

Defense counsel indicated in the motion to withdraw that he and Van Den Heuvel had experienced a breakdown in communication. Based on counsel's request, and Van Den Heuvel's agreement, they had a discussion with the district court in chambers that was *ex parte* and not recorded. During this discussion, the district court determined that there was no actual breakdown in communication but Van Den Heuvel wished to argue he was actually innocent dispute his admissions at the change of plea hearing. Counsel disagreed with

these assertions. Van Den Heuvel did not otherwise express dissatisfaction with defense counsel. (App. at 75.) The court found there was no reason to believe defense counsel could not advance a strong sentencing argument, both legally and factually. (App. at 75-76.)

In deciding whether to grant a motion by court-appointed counsel to withdraw, the district court considers "the timeliness of the motion, the adequacy of the court's inquiry into the motion, and whether the conflict was so great that it resulted in a total lack of communication preventing an adequate defense." *United States v. Harris,* 394 F.3d 543, 552 (7th Cir. 2005). A defendant has no right to indefinite delays if he disagrees with his lawyer unless he has a reason for dissatisfaction. *United States v. Oreye,* 263 F.3d 669, 671 (7th Cir. 2001). An indigent defendant has a right to competent counsel but not a right to counsel of his choice and not the right to a lawyer who will agree with him at every turn. *Id.*

The district court did not err in denying the motion to withdraw. It was filed a few days prior to sentencing and was not based on counsel's performance or any actual conflict of interest. It was based on Van Den Heuvel's desire to retract his guilty plea, a decision defense counsel clearly disagreed with and advised Van Den Heuvel against. "The right to counsel of one's choice does not give [a defendant] the power to manipulate his choice of counsel to delay the

orderly progress of his case." *United States v. Velazquez*, 772 F.3d 788, 796 (7th Cir. 2014). The district court did not err in denying defense counsel's motion to withdraw.

V. Any argument challenging Van Den Heuvel's sentence would be frivolous where his sentence was not imposed in violation of the law, was not the result of an incorrect application of the guidelines, and was not unreasonable.

A. Standard of Review.

This Court reviews preserved challenges to the application of the guidelines for clear error and interpretations of the guidelines *de novo*. *United States v. Cobblah*, 118 F.3d 549, 550 (7th Cir. 1997). After *Booker*, this Court reviews a defendant's sentence for reasonableness in light of the statutory factors in 18 U.S.C. § 3553(a). *United States v. Booker*, 543 U.S. 220 (2005); *United States v. Hollins*, 498 F.3d 622, 629 (7th Cir. 2007). Any sentence that is within the properly calculated sentencing guidelines range is entitled to a rebuttable presumption of reasonableness. *Rita v. United States*, 551 U.S. 338 (2007).

Appellate review is two-fold. First, the Court must consider whether the district court committed any procedural errors, such as failing to calculate or improperly calculating the guidelines range, selecting a sentence based on clearly erroneous facts or failing to adequately explain the chosen sentence with an explanation as to why the judge deviated from the applicable guidelines range. *United States v. Lyons*, 733 F.3d 777, 784 (7th Cir. 2013). If there are no procedural

errors, the Court analyzes the reasonableness of the sentencing using an abuse of discretion standard. *United States v. Rice*, 520 F.3d 811, 819 (7th Cir. 2008).

For challenges not made in the district court, the applicable standard of review depends upon whether the failure to raise the issue constituted a waiver or a forfeiture. *United States v. Staples,* 202 F.3d 992, 995 (7th Cir. 2000). Where waiver is accomplished by intent, forfeiture comes about through neglect. *Id.* Waiver extinguishes the error and precludes appellate review, but forfeiture, instead of precluding all appellate review, permits plain error review. *Id.* For a forfeited issue, therefore, there must be an error that is plain and that affects substantial rights. *United States v. Perry*, 223 F.3d 431, 433 (7th Cir. 2000).

This Court reviews constitutional challenges to the conditions of supervised release *de novo. United States v. Schrode,* 839 F.3d 545, 554 (7th Cir. 2016). The Court reviews contested conditions of supervised release for an abuse of discretion. *United States v. Warren,* 843 F.3d 275, 280 (7th Cir. 2016). However, review of forfeited issues is for plain error and waiver forecloses any review because there is no error to correct on appeal. *Id.; United States v. Webster,* 775 F.3d 897, 902 (7th Cir. 2015).

B. Legal Argument.

A defendant may only appeal a sentence imposed under the Sentencing Reform Act of 1984 if it was imposed in violation of law, was imposed as a result

of an incorrect application of the sentencing guidelines, or was a departure from the applicable sentencing guidelines range and was unreasonable. 18 U.S.C. § 3742. Van Den Heuvel's sentence of incarceration was not imposed in violation of law as his sentence of 36 months did not exceed the statutory maximum sentence of 5 years in prison.

In addition, the district court did not erroneously apply the sentencing guidelines and Van Den Heuvel's sentence was reasonable. The district court addressed all of Van Den Heuvel's arguments in mitigation. No non-frivolous issues can be raised with respect to his sentence. Counsel has reviewed the entire record in this case and has identified the potential issues for appeal set forth below. However, none of these issues are meritorious and, therefore, none present non-frivolous arguments for appeal.

1. Van Den Heuvel's guidelines range was correctly calculated under the sentencing guidelines.

Van Den Heuvel did not object to the guidelines calculations in district court at the sentencing hearing. With regard to the base offense level and the amount of loss, he specifically agreed to those calculations in his plea agreement. Those issues would be waived for appeal and are unreviewable. *United States v. Garcia*, 580 F.3d 528, 541 (7th Cir. 2009).

Regarding the role in the offense issue, Van Den Heuvel did not agree to it in his plea agreement but he also did not object to it at the sentencing hearing.

Therefore, any issue would be reviewed for plain error. There is no error in this case, plain or otherwise. In addition, this Court has found that objecting to certain parts of the PSR but not the guidelines calculations or range, "constitutes the paragon of intentional relinquishment" which is considered waiver. *United States v. Fuentes*, 858 F.3d 1119, 1121 (7th Cir. 2017). Van Den Heuvel did not object to the role in the offense even though he objected to other portions of the PSR. Therefore, it is likely he waived any objection.

Furthermore, the role in the offense enhancement was appropriate. The two level enhancement applies if the defendant was an organizer, leader, manager, or supervisor of any criminal activity. U.S.S.G. § 3B1.1(c). By Van Den Heuvel's admissions in his plea agreement, he approached Piikkila to request the straw borrower loans, picked who the borrowers would be, directed where the money would go when it was received, received a large portion of the money for his own use, and used employees from the businesses he owned as participants. This is enough to justify the two level increase. *See United States v. Sheikh*, 367 F.3d 683, 688 (7th Cir. 2004) (finding the enhancement proper for a store owner who received a large portion of the proceeds, ran the business used to conduct the fraud, and directed an employee's activities.)

Defense counsel objected to the district court's denial of acceptance of responsibility so this issue would be reviewed for clear error. However, this

Court has held that it is frivolous to argue that a defendant is entitled to a reduction for acceptance of responsibility after he maintains his innocence when he moves to withdraw his guilty plea. *United States v. Johnson,* 2010 U.S. App. LEXIS 8412, *5 (7th Cir. 2010); *citing United States v. Lopinski,* 240 F.3d 574, 576 (7th Cir. 2007). Therefore, there are no non-frivolous issues to be raised regarding the sentencing guidelines.

2. Van Den Heuvel's sentence is reasonable.

Counsel has considered whether to challenge Van Den Heuvel's sentence but has concluded that doing so would be frivolous. His 36 month sentence was within the guidelines range. In addition, the court adequately addressed his mitigating arguments. *See Velazquez,* 772 F.3d at 800-01; *United States v. Stinefast*, 724 F.3d 925, 931 (7th Cir. 2013). The district court adequately considered the sentencing factors by discussing the guidelines range, the seriousness of the offense, the impact of the offense on the bank and its employees, Van Den Heuvel's history and characteristics, his family support, his claims that he was not guilty of the offense, the effects his incarceration would have on his family, the need to deter him and protect the public from future crimes, and the lack of criminal history. Since the district court addressed Van Den Heuvel's primary mitigation arguments, it would be frivolous to argue procedural error. *See United States v. Modjewski*, 783 F.3d 645, 654-55 (7th Cir. 2015); *United States v.*

Donelli, 747 F.3d 936, 940-41 (7th Cir. 2014); *United States v. Garcia-Segura*, 717 F.3d 566, 568-69 (7th Cir. 2013). Therefore, there is no challenge to Van Den Heuvel's sentence to be made on appeal.

3. The district court did not err by imposing a term or the conditions of supervised release.

The district court imposed a three-year term of supervised release. Under 18 U.S.C. § 3583(d), a sentencing court has discretion to impose appropriate terms and conditions of supervised release. *United States v. Bloch*, 825 F.3d 862, 868 (7th Cir. 2016). The district court is not required to provide a separate explanation for imposing a term of supervised release and the reasons for imposing the sentence for imprisonment can also apply to imposing the term of supervised release. *Id.* at 869-70. In this case, the district court provided ample justification for the term of supervised release and this decision cannot be challenged on appeal.

Van Den Heuvel objected prior to and at sentencing to several of the conditions of supervised release that restricted his ability to obtain credit, to work in a fiduciary capacity, or to be self-employed. The district court denied these objections, reasoning that this conditions related directly to the offense of conviction - a conspiracy to commit fraud through lines of credit obtained through his self-employment. All discretionary conditions of supervised release must comply with federal sentencing policy as stated in 18 U.S.C. § 3553(a).

United States v. Siegel, 753 F.3d 705, 707 (7th Cir. 2014). District court judges should justify the conditions with an adequate statement of reasons, related to the § 3553(a) factors. *United States v. Kappes,* 782 F.3d 828, 838-39 (7th Cir. 2015). The imposed conditions cannot involved a greater deprivation of liberty than is reasonably necessary to achieve the goals of deterrence, incapacitation, and rehabilitation. *United States v. Goodwin,* 717 F.3d 511, 522 (7th Cir. 2013). These conditions were related to the offense of conviction and necessary to achieve the goals of sentencing, as found by the district court.

Van Den Heuvel did not raise challenges to any other conditions of supervised release. Defense counsel affirmatively waived any challenge to his conditions of supervised release when both he indicated he agreed with the conditions. *See United States v. Anglin,* 846 F.3d 954, 967 (7th Cir. 2017) (holding that when the district court invites counsel to raise objections on conditions of supervised release and counsel declines the invitation, appellate review is waived.) Therefore, there are no issues regarding the conditions of supervised release in this case.

CONCLUSION

For the reasons stated herein, undersigned counsel respectfully requests that this Court allow counsel to withdraw.

Respectfully submitted,
THOMAS W. PATTON
Federal Public Defender

s/ Johanna M. Christiansen
JOHANNA M. CHRISTIANSEN
Assistant Federal Public Defender

Attorneys for Defendant-Appellant,
RONALD H. VAN DEN HEUVEL

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)(C)

The undersigned certifies that this brief complies with the volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(C) and Circuit Rule 32 in that it contains 13,235 words and 1,184 lines of text as shown by Microsoft Word 2010 used in preparing this brief.

s/ Johanna M. Christiansen
JOHANNA M. CHRISTIANSEN

Dated: August 9, 2018

No. 18-1147

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

RONALD H. VAN DEN HEUVEL,
Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Wisconsin
Case No. 16-CR-64
The Honorable Judge William C. Griesbach

REQUIRED SHORT APPENDIX OF DEFENDANT-APPELLANT, RONALD H. VAN DEN HEUVEL

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CERTIFICATE OF COMPLIANCE WITH CIRCUIT RULE 30

The undersigned counsel for Defendant-Appellant, hereby states that all of the materials required by Circuit Rule 30(a) and 30(b) are included in the Appendix to this brief.

s/ Johanna M. Christiansen
JOHANNA M. CHRISTIANSEN
Assistant Federal Public Defender

Date: August 9, 2018

APPENDIX TABLE OF CONTENTS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA,	)	CASE NO: 1:16-CR-00064-WCG-1
	)	
Plaintiff,	)	CRIMINAL
	)	
vs.	)	Green Bay, Wisconsin
	)	
RONALD H. VAN DEN HEUVEL,	)	Friday, January 5, 2018
	)	(9:30 a.m. to 9:38 a.m.)
Defendant.	)	(10:01 a.m. to 11:27 a.m.)

SENTENCING

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

APPEARANCES:

For Plaintiff:	MATTHEW D. KRUEGER, ESQ. Office of the U.S. Attorney 517 E. Wisconsin Ave., Rm. 530 Milwaukee, WI 53202
For Defendant:	ROBERT G. LE BELL, ESQ. LeBell Dobroski & Morgan 309 N. Water St., Suite 350 Milwaukee, WI 53202
U.S. Probation Office:	Brian Koehler
Court Reporter:	Recorded; FTR
Transcribed by:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

Green Bay, Wisconsin; Friday, January 5, 2018; 9:30 a.m.

(Call to order)

THE CLERK: The Court calls Case Number 16-CR-64, United States of America v. Ronald H. Van Den Heuvel for sentencing. May I have your appearances, please?

MR. KRUEGER: Good morning, Your Honor. Matthew Krueger on behalf of the United States. Along with me at counsel table is Special Agent Sarah Hager from FDIC. Jen Baker from our office is also here with two representatives from Horicon Bank.

THE COURT: Good morning.

MR. SPEAKER: Good morning.

MR. LE BELL: Good morning, Your Honor. Attorney Robert LeBell for Mr. Van Den Heuvel. Mr. Van Den Heuvel's in court.

THE COURT: Good morning.

U.S. PROBATION OFFICER KOEHLER: Good morning, Your Honor. Brian Koehler on behalf of the U.S. Probation Office.

THE COURT: All right. Well, good morning all. We're here today for the sentencing in the case for Mr. Van Den Heuvel who entered a plea of guilty to the charge of conspiracy to commit bank fraud back in October 10th, I believe. And there are a number of motions that have been filed since then. There was a motion to adjourn sentencing. There was a motion to withdraw the plea. And most recently, a motion by counsel

to withdraw. And Mr. LeBell, perhaps we should address that motion first.

You filed a motion to withdraw as attorney for Mr. Van Den Heuvel yesterday afternoon?

MR. LE BELL: I did.

THE COURT: And your motion simply states that there is a breakdown in communications that occurred to the extent that further competent representation cannot be provided. What do you mean?

MR. LE BELL: Judge, I think perhaps this discussion necessitates a number of things. First of all, it should be, I think, in closed session. I think that there's an issue of CJA and also with respect to my client's representation. It also would theoretically require a waiver of attorney-client privilege. And I'm very uncomfortable with talking about details, certainly in public.

THE COURT: Well, criminal proceedings are public. The public really has a right to know and particularly where there's a motion to withdraw as an attorney at the last minute. And you don't have to disclose confidential information, but I'm asking what you mean by a breakdown in communication. Are you not talking to Mr. Van Den Heuvel? Is he not talking to you? What is this breakdown? What do you mean? You've been on this case for a year and a half, almost two years now. And, yes, you're public-appointed. Despite Mr. Van Den Heuvel's

original claims that he's a wealthy man, he could not afford counsel. And now at the last minute, we have a motion to withdraw and those are not lightly granted at this point. And you need to tell me more than a breakdown in communication.

MR. LE BELL: Well, again, Judge, in order -- it's a little hard to articulate the specifics and I don't think it's appropriate for me to do it in public. And it certainly is not appropriate for me to discuss the specifics because I couldn't articulate in direct response to your question --

THE COURT: Are you saying you can't -- is the government -- is this supposed to be an ex parte where the government doesn't even hear the reasons?

MR. LE BELL: I believe that's the appropriate procedure. That's what I was trying to articulate. And it also requires a waiver of attorney-client privilege.

THE COURT: Mr. Van Den Heuvel, do you waive your attorney-client privilege so that Mr. LeBell can explain to me why there's a breakdown in communications? Do you wish to waive your attorney-client privilege so that he can explain to me why he has to move -- why he's moving to withdraw?

THE DEFENDANT: I can explain it to you, but if you want Mr. LeBell to --

THE COURT: Well, if you want to explain it to me, that's fine.

THE DEFENDANT: Okay. I know the prosecution

believes I'm trying to make a mockery of your court, and I'm not. Not at all. This case is very complicated. Mr. LeBell has never been to my office. There is 44 years, millions of pages of documents illegally taken in a search warrant on July 2nd, 2015. I know you want justice, but I found the method since July 10th and when you said to me -- which wasn't clear to me before -- that everything has to be proven beyond a reasonable doubt, I went -- I found a method to go through those million pages of documents that were all piled together, mixed up, matched, couldn't find any exculpatory evidence. But I found a way to retrieve documents and organize the documents very quickly. I brought this to Mr. LeBell's attention.

MR. LE BELL: Judge, can I just ask, are you waiving attorney-client privilege for the purpose of this discussion?

THE DEFENDANT: I am -- what I say here, I am waiving for -- I'll waive it for whatever the Judge wants you to waive it for.

THE COURT: It's not up to me, Mr. Van Den Heuvel.

THE DEFENDANT: I want to finish if I can though.

MR. LE BELL: I want to know on the record if you are waiving attorney-client privilege. Please, just answer the question. If you're not, you're not. If you aren't --

THE DEFENDANT: Not to everything we talked about for two years, no.

THE COURT: You know -- Mr. Krueger, any comment?

MR. KRUEGER: Yes, Your Honor. The government is concerned that this could be a delay tactic. The government is concerned that the parties appear ready for sentencing, PSR objections made, sentencing memorandum made. Mr. LeBell has been competently representing Mr. Van Den Heuvel for quite some time. At the same time, in review of case law, in order to avoid future problems on appeal, it does seem prudent for the Court to do a careful examination of what the basis for this motion is so that there's an exploration of what the claim of breakdown in communications is and then to proffer of something specific that would -- could be explored. And then if there is nothing specific, to move on to sentencing. But I do think it would be prudent not to just deny it summarily, but instead to explore the grounds.

THE COURT: Well, that's what I'm doing.

MR. KRUEGER: I agree. And under the case law, it is not uncommon to excuse the government from those communications so that it can happen freely, whether it happens in chambers or the courtroom is cleared.

THE COURT: Should -- but that's what Mr. LeBell has asked, that Mr. Van Den Heuvel waive attorney-client privilege for purposes of his presenting the argument that Mr. Van Den Heuvel needs a different attorney. And that's where we started. And Mr. Van Den Heuvel has not agreed to do that so

far.

Now, Mr. LeBell, would you suggest that you and Mr. Van Den Heuvel come into chambers and talk with me outside the presence of the U.S. Attorney and off the record?

MR. LE BELL: Yes, I would.

THE COURT: Mr. Van Den Heuvel, do you wish to do that?

THE DEFENDANT: The one major point of contention between me and Bob --

THE COURT: No, no, this is --

THE DEFENDANT: I'd love to talk to you in your chambers.

THE COURT: -- you can come in privately if you're interested in --

THE DEFENDANT: Go ahead.

THE COURT: -- going this way.

THE DEFENDANT: Go ahead.

THE COURT: All right. And you're in agreement with that, Mr. Krueger?

MR. KRUEGER: Yes.

THE COURT: All right. Yeah, all right, Mr. Van Den Heuvel and Mr. LeBell, you can come back into chambers. We'll take a recess.

MR. KRUEGER: For a record of it to be made whether in chambers or afterwards, for you just to make a record so

that --

THE COURT: Well, of course. Once I have a conversation in chambers, I will come out and I'll -- I have to render a decision on the motion to withdraw.

MR. KRUEGER: Okay.

THE COURT: So -- and to the extent that I conclude that -- I mean I may describe in general terms what occurred, but, you know, obviously, I'll make a record.

MR. KRUEGER: Okay. Thank you.

THE COURT: All right. We're in recess.

(Recess taken from 9:38 a.m. to 10:01 a.m.)

THE COURT: You can be seated.

Mr. LeBell, do you want to make any statement on the record at this point? I know that you're going to summarize the basis of the motion to withdraw in more detail and will -- that will be filed under seal, so it can be reviewed at the Court of Appeals level if necessary.

MR. LE BELL: I will and I will also secure in writing the necessary waiver.

THE COURT: Okay.

For the record, I will say that I'm going to deny the motion to withdraw. There was a discussion in chambers. Although there's a claim of a breakdown in communication, I see no reason why -- well, first of all, we're at the sentencing stage. So, there's been an awful lot of communication prior to

today. And in fact, at the time of the plea hearing, Mr. Van Den Heuvel was asked if he was satisfied with the representation of his attorney. And at that time, he said he definitely was satisfied and, in fact, if I recall correctly, "It was as good as I could've paid for." He was satisfied with the representation of counsel at that point. As we got closer to sentencing, he's become dissatisfied. Mr. Van Den Heuvel believes he now has found evidence of -- exculpatory evidence in the massive amounts of material that had been seized by the Brown County Sheriff's Department in connection with a different investigation. From what his description is, none of it -- it deals more with motive and whether he had other access to other monies and other funds so that he wouldn't have had to defraud Horicon bank. I don't think it would be relevant, but in any event having entered a plea of guilty under oath, waiving his rights after being advised fully on the elements of the offense, the burden of proof, and all the other material, I'm satisfied that the plea was knowingly and voluntarily entered. The motion to withdraw at this point seems to me more of a delaying tactic. It appears that there is certainly conflict, but I'm convinced that even if I were to grant this motion and appoint new counsel, the conflict would still exist. The fact is Mr. Van Den Heuvel is unwilling to admit what he previously admitted in the plea hearing. And I don't find a breakdown in communication that would prevent Mr. LeBell from

fully and adequately representing him here today at the sentencing. He has spent more than a year and a half with this defendant. He has spent a great deal of time reviewing documents in discovery and in conversations with his client. He's certainly capable of bringing up all mitigating factors that may bear on sentencing. And he's certainly capable of communicating that to the Court. In the event that Mr. Van Den Heuvel is correct and Mr. LeBell overlooked matters, made an error, Mr. Van Den Heuvel is free to seek postconviction relief and he's free to appeal. And there'd be no doubt that a different attorney would be appointed to represent him on appeal and that attorney can investigate the so-called exculpatory evidence and if the view is that a postconviction motion should be filed, that would be filed. But I'm satisfied that at least as of today, the motion to withdraw should be denied and I hereby deny it. I also note there was a motion to withdraw the plea and a motion to adjourn the sentencing.

I carefully reviewed the plea colloquy that was attached to the government's opposition to the motion to vacate the plea. And this was a thorough plea colloquy. Mr. Van Den Heuvel was placed under oath. It was explained to him that the purpose of the hearing was to make sure that he fully understood what he was doing and that any decision he made was a free and voluntary decision on his part. It was not his attorney's decision, it was not family's decision, it was his

decision. The fact that part of the plea agreement called for the dismissal of the charge against his -- the charges against his wife was explained, was made a part of the record. It was a reason, perhaps, that motivated him but it was not compulsion. It was not coercion. And there certainly was probable cause to charge her in the first place. The fact that the government and -- that he insisted upon that as the plea agreement does not render his plea involuntary.

He has provided no fair and just reason to withdraw his plea at this point. The plea was fully and carefully taken. It was voluntary. And the amount of time that has gone -- already gone on in this case to now allow a withdrawal of the plea would prejudice all parties and simply delay. In fact, I told Mr. Van Den Heuvel during the plea -- when he balked at the idea that intent was an element of this crime, I told him that we're not playing games here. We're not going to equivocate on what he's pleading guilty to. And I made certain that he understand that intent to defraud was an element of the offense he was pleading guilty to. And he acknowledged that and he continued to enter his plea. And I cannot accept a claim now that under oath he decided to lie in order to move things along. This is just gamesmanship as far as I am concerned and it will not be tolerated.

The motion to adjourn the sentencing also, the first one had nothing in it other than an indefinite description of

the need to go through more documents. The second one is devoted to his efforts to prove his innocence. He tells me vaguely and in conclusory language that attorneys have now -- that represented him in civil actions have now turned over documents that he's convinced will prove his innocence. I don't see affidavits by these attorneys. They are not named, or maybe they're named, but there's no affidavits. There's no document produced. There's a vague assurance that somehow a delay in sentencing will allow him to prove his innocence.

Well, he's pled guilty. He did so freely and voluntarily. And let me say this too. The parties have talked about the complexity of this case. This is not a complex case. Lying to get a loan is a pretty obvious and simple and straightforward thing. And certainly, the person that gets the loan, the person involved knows what he intended, knows what he did, knows what he said. Certainly, the bank to which the loan application is made is aware of what's going on. The fact that Mr. Van Den Heuvel knew these things -- and these are seven loans that are laid out clearly in the indictment, the applications for the loans are there. The individuals who served as straw borrowers are listed. What's there had really nothing to do -- and the evidence that was seized from him by the Brown County Sheriff really doesn't bear on these cases. These cases arose independently, were charged separately, and were charged before that without any of that information really

being in the hands of the FBI and the investigators in this case.

So, for those reasons, I find no reason to allow the motion to vacate the plea. That motion is denied. The motion to adjourn sentencing is also denied.

Turning to the presentence report -- and I have a presentence report as well as a sentencing memorandum from the defense and a sentencing memorandum from the prosecution today. But the presentence report, itself, is prepared by the probation department. That has been filed and on file for some time. There have been revisions made at the request of the parties. I know there's some objections.

First of all, Mr. Krueger have you thoroughly reviewed the presentence report?

MR. KRUEGER: Yes, Your Honor.

THE COURT: Are there any objections to the factual statements in the report?

MR. KRUEGER: No, Your Honor.

THE COURT: What about the guideline calculation?

MR. KRUEGER: We agree with the base offense level, the 12-level increase, the two-level increase for role in the offense. We are no longer recommending an acceptance of responsibility decrease. And so, we think the offense level should be 20.

THE COURT: Mr. LeBell, have you gone over the

presentence report with your client?

MR. LE BELL: I have, Judge. He has copies of both the PSR as well as the addendum which followed the objections, as well as my own objections, as well as those of the government.

THE COURT: And they are all attached. And the government responded to those objections. And Probation issued a response, and then the documents -- the witness statements and other documents supporting the probation agent's recitation of the facts are attached as well. Do you have any evidence you wish to offer or anything else you want to offer with respect to those factual disputes?

MR. LE BELL: Judge, I have -- as I indicated in my objections, the factual differences I don't think -- first of all, let me say that the factual recitation by the government I think exceeds the plea agreement, but notwithstanding that, I don't think anything that factually was set forth by the government, or by the defense for that matter, impacts on the guidelines. I don't think it substantially changes the underlying facts. That having been said, Mr. Van Den Heuvel -- and I have counseled him regarding this potential statement. Without going into my counseling, suffice it to say, he wishes to make a statement with respect to the facts themselves.

THE COURT: He may do so under oath. If he's going to offer evidence for sentencing, he must do so under oath.

MR. LE BELL: And could I have just a second because --

THE COURT: Subject to cross-examination.

MR. LE BELL: Right. I just want to reiterate something to Mr. Van Den Heuvel.

THE COURT: Yes.

(Pause)

THE COURT: Well, does he wish to testify?

MR. LE BELL: Mr. Van Den Heuvel, do you want testify?

THE DEFENDANT: I'd like to make a statement.

THE COURT: You'll be allowed to make a statement after -- before I impose the sentence. It will be allocution. But this question at this point is whether or not you wish to offer evidence with respect to the factual allegations in the presentence report? And if you wish to offer evidence, then you have to take the stand and be placed under oath and be subject to cross-examination.

MR. LE BELL: Including in response to the government submissions of various documents that we went over. That's your wish?

THE DEFENDANT: Yes.

MR. LE BELL: You acknowledge that you discussed the matter with me; is that correct?

THE COURT: The record certainly reflects you've

discussed it with him.

MR. LE BELL: Thanks.

THE COURT: Do you wish to testify Mr. Van Den Heuvel?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Come forward and take the stand.

(Pause)

THE DEFENDANT: Excuse me, Your Honor.

THE COURT: Mr. LeBell, I would expect that you will question him regarding the specific objections that are set forth in the presentence report.

MR. LE BELL: Yes, I will, Judge.

(Pause)

THE CLERK: Please state your name.

THE DEFENDANT: Ronald Van Den Heuvel.

(Defendant sworn)

THE CLERK: Please be seated.

THE COURT: All right. Mr. LeBell, you may proceed.

MR. LE BELL: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. LE BELL:

Q Mr. Van Den Heuvel, you're the defendant in this action, is that correct?

A (Inaudible)

Q You're the defendant in this action. Is that correct?

A Yes, sir.
Q And you have taken the stand after you and I have discussed your testimony. Is that correct?
A Yes, sir.
Q And is it your intention to respond or at least address some of the objections that were interposed during the presentence investigation report as well as in response to the government's submissions? Is that correct?
A Yes, sir.
Q Specifically, let go through the government's -- let me just get to it -- and is it your position -- correct me if I'm wrong -- do you take issue with whether the Peters' loan was taken out for you or for the benefit of your company? Judge I -- let me withdraw this question. It's very uncomfortable for me to do this. I am -- let me withdraw the question. I --

THE COURT: Well, you interposed objections on behalf of your client --

MR. LE BELL: I have.

THE COURT: -- in the presentence report.

MR. LE BELL: I have, but in good conscience as a lawyer, I can't ask questions that I think are going to be very damaging. I cannot do that. If Mr. Van Den Heuvel chooses to testify on his own behalf, sort of in an extemporaneous fashion against or with my advice, whatever it is, I think that's appropriate. But I -- just as a lawyer, I'm not going to ask

him questions that I think are potentially damaging, the answers to.

THE COURT: Any comment, Mr. Krueger?

MR. KRUEGER: To the extent that he's just trying to establish evidence to support his objections to the PSR, I suppose one could just ask, do you think your objections are true and then it's a sworn statement by him in support of his objections rather than marching through each one.

THE COURT: Could you ask him that, Mr. LeBell?

MR. LE BELL: Judge, I would prefer not to. I understand what you're -- I understand what the government's position is and I appreciate the consideration. I don't want to be party to what I see is going on here because I think it's going to be extraordinarily problematic, not for me, but for my client. Anything under oath. And the reason I say that -- for a number of different reasons -- but more importantly, as I said to you in my preparatory remarks, these objections categorically deny in part any significance to the guideline calculations.

Similarly, I don't think they necessarily reflect on the offense itself. As the Court's indicated, you have not allowed him to withdraw his plea. His plea stands. His admissions are there. You can't eradicate or erase his admissions. The objections that I interposed were fairly innocuous and they basically had to do with some rather

nonsubstantial circumstances surrounding the loans, but the loans -- the objections that I interposed, never indicated -- to my knowledge -- that he did not at that point in time claim he was a straw borrower. What Mr. Van Den Heuvel may have put forth in other pleadings, that's a different issue.

THE COURT: I'm --

MR. LE BELL: Let me give you an example, Judge, just so I -- without being vague. As an example, at one point in time, he's described as -- somebody describes him as an individual who's posing as a businessman. Whether he's posing as a businessman or he's not posing as a businessman categorically has nothing to do or impact on his sentencing, at least in my opinion. I put it in there because I thought it was --

THE COURT: Are you talking about the objection to paragraph 16?

MR. LE BELL: Yes.

THE COURT: Which is that Mr. Van Den Heuvel never represented himself --

MR. LE BELL: Correct.

THE COURT: -- to be a wealthy and successful businessman. Nor did he conduct a shell game with companies who in different respects involved in the paper industry?

MR. LE BELL: Right.

THE COURT: Why can't you ask him if that's his

statement if that's true?

MR. LE BELL: I think it was more the inference that was drawn that he was sort of represented that he was not a wealthy businessman and that's where we're going to get into the weeds I think.

THE COURT: I'm not asking you to get into the weeds. I'm asking you to simply ask the questions that led you to elicit these objections in the presentence report. That's what he wants to put under oath. That's what he wants to add.

MR. LE BELL: I don't believe that is what he wants to add at all. That's my problem. The objection --

THE COURT: Well, he's limited to answering what you ask him --

MR. LE BELL: Right.

THE COURT: -- at this stage. And if he wants to say more on cross-examination or if he wants to add more and argue that you no longer should be his attorney, that he wants to simply represent himself, he's free to do that.

Mr. Van Den Heuvel, your attorney doesn't want to ask you these questions. Do you wish to represent yourself and make a statement and offer narrative testimony concerning these matters?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Then go right ahead. Tell us what you want to say with respect to the factual statements in the

presentence report. Do you need the presentence report in order to look at your objections?

THE DEFENDANT: Yes.

THE COURT: Mr. LeBell, hand him your copy of the presentence report or if he has a copy, he can have it. Mr. LeBell -- Mr. Van Den Heuvel, you can just remain seated. We'll bring it to you. I take it you have your own copy of the presentence report? Did you have your own copy?

THE DEFENDANT: I believe I was emailed something like this.

THE COURT: Go ahead, Mr. Van Den Heuvel.

THE DEFENDANT: My objection to the report is more the straw borrowers. They mentioned that in here several times. Straw borrowers were known to me for 10 to 30 years, were partners, some of them in 11 different firms, all of which signed every one of these operating agreements which allowed them to borrow money on behalf of the company.

Horicon Bank used my collateral for every one of the loans and every single one of the loans had a signed copy from the Board of Directors and the shareholders stating that Mr. Van Den Heuvel was there. I knew of this loan. The bank knew I knew of this loan. And the bank knew that the collateral being used for the loan was being used for the specific companies of which I was not a managing member, but the -- it was assigned.

Every one of these people, including Julie Gumban, has made a significant amount of money being a partner to these LLCs. Some of them have been in the 11 and 12 -- and still are -- partners and get a K-1 from these companies. I don't understand the conflict of law. I do not want to hurt anybody. I would never hurt anybody. I would never take money from a bank willfully, intentionally ever. I understand the restitution and I intend to pay it in full. I have a mountain of work to do to get out of this destruction of my company. Okay?

Without going much further, the main thing that is against all of this is that these people were straw borrowers and only Mr. Piikkila at Horicon Bank knew about it. It's just simply not true, just simply not true. I don't want to make a mistake again. The bank had five officials on some of these loans and they went to Associated and removed the top loan. They went to --with a payment. They went to Johnson Bank and removed the top loan. They went to the Nicolet Bank with the top loan. Made their payment from Peoples' loans and paid it off.

Prosecution says it was for my benefit. It was to my benefit, along with the eight or nine or 10 other shareholders of that company. That's a true statement. Did I receive a 1099 or W-2 for any of that money coming to me personally? No. There wasn't any money coming to me personally.

It was bank debt at one bank, collateralized to clean the title of a middle sale, transferred to another bank that wanted that loan. They wanted that loan and they wanted that loan bad. They were on the low side of deposit-to-loan ratio and they took that. Now there's a time that this bank was looking to take target money. They need to go through all their loans. They need to figure out what it is and the collateral for these loans is mine and I worked very hard to make sure that the bank got every penny of their money back. In fact, the plea agreement is that I'm -- I have to have restitution to the bank. I understand this. I understand this.

I do not understand the fact that somebody is saying now that intentionally we got together and said this is what we're going to do to borrow money from Horicon Bank. I sent introductory letters for every one of these loans and copied other people at the bank. I found that just recently. It's important to me. I don't want to lose points.

I think Mr. Krueger is a fair man. I think he understands what it's supposed to be, but I can't stand up here -- or didn't totally understand what I was saying when I said that I intentionally got together and defrauded the bank. If this system worked and that straw borrower system worked for nine years, why wouldn't I keep using it? Why wouldn't I use it at other banks? Why would I do this? Purportedly a

businessman.

I had a six -- I had a huge line of credit at a local bank. I worked hard during this time. I was trying to buy the mill in Everett from Kimberly-Clark, gone a lot, doing a lot. I expected my partners to do it. I had tons of money tied up in a huge line of credit at Johnson Bank.

I was waiting for Mr. Tock (phonetic) to pay the promise notes. I just needed to say that what it says here, I'm straw borrowers, isn't right by me. I just would not intentionally do that. I know you don't need to be intentional to be convicted. I understand that. I understand that I signed a plea and I understand everything that I did and what I did wrong. I never intended to hurt anybody, but I do want everybody to understand every one of these partners, including Julie Gumban, who was a partner with me in seven different firms, 15 percent ownership in some of them. She left her money roll, as we call it. When her time for payment was, she'd invest more, do more. But she took $65,000 in addition to her wages up out of these companies. And I'm just saying, I can't stand up here as a guy with the ideas, the guy with the technology, the guy going forward, the guy building everything together, the guy letting these people come to manage their own businesses and pay for their homes faster and do other things, that there was an intent to hurt anybody. There were certain things my collateral was no good in this town because I had

huge lines of credit already withdrawn -- already drawing on banks and they will not let you use collateral when you exceed the bank's legal lending limit. I'm not here to try and tell you this.

I -- yes, Ms. Hager is right. I was president and chairman of BB&T Bank. Yes, I founded that bank. Yes, I hired Mike Daniels from Nicolet Bank to come down to Georgia and run it. I understand. I understand exactly what they're doing. I didn't intend ever to defraud anybody or to hurt anybody. And if I did from meaningless -- or meaningful actions, I will attempt to the best of my ability to restore those funds. And these people are my partners. The term straw borrower, until this case I didn't even know what it was.

THE COURT: All right. Thank you. Mr. Krueger, any questions?

MR. KRUEGER: Yes, thank you, Your Honor.

CROSS EXAMINATION

BY MR. KRUEGER:

Q You mentioned Julie Gumban. She was the nanny to your children, right?

A Yes, sir.

Q And she lived in your house? Right?

A Yes. She was what's called a live-in nanny.

Q And she was interviewed by an agent in this case. And she said that for a period of time that you were not paying wages

that were owed to her. Is that true?
A Yes. Can I explain it?
Q No. Did she, in fact, need to sue you after she left to recover her back wages?
A Yes.
Q And did you enter into a settlement in which you paid $45,000 to her in back wages?
A Yes.
Q You said that for all of these straw borrower loans, that Horicon Bank officials all knew about it. Is that your testimony under oath?
A Yes.
Q And that your testimony is that if this was such a great plan, you would've kept doing it past the straw loans in this case, right?
A I didn't say that I'd keep doing it. I asked why wouldn't I have.
Q Okay. Paul Piikkila was the loan officer that arranged these loans for you, right?
A At Associated, at Anchor, and at Horicon. That's correct.
Q And so the straw borrower loans in this case were arranged by Paul Piikkila, correct? From Horicon -- when he was at Horicon bank?
A On all but the mortgage loan on KYHKJG.
Q So for all the others, it was Paul Piikkila?

A Correct.
Q And when these loans came to light, Paul Piikkila was fired by Horicon Bank, right?
A As he was at five previous banks for noncompliance, that's correct.
Q And then he went to work for you. Is that right?
A He did not. In fact, he sued me. I would not hire him.
Q Was he -- so if I have a document that shows Paul Piikkila is representing things for you about Green Box, is that not a -- is not a real document?
A The CEO of the company, PC Fiber, and Green Box was -- I was the CEO of Green Box but the gentleman named Howard Bedford who Paul Piikkila was the president of his company for years, hired Paul on a commission basis. He did not get salaries.
Q Okay. And so when he was doing that, Paul Piikkila was doing work to promote the Green Box process, right?
A PC Fiber.
Q Which became -- is it one of your companies associated with Green Box. Is that right?
A It's the company that holds the technology. That's correct.
Q Okay. So, bringing it back to this case, after Paul Piikkila left, Horicon Bank wasn't giving you more loans, was it?
A No, we were paying off loans at Horicon.

Q Okay. And so, if Horicon Bank officials have given interviews as they have and have said that they were not aware that Paul Piikkila had given loans to others like Peters, that were also associated with you, are those bank officials from Horicon lying? Is that your testimony?

A It would depend on the individual. But every single bank has two loan officers that fills the file, checks them in, and does a loan report to the loan committee and the board. Okay? And every single bank had an operating agreement signed and asked for a borrowing base resolution of which I signed for every single loan.

Q Okay. So, let's talk specifically about Horicon Bank. At Horicon Bank, if -- the Horicon Bank officials, this is what they have said. They have said that Paul Piikkila had a $250,000 lending limit and that loans below that amount did not have to go to a loan committee. And so, the loans in this case to Peters and to Bain and to Gumban, the Horicon Bank officials say that they did not approve those loans and that Paul Piikkila did not make them aware of them. Do you -- are you saying that they are lying?

A I'm not saying they're lying. And the way you put your words, approval of a loan and the funding of the loan are completely different than the development of a loan portfolio file that is required by the FDIC and is reviewed quarterly or yearly by the FDIC when they come in and do an audit at a

bank. And those two officials other than Paul -- it cannot be a loan officer -- other than Paul, reviewed each one of those and those loans are also listed with the collateral and who owns the collateral on a monthly report to the loan committee and the Board of Directors of the bank.

MR. LE BELL: Judge, at this point, I don't know if the government intends to call any witnesses, but I move to sequester in this part.

MR. KRUEGER: We don't. I just have two last questions.

THE DEFENDANT: Go ahead, sir.

BY MR. KRUEGER:

Q So your testimony is that Horicon Bank officials were aware of all these loans. Is that right?

A Horicon Bank's Board of Directors and officers have seen the loans, every one of them.

Q Okay.

A They're on the loan reports every month.

Q And so the Horicon Bank officials who have stated they were not aware that you and your companies were behind the loans, you would disagree with that statement. I understand.

A They could still make that statement had they not -- you know, but in the file, the operating agreement is there with my name on it and the shares in it. And the borrowing base resolution has my name on it. So, it depends what they're

saying. They weren't aware of it. They look at the monthly report and the collateral's there, they should be aware of it. If they're not, they're not watching it close enough.

MR. KRUEGER: Okay. No further questions, Your Honor.

THE COURT: All right. You can step -- so you have anything else you want to say?

THE DEFENDANT: Nothing else, but I would like to apologize to everybody. I'm sorry if I did something wrong.

THE COURT: Okay. You can have a seat and certainly you can exercise your right of allocution later -- the opportunity to exercise that right.

All right. Well, I've listened to the testimony. I've also reviewed the entire presentence report, the attachments, and the other documents. And I'm going to adopt as my findings of fact the factual statements in the presentence report. I'm satisfied, notwithstanding Mr. Van Den Heuvel's testimony today, which of course is inconsistent with his plea itself, that those factual statements are correct and true. I also conclude that the government is correct that there has been no acceptance of responsibility, so he's not entitled to the additional three-level reduction of the offense level. So we're looking at a total offense level of 20 and a criminal history category of I. Which means the sentence range under the United States Sentencing Guidelines would be 33

to 41 months -- 33 to 41 months.

MR. LE BELL: Judge, just so I'm on the record of having maintained my position that I think he's entitled to acceptance and I won't put any further argument on it.

THE COURT: Okay. Your objection is noted, but I'm satisfied there's been no acceptance of responsibility and it would be improper to award a decrease for that.

So, the guideline is a starting point of the sentencing determination, but I'm -- of course, I need to hear from counsel concerning the factors that the statute directs the Court to consider in arriving at a fair and just sentence.

So, Mr. Krueger, I'll first hear from the government, but were there witness statements or victim statements you wanted me to consider?

MR. KRUEGER: Yes, Your Honor. There are two officials from Horicon Bank who are here today and --

THE COURT: Wish to make a statement?

MR. KRUEGER: I believe one of them is willing to make a statement.

THE COURT: Okay. You may. If you would just say your name, and spell your last name for us, and then go ahead and tell us who you are and what your statement is.

MR. SCHWAB: All right, thank you, Your Honor. My name is Alan Schwab. My last name is spelled S-C-H-W-A-B. I'm the Executive Vice President and Chief Credit Officer for

Horicon Bank.

THE COURT: Okay, thank you.

MR. SCHWAB: Thank you, Your Honor. Basically, it's clear in the impact statement that Horicon Bank submitted that Horicon Bank sustained a substantial loss, especially for a community bank. And our loss is significantly more than what has been agreed to as far as the final amount that will potentially be paid back. But I think more importantly that's not in the impact statement is the reputational loss of Horicon Bank, especially in the Fox Valley market area. This case has been going on for 8 to 10 years. It's in the paper. It's on the news. It's on the radio. If you go to Google or search Horicon Bank, you'll see that this fraud case pops up right away. So if you're looking for a bank in the Fox Valley area, that will stand out and as an individual, you want to maybe bank with the bank that has that type of reputation as looming on it. We've also had customers come in -- especially with our investment reps -- saying is our money safe and secure being your bank had fraud? I personally can attest as well, interviewing business bankers in this area. When it's their turn to ask our bank questions about a potential career with Horicon Bank, they have asked, are there any concerns we should have coming to work for Horicon bank being this litigation and this fraud has been out there? So, I just ask that you take that into consideration with your sentencing that that's

something that you can't put a dollar amount on. That's a harmful loss to Horicon Bank.

THE COURT: All right. Thank you.

Mr. Krueger?

MR. VANDEN BOOGART: My name is Jay Vanden Boogart, V-A-N-D-E-N, space, capital B-O-O-G-A-R-T. Al articulated well the financial impact and the reputational damage done to Horicon Bank by this incident. I'd also like to mention that as a small independent bank, we are 25 percent employee-owned through an ESOP. And the financial damage caused by this act has impacted all of our 150 employees financially, down to our bookkeepers, our tellers, and everyone that works for us. I think they should be taken into consideration when sentencing is handed out here also. Thank you.

THE COURT: Thank you. Mr. Krueger?

MR. KRUEGER: Thank you, Your Honor. The one other victim impact statement was submitted to the Court on a videotape by Ms. Julie Gumban.

THE COURT: I did have the opportunity to view the videotape and will make that a part of the record. I'll direct the clerk to mark it as Exhibit 1.

MR. LE BELL: Judge, before there's any further discussion, I maintain that that particular submission does not constitute the submission of a victim and shouldn't be considered as such. Ms. Gumban and her activities as it

relates to this case have been pretty well articulated through the course of the plea and the offense history. I don't see that she's a victim. She's never been nominated as a victim and I'd asked the Court not to consider it. It has no other value. I --

THE COURT: Well, it would have value even if she wouldn't be technically within the context -- the definition of a victim of the offense, but, Mr. Krueger, is -- does she fit within the definition?

MR. KRUEGER: I don't have the statutory definition in front of me right now. I think it's rather broad, but even apart from that under the guidelines and federal statute, the Court is free to consider any sort of evidence to take into account the history and the nature of the defendant and the offense. And so, whether a victim or not, I think it's perfectly appropriate to consider for sentencing.

THE COURT: Yeah. Well -- and I know there's a transcript of that interview and that should also be made a part of the record. That will be Exhibit 2. But my ruling stands, I'm going to make those things part of the record at sentencing in this case if not as a victim statement, a statement of the -- concerning the nature and circumstances of the offense. All right. Go ahead, Mr. Krueger.

MR. KRUEGER: Your Honor, because there has been such substantial briefing and papers in this case, I'll try to keep

my remarks to certain high points, but would ask the Court to consider all of the information that we set forth in the sentencing memorandum.

So as the Court considers the 3553(a) factors, I would mention three overarching points. First of all, that this scheme was in its real essence motivated by greed and a desire for Mr. -- by Mr. Van Den Heuvel to keep up an image of success. And that's in contrast to his claim that this was motivated by a desire to promote his businesses. As laid out in the sentencing memorandum, Mr. Van Den Heuvel has maintained a very lavish lifestyle, a five-bedroom residence worth nearly $2 million, second homes, second home in Florida, luxury automobiles, annual trips to Las Vegas, frequent dining at expensive restaurants. Witnesses are consistent in describing that and at the time that the scheme began, he really didn't have businesses that were generating much money but nonetheless, didn't pare back the lifestyle, and instead, lived off of other people whether it was friends or associates that he was borrowing from or banks. And Mr. Peters and Bain have given the witness statements that we laid out explaining that they had previously taken out loans from Mr. Van Den Heuvel elsewhere. Mr. Van Den Heuvel's credit was essentially dried up at other banks. That's why he had had his friends borrow from elsewhere and then when it came he needed a new source, he went to Horicon Bank to get yet more loans. So really were

motivated by need to pay off these other debts, to keep his lifestyle going. And so this was fundamentally a crime of greed and is part of a longer story of keeping up a mirage of success that wasn't real.

The second point I think that's evident and what you've heard today already is that Mr. Van Den Heuvel has demonstrated a serious and harmful manipulation of other people, that this is not a crime in which just a single institution that is faceless was affected, but that this did affect real people. And that to perpetuate the crime, he used other people including, again, Ms. Gumban, who in very stark contrast in sworn testimony you heard from Mr. Van Den Heuvel who is claiming that he somehow made her high levels of money as a business partner. The reality is Ms. Gumban was a vulnerable person who was dependent upon Mr. Van Den Heuvel for her livelihood and her shelter and her food. She was caring for his children. And yet he took advantage of her using her credit cards and then putting her forward to make her on paper at least liable for a loan to Horicon Bank, and then used the proceeds for his own benefit. Ultimately, she left his employment, had to sue him just to recover back wages, and was quite significantly scarred by this experience. And that's just one story, one example of how Mr. Van Den Heuvel has used other people to keep up this lavish lifestyle.

In fact, we see just a few years other -- a few years

later, as part of the relevant conduct in this case and as -- and which was one of the charges in this indictment, that a few years later he put forward his own son-in-law as another potential straw borrower to try to obtain loans for him. It shows a callous use of other people.

The third point I'd make is just to note his personal advantages that he had in life, being a sophisticated actor as he testified having been in the position on the chair of the board of a bank, having previously in his life built successful companies, and yet when his fortunes were not so substantial, using these manipulative ways to keep up his lifestyle.

We -- I would lastly note that in anticipation of arguments about his family situation, that we respectfully submit that the family situation is not a mitigating circumstance given that the guidelines specifically suggest that family circumstances shouldn't be taken into account unless there are very extraordinary situations. And this case doesn't fit that situation. There are many defendants who have family obligations and undoubtedly, it's harmful and difficult, but Mr. Van Den Heuvel chose to engage in these offenses, even had his wife take out two of the loans and so put his family at risk by engaging in this sort of conduct.

So, for these reasons, pursuant to the plea agreement by which the government agreed to recommend the low end of the guidelines as the Court calculates, that's the government's

recommendation based on these factors.

THE COURT: Mr. LeBell?

MR. LE BELL: Judge, first let me say from the outside that the comment about non-consideration of family factors really isn't the way -- the status of the law. And under 3553, it is a genuine factor that can be considered on -- no matter how grave it is, no matter how modest it is, family factors are a factor the Court can incorporate in its ultimate decision.

I was thinking about this last night, this whole composition of what I was going to say to the Court. There's a -- in the Spanish language, there's a concept called orgullo, 0-R-G-U-L-L-O. It's real simple. It means -- it translates to pride. But it's different in the Spanish language and the culture. Pride is an overarching characteristic or quality and sometimes good and sometimes not so good. It's used for good purposes and it's used sometimes for things that don't go so well. And I think this is a prime example of when an individual who has had success in life, who has done some really good things, and has contributed to the community, has a downturn in his own circumstances, his personal circumstances. And I think right around '08, which is the beginning time of this particular fraud scheme when the economy went south, so went Mr. Van Den Heuvel's fortunes. But then you get back to the concept of orgullo. It doesn't abate that pride, that need

to be able to present oneself, that need to be able to function effectively and to succeed, it doesn't go away. And so, the decision-making process is not justifiable. The decision-making process is not something that I'm asking the Court to excuse, it's to put it into the context of oh, what motivated the conduct here.

And so, you look at the past history and it's how do I sustain that? And the choice that was made obviously was the wrong choice. Obviously, it impacted on a number of different individuals adversely, but that I think is how it happened, what the genesis was of the various loans. Mr. Van Den Heuvel, I don't think anybody in this room can ignore a long history of Mr. Van Den Heuvel's contribution to the community. I tried to lay that out in the sentencing memorandum. I think I've effectively demonstrated that this isn't just a whim on his part on one occasion. It's consistent and it's -- it reflects well on his approach to life, his involvement in his church and his family, with his wife, with everybody else that he touches, obviously with the exception of the folks that are involved in this particular case. He left a huge positive imprint in many respects. He also obviously had a negative impact and imprint and that's what the Court is considering. And so, I would hope that whatever judgment day comes for anybody, that they're judged on the continuum of life, that sort of sequential series of events from day one until the time

you die as opposed to one particular series of events, one particular course of conduct. And if you look at the overall course of conduct, there's a lot positive to be said about Ron Van Den Heuvel, a lot of things that he has done for other folks. And I'm confident that having gotten his attention, that he can get back onto the straight and narrow.

He has an extraordinarily positive attitude. I will give Ron Van Den Heuvel that from a month of Sundays. He has a belief in himself which is probably the most important thing that anybody can have. He has a belief in what he's doing. And he really has good goals and objectives. And I set forth in the sentencing memorandum that these are not unrealistic and he really wants to make the planet a better place. And how he goes about that, I can't tell you. I don't know. I'm not in his shoes. But I think if given the opportunity to take care of that objective, to take care of himself, to care of his family, his community, his church, I think he will use it in a positive fashion.

I ask the Court to impose a period of probation. If the Court thinks alternatively -- and I hate to argue in the alternative -- but if the Court thinks there's a period of incarceration that's necessary, it should be a year and a day, otherwise it should be community confinement. That particular structure enables other objectives rather than pure punitive sanction from being imposed. Under the state law, which

obviously is not applicable, the Galman (phonetic) decision lays out certain objectives and those objectives are flexible and those objectives are not mandatory and I fully admit that, but when you talk about objectives of sentencing, punitive sanction is not the exclusive remedy for an imposition of sentence. It's not the exclusive objection. It has to take into consideration things that Mr. Van Den Heuvel can derive from that sentence.

And this proposal that I'm making allows him to do good things as opposed to simply be put away for a period of time. I, as a defense attorney, loath to concede that the punitive aspect of the sentence is proper. I know what the case law is. I understand that it's been sanctioned all over the country. We're a country which absolutely believes the punitive component is appropriate. I don't agree, but that's neither here nor there. But that having been said, my proposal also contemplates a punitive component.

The other thing is that despite z Mr. Krueger's comment about family circumstances, I attached a number of different articles. In those articles, I'm bearing as much research as I think is reasonable under the circumstances in this case and others. And I think we do as a culture -- when we make decisions, sometimes we don't think of how they impact on secondary individuals. I know there's collateral consequences. This man, whatever you think about Mr. Van Den

Heuvel, whatever has been presented, has a family who loves him dearly. All these folks in the courtroom absent the people from Horicon are here for Mr. Van Den Heuvel. They've taken a day out of their work to see him, to support him, to show their love and affection. You don't go through life screwing up and have this sort of folks behind you. The saddest thing that I think this Court probably sees and you've probably seen it on a regular basis is guys brought in by the Marshal service in orange, and there's not a soul in back of the room. And that doesn't bode very well because as this Court well knows, it's the society into which a person is released on supervision, the society and social structure that person has to rely upon that really is the prognosticator of how that person is going to do. And here you have a social structure that is really incredible. It's fantastic. And it's not something that should be discounted lightly.

So, I'm asking the Court to consider the submissions that I have provided. I think it gives a reasoned and rational approach why my recommendation is appropriate. I understand fully that the Court has to take into account all of which it's heard. I'm done whatever I can to -- I'll keep my comment to myself. Suffice it to say, that I believe that given his -- the factors that I've presented, the 3553 factors, that the sentence as presented by the defense is appropriate either in the alternative, and I'd ask the fact that the probationary

sentence be imposed. I think Mr. Van Den Heuvel would like to make another statement.

THE COURT: All right. Thank you, Mr. LeBell. Mr. Van Den Heuvel, is there anything you would like to say before I make a decision and impose a sentence?

THE DEFENDANT: Your Honor, Mr. LeBell, I thank him for the comments. Okay? I do not own my home. I invested all of it to clean landfills. We don't need any anymore. The patents are there. It will go on and we will save things for the planet. My son died of meningitis and we didn't have a cure for that bacteria. And that will no longer come out of landfills that are using this new patent. I did borrow $70 million from a lot of people and put it into this patent and hopefully, the fruition of it by others will make the world a better place. I want to thank everybody for showing their support for me, all the letters I got, all the things I have from past and present employees. I understand also with or without here, none of this happens if my loans that were signed and personally guaranteed to me were paid to me. Now, I understand and Horicon understands that, that if that loan would've been paid, they would've been paid. It was their collateral. So, I apologize. I certainly wouldn't want to hurt any of the employees of Horicon Bank. And I'll try to make it up to them.

MR. LE BELL: Judge, the only thing I'd add is that

pursuant to the agreement, other than as an imposition of a period of probation or -- and/or community confinement, if the Court imposes a period of imprisonment, that you delay it for the minimum of six months subject to availability of the parties.

THE COURT: All right, thank you.

In the determination of a fair and just sentence, I'm to begin with the guideline -- the sentence range that the guideline sets forth. And as I determined the guideline range, it's between 33 and 41 months. That's -- of course, 36 months is three years, so it's three months less than that to almost three and a half years. That's what the guideline range says. The guidelines are not presumptively the sentence, but the Court is required to give consideration to the guidelines with the ultimate goal of having some uniformity and consistency in sentencing.

Ultimately though, sentencing is an individual determination based upon the facts and circumstances of the case and the history and character of the defendant. And in arriving at a just sentence, I'm instructed to look at the circumstances of the offense -- the nature and circumstances of the offense and then the history and character of the defendant and using those two factors, attempt to arrive at a sentence that accomplishes certain goals. The first of which is contrary to Mr. LeBell's statement, to provide just punishment

for the offense. That's the purpose of sentencing. That's what brings Mr. Van Den Heuvel before the Court. This Court has no authority over anyone to impose a sentence that does not commit a crime. And when they commit a crime, punishment is appropriate. But punishment is not near merely vindictive. It is intended to provide some sort of reordering or bring back order to a society. It also has other goals.

It promotes respect for the law and it reflects the seriousness of the offense. Punishment also -- the sentence is also a sentence intended to deter, to deter the individual defendant and to deter others. Deter means to send a message. Behavior, if it's serious, society has an obligation in order to protect itself by making a statement about it, a statement that makes clear it's not to be tolerated. And that the benefits that look like they're obtainable from the kind of criminal conduct that brings the defendant before the Court are outweighed by the potential consequences.

Another purpose of sentencing is to protect the public from further crimes of the defendant and of course, we normally think of that in terms of violence and other types of crimes, but financial crimes as well they can leave people destitute and have horrible impacts on people.

And then lastly, the purpose of sentencing is to try to provide programming or treatment or the types of rehabilitative efforts that will assist the defendant so that

when he is at the end of the process, he will avoid any similar conduct that brought him to that point. So those are the purposes of sentencing.

Looking first now at the nature and circumstances of the offense that brings Mr. Van Den Heuvel before the Court. It is a serious offense. Defrauding anyone is a serious offense. Defrauding a federally insured bank -- and this is a conspiracy to defraud. He was not charged, or at least he was not -- he did not plead guilty to the actual bank fraud charges. He pled guilty to the conspiracy count which carries a maximum of five years, but the conspiracy we're talking about is the conspiracy to engage in bank fraud and to provide false information. So, it's a serious offense not only when we look at the face amount of the loans where it's about $775,000. The restitution amount is significantly less because the loans, some of the proceeds were used to pay down other loans. The restitution the parties have agreed on is $316,445. But that type of conduct and that amount of money has a significant impact. And, of course, as the Horicon representative has asked, I have to consider the impact on the victims and the impact is just not the loss of money. They lose money on loans all the time, but the fraud, the way in which this was conducted and carried out is -- tarnishes their reputation in the community and it leads to a lack of confidence. It also impacts anybody that borrows money. So, it is a serious

offense.

I look at the nature and circumstances of Mr. Van Den Heuvel and certainly there are very -- there's much positive to be said about Mr. Van Den Heuvel. But in many ways, that makes this crime all the more disturbing. Mr. Van Den Heuvel had advantages far beyond the vast majority of people that we see. He had wonderful parents and a wonderful family he grew up with. He had tremendous advantages in terms of what his father left he and his brothers and sisters. And he, of course, has a great deal of intelligence. He has a business acumen. He has a strong and vibrant personality. He has a strong faith. His family's devoted to him. These are all wonderful gifts, wonderful blessings that he has. Very few people that come before me for sentencing have those kinds of blessings, those kinds of gifts, which makes this crime all the more incomprehensible. And it makes it less -- frankly, more astounding that someone in his position would engage in this type of behavior that is so serious.

I am satisfied that this is a case that calls out for significant punishment. The amounts involved -- and this was a -- wasn't an impulsive or sudden mistake. It wasn't a poor judgment. And I've gone through this presentence report very carefully. I've gone through the documents that are attached. Mr. Van Den Heuvel had hopes of Horicon loaning him 7.1 million I think is the package that Mr. Piikkila presented to the loan

committee and that's when they did their due diligence and looked into Mr. Van Den Heuvel and his businesses and concluded not only are we not going to approve a $7.1 million loan package, we don't want to loan to him at all. We don't want to loan to his businesses. And Mr. Piikkila was told that. And Mr. Van Den Heuvel and Mr. Piikkila arrived at a way of avoiding that. And that consisted of setting up other people to borrow in Mr. -- in their name for Mr. Van Den Heuvel's benefit and they began that process and engaged in seven different loans, the first one 200 -- the first one $100,000 that Mr. Peters, I believe, obtained. $240,000 then -- the first on September 12th, 2008; $240,000 on January 2nd, 2009; 30,000 on February 11th, 2009; 129,958 on May 15th; 25,000 on May 15th; 240,000 on September 11th, 2009; and then 10,000 on September 25th of 2009. Most of these counts also have a separate -- had a separate charge of false statement. Now those were -- there were not guilty pleas entered to those, but these are the facts that I look at.

And in addition, I look to the evidence of the other crimes, all of this is relevant. Some of it is very telling in relation to Mr. Van Den Heuvel's insistence that, in fact, contrary to his plea, he's really not guilty and this is just bad business or bad luck. I thought the -- Ms. Gumban's evidence -- or the victim impact on her was particularly telling. Here was a loan that -- for $25,000 on May 15th,

2009, that Mr. Piikkila approved for Ms. Gumban. She was the nanny for Mr. Van Den Heuvel's children. She came from the Philippines. She spoke English well enough, but obviously with an accent. The money was borrowed in her name. It was immediately distributed to make payments on the loans in the names of Mr. Peters and Mr. Bain. That was the -- Mr. Van Den Heuvel had assured them that they would not be responsible for the loans that they took out and they were to be given to him, the proceeds of which went for his -- or at his direction. The remainder was transferred to his property RBDH and Ms. Van Den Heuvel's company, KYHKGJ. And that's the other thing, there's so many companies here. But Ms. Gumban, in order to get the loan, there was -- they presented a financial statement that claimed she had assets of $280,000, and $208,000 in real estate, as well as a salary of $65,000 even though she had -- they were way behind in salary and were accruing debts on her credit card. They encouraged her -- Mr. Van Den Heuvel encouraged her to take out credit cards so she could build a good credit history. And then he and his wife used those credit cards for their personal expenses and she ended up with all this credit debt that she -- in her name that they took out for their lifestyle expenses, buying clothing and dinners and things that had nothing to do with her. Now, this is a woman who lived in their home and was dependent on them. And this is how she was treated. Ms. Starry (phonetic), his

administrative aide who worked as really a secretary was allowed to -- he used her to get a loan as well for $240,000, was it? Or a significant amount of money. And suddenly, a month before she's made an officer of the corporation instead of an administrative secretary, and it appears certainly for the purpose of getting the loan. The son-in-law, Mr. Hoffman, these are the charges that were the -- came in on a superseding indictment and there were charges of attempted bank fraud or a credit union fraud. The plan here was to have him use their Cadillac Escalades, Mr. and Mrs. Van Den Heuvel's Cadillac Escalades as collateral to get loans from credit unions. Mr. -- in addition, they falsified pay stubs to say that Mr. Hoffman was making $100,000 a year when in fact he was making some $12 an hour. They were told by accountants, Mr. Locascio, Mr. Huntington, that this is illegal. Mr. Van Den Heuvel was told this was illegal and yet he continued to do this. Now the banks turned down the loans, so it's only an attempt. But the fact that he would use his son-in-law in this way and do what he was directly told was illegal, I think shows and sheds light on what we're looking at here.

This is not -- this is not evidence of a mistake. This is not evidence of bad business judgment or poor consequences. This is evidence of fraud. The defendant has presented himself and continues to present himself as a selfless and successful entrepreneur and philanthropist. He's

pretended to be that up to and including today. That's a lie. And that lie is made manifest by the crime and the related conduct that brings him before the Court today. Mr. Van Den Heuvel cannot admit that to himself, to his family, or to anyone. And that's unfortunate because the beginning of rehabilitation is honesty. Honesty with respect to oneself. And there's little hope of rehabilitation or reform when one isn't even honest with oneself, even when it's -- it would be to his advantage to do so.

Mr. Van Den Heuvel has delayed these proceedings. He's filed these motions that are frankly frivolous that I'm sure his attorney -- part of the reason we're here today and part of the reason his attorney seeks to withdraw is because his attorney gives him advice he does not like. That says more about Mr. Van Den Heuvel than it says about the attorney. And it tells us that he is -- he's still has not gotten the message, that he insists that he is what he pretends to be instead of what he has actually done.

And it -- I've looked at this family and he has a wonderful family and children are here as well. And I understand that. No Court enjoys sending a person to prison. I don't care what he's done. And yet that is the obligation when one has committed a serious crime. And I understand it affects the family. But Mr. Van Den Heuvel, he should've understood it affects his family. For a person in his position

with people as dependent upon him as his family is, to engage in the type of behavior, the flagrant fraud involved here, that would endanger his ability to continue to provide for them, is frankly an aggravating factor more than a mitigating factor. It does not warrant -- you know, especially when you look at the advantages and the blessings that he's had, it does not warrant leniency and it would fly in the face of justice to allow Mr. Van Den Heuvel to escape responsibility for his conduct given the number of people he's defrauded and the manner in which he's done this over years simply because he has a family that is dependent upon him.

Unfortunately, the vast majority of people in this world have people that are dependent upon them and it makes their crimes worse when those who have those types of responsibilities ignore those responsibilities for their personal gain or even if they think they're doing it for the benefit of their family. Mr. Van Den Heuvel certainly knew better. He was raised better than that. And he understands better than that.

I have no doubt that there's many positives in his life. That's not what brought him here today though. What brought him here today is the willful criminal misconduct that undermines our banking system, that undermines the trust that's essential for successful business and loans to go through. And for that, he's deserving of the punishment.

Taking these factors into consideration -- and I also consider not only the need for punishment but also the need for deterrence. White-collar crime is difficult to prosecute. And -- but it -- people think that if you use a pen instead of a gun, it's a lot easier to steal. That's a bad message. The fact that he doesn't have a crime -- a criminal history, I've certainly considered that. But the absence of a criminal history is frankly standard in white-collar crimes cases. People aren't in a position to steal the kinds of money Mr. Van Den Heuvel obtained by fraud unless they have -- if they have a criminal record. So, it pretty much goes with the territory, but when one looks at the totality of conduct. This is the type of behavior that should be deterred. A message should be sent that it cannot be tolerated and it will not be tolerated.

Finally, I think for protection of the public, the fact that there's even -- not even today an admission that he did anything wrong, and from all appearances he would go do it again, I think suggests that he's a threat to the property of others, certainly not the physical -- he's not a physical threat. There's no violence here. But there has been the type of conduct that threatens other people's property. He has these gifts of persuading people to do things for him that is against their own interests and involves them in criminal conduct. One can see that with Mr. Piikkila, with Ms. Gumban, with Ms. Starry, with Mr. Peters, and even with Mr. Bain. And

yet, there's no stopping this.

So, under these circumstances, I'm satisfied that a guideline sentence makes sense. I'm going to impose a sentence of 36 months in the custody of the Bureau of Prisons.

I'm also going to impose three years of supervised release; $100 special assessment is ordered. I'll order restitution in the agreed amount of $316,445.47. And I certainly -- it would be wonderful if this restitution were paid. If I was the bank, I wouldn't hold my breath and I'm sure they're not. There's a history here and this is certainly not -- as we can see from the financial records -- the only huge debt that Mr. Van Den Heuvel owes.

The conditions of supervised release -- and I know there's some objection to those conditions. I'm going to go over them though. I'm overruling the objections. The objection is to -- is to the -- well, I'll get to those as I go over the conditions of supervision.

But first of all, the defendant is not to commit another federal, state, or local crime. He's not to possess any firearms. He may not illegally possess or use a controlled substance. I find a low risk of future substance abuse because there's no past in that regard. So, I'll suspend drug testing requirements that would otherwise apply.

He's to report to the probation office in the district to which he's released within 72 hours of his release

from the custody of the Bureau of Prisons and he's to report to the probation officer in a manner and frequency as reasonably directed by the Court or his probation officer. He's not to leave the state of Wisconsin without the permission of the Court or his probation officer.

He's to answer truthfully all inquiries put to him by the probation officer subject to his Fifth Amendment right against self-incrimination. And he's to follow the reasonable instructions of his probation officer.

He's to use his best efforts to support his dependents. He's to use his best efforts to find and hold lawful employment unless he's excused by his agent for schooling, training, or other acceptable reasons.

He is to notify his agent at least 10 days prior to any change in his place of residence or his place of employment. If pre-notification is not possible, he's to notify his agent within 72 hours after the change.

He's not to associate with any persons known by him to be engaged in or planning to be engaged in criminal activity. Associate as used here means to reside with or regularly socialize with such a person.

He's to permit his probation officer to visit him at reasonable times at home and permit confiscation of contraband if it's observed in plain view by his probation officer.

He's to notify his agent within 72 hours of being

arrested or questioned about a crime by law enforcement officer.

He's to pay restitution at a rate of $200 per month or 10 percent of his net monthly income whichever is greater. He's also to apply 100 percent of any federal or state income tax refund toward payment of the fine -- of the restitution. He is not to change exemptions claimed for either federal or state income tax purposes prior to notifying his agent or notice to his agent. He is to provide access to financial information requested by his agent, including but not limited to copies of his federal and state income tax returns. He's to file his tax returns in a timely manner. He is to submit monthly financial reports to his agent. And he's -- his -- these obligations, financial obligations -- or these -- this condition will no longer be in effect once his financial obligations have been satisfied. He is not to open any new lines of credit which includes the leasing of any vehicle or other property without -- or taking any loan from a bank or using existing credit resources without the prior approval of his agent. Again, after his obligations are met, that -- his financial obligations are met, that condition will be waived.

He is not to hold employment with fiduciary responsibilities during the supervision term without first notifying the employer of his conviction. He shall not hold self-employment having fiduciary responsibilities or otherwise

-- or is otherwise involved in initiating or conducting financial transactions without the approval of his probation officer. Those last -- that last condition goes directly to the risk he poses to property of others and it's what brought them here before the Court.

I'm satisfied that these conditions are -- fit the circumstances here. Most of them are for -- just to maintain supervision. The reasons set forth for those conditions in the presentence are adopted by the Court. And I want to say one more thing about family. And as difficult as this is for family, again, I've certainly considered family. I also note Mr. Van Den Heuvel has -- is far more fortunate than many people that come before me in that he has a lot of extended family that have shown tremendous kindness and I have no doubt that his family will be taken care of if that -- if things come to that, but I'm -- nevertheless, it's not a reason not to impose the sentence that I think is called for by the nature and circumstances of the crime and the history and character of the defendant.

Finally, with respect to voluntary surrender, I'm going to allow voluntary surrender, but I'm not going to delay this sentence. This case is old. The fact that he is charged in another case with money laundering and bank fraud -- or wire fraud, I should say, multiple counts, that's not a "stay out of jail free" card. He can voluntary surrender, but he is to

surrender when the Bureau of Prisons gives him a place to report and a reporting date.

MR. LE BELL: Judge, can I just briefly be heard on that because I'm the one who's handling the other case. It is a complex case, number one. The documents have been loaded on the Relativity platform which would be impossible for Mr. Van Den Heuvel to access from an institution. He needs to be able to review the documents. It would be -- there's no prison that I can imagine that's going to allow him to have 800 or whatever it is -- 50,000 documents --

THE COURT: I'm not delaying this. Figure it out. Other people have the same problems. Figure it out. I'm not going to delay this. I'm not going to delay the sentence for -- it'll be another year. And all the reason more for delay. No. This case -- these crimes occurred in 2009, and here this case was already -- was started in April 2016. And I'm -- we're just going to stay sentencing for a year or two?

MR. LE BELL: I don't think that was the proposal. The proposal was for six months because as you know, the Relativity access was just granted -- at least for my purposes, last Thursday. So meaningful access to the discovery really can't -- hasn't occurred and for --

THE COURT: Well, you have access to the discovery. He obviously knows what documents he has. He -- they were his records. And he knows what in fact he did as. This again is a

claim of wire fraud. It's a claim of money laundering. You know, I -- you can renew your motion if you want to once he gets a reporting date. You do have some time between now and when he has a reporting date. You can renew it then, but I'm not going to indefinitely stay this -- the sentence in this case.

MR. LE BELL: One other thing. You made a remark about the motions that were filed on behalf of Mr. Van Den Heuvel and you used the term "frivolous." I assume you're not making a formal adjudication they were frivolous. Is that correct?

THE COURT: No. I denied them. I've considered them. But I -- frankly, the argument that the plea was not voluntary, I do not -- whether you call it frivolous or just meritless, I rejected that.

MR. LE BELL: No, there's a difference from my perspective what you call it.

THE COURT: No, I'm not saying you were filing frivolous motions given your circumstances, Mr. LeBell.

MR. LE BELL: Thank you.

THE COURT: I'll order the other counts in the indictment dismissed on the motion of the government. Mr. Van Den Heuvel, you have the right to appeal your conviction or your sentence. Your attorney will talk to you about possible grounds to appeal. If you cannot afford the cost of the

appeal, the clerk will assist you so you can file in forma pauperis and not have to pay those costs. If you choose to appeal, you have to file a notice of appeal within 14 days of the entry of the judgment. If you fail to file a timely notice of appeal, you would lose your right to appeal. Do you understand those things?

THE DEFENDANT: Yes.

THE COURT: It had been my intent to address the motions for -- to vacate -- or to vacate the plea or withdraw the plea and the motion to adjourn in writing. I addressed them at the beginning of the sentence. Are you satisfied, Mr. Krueger and Mr. LeBell, or do you wish me to issue a written opinion on those as well?

MR. LE BELL: I am satisfied.

MR. KRUEGER: We are satisfied as well, Your Honor.

THE COURT: And I carefully looked at both briefs and as the government points out, it's simply not a change of mind at this stage. Certainly, a manifest and just reason has to be something more than just a sudden unsupported claim of innocence under these circumstances. And I find nothing like that here. Again, the motion to adjourn sentencing offered no specifics.

(Audio of proceeding ended at 11:27 a.m.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v. Case No. 16-CR-64

RONALD H VAN DEN HEUVEL,

Defendant.

ORDER DENYING MOTIONS TO VACATE PLEA, ADJOURN SENTENCING, AND FOR WITHDRAWAL OF COUNSEL

On October 10, 2017, Defendant Ronald H. Van Den Heuvel entered a plea of guilty to a single count of Conspiracy to Commit Bank Fraud in violation of 18 U.S.C. § 371, in return for the government's promise to dismiss the remaining 18 counts in the superseding indictment against him and all charges against his co-defendant wife Kelly. The sentencing was scheduled for January 5, 2018. On December 27, 2017, Van Den Heuvel filed a motion to adjourn the sentencing, which the court denied the following day on the ground that both the reason for and the length of the adjournment requested were too indefinite. On January 2, 2018, Van Den Heuvel filed a motion to withdraw his plea of guilty on the ground that it was not knowingly and voluntarily made. On January 3, 2018, Van Den Heuvel renewed his motion to adjourn the sentencing, this time stating he needed to go through approximately 38 bankers boxes and 6 CDs and/or thumb drives that he obtained within the last three or four weeks from various lawyers who previously represented him in civil litigation matters so as to determine how they may impact on a potential defense to the charge to which he has pled guilty. Finally, on the eve of sentencing, Van Den Heuvel's attorney filed a

motion to withdraw as counsel on the ground that there had been a breakdown in communication with his client.

The first two motions were denied by text order on the morning of January 4, with a notation that a written order would follow. The court took up counsel's motion to withdraw at the beginning of the sentencing hearing the next day. Citing concerns over attorney-client privilege and ethical obligations, counsel declined to explain what he meant by a breakdown in communication on the record and requested the matter be addressed *ex parte*. With the government's consent, the court had an *ex parte* conference on the issue with Van Den Heuvel and his attorney in chambers. Counsel agreed to supplement the record with a memo filed under seal setting forth a summary of the discussion held in chambers. Based on the information conveyed in chambers, the court concluded that a communication breakdown had not occurred and that counsel could continue to represent Van Den Heuvel at sentencing. The hearing resumed, and the court denied all three motions and proceeded with the sentencing hearing after which it imposed a guideline sentence of 36 months. This decision will address the motions that were denied on the record prior to sentencing in more detail.

BACKGROUND

This case began on April 19, 2016, when the Grand Jury returned an Indictment charging Ronald Van Den Heuvel, Paul Piikkila, and Van Den Heuvel's wife, Kelly Yessman Van Den Heuvel, with conspiracy to defraud Horicon Bank by obtaining a series of loans through "straw borrowers". The thirteen-count Indictment, in addition to the overall conspiracy charge, detailed seven separate loans that Van Den Heuvel had obtained from Horicon Bank with loan officer Paul Piikkila's assistance after Van Den Heuvel's application for a $7.1 million loan package had been

denied and the bank's loan committee had instructed Piikkila not to approve any more loans to Van Den Heuvel. Van Den Heuvel and Piikkila managed to circumvent the loan committee's instructions by having Piikkila authorize loans under the $250,000 limit Piikkila was authorized to approve without committee approval to individuals who, at Van Den Heuvel's urging, signed the loan application documents, even though the proceeds of the loan were to be paid to, or at the direction of, Van Den Heuvel and not for the purposes represented on the loan applications submitted to the bank. The individuals who signed the loan documents, the "straw borrowers, regarded the debt incurred by the loan as Van Den Heuvel's and felt no obligation to repay the loans. The collateral pledged as security for the loans actually belonged to Van Den Heuvel but was not sufficient to allow the bank to recover the principal or interest on the loans. The total of the face amount of the seven loans was just under $775,000. Because some of the proceeds of later loans were used to make payments on earlier loans, the total restitution amount agreed upon by the parties is just under $316,500. In addition to the loans themselves, charged as separate counts of bank fraud in violation of 18 U.S.C. § 1344, charges of making a false statement in connection with a credit application in violation of 18 U.S.C. § 1014 were set forth as to all but two of the loans.

A later Superceding Indictment added additional counts relating to loans Van Den Heuvel allegedly had a person identified by his initials as P.H. apply for at various credit unions around the Green Bay area to obtain funds that Van Den Heuvel could then use for his own purposes. To help P.H. qualify for the loans, the superceding indictment alleges that Van Den Heuvel caused the 2010 and 2013 Cadillac Escalades that were driven by Van Den Heuvel and his wife and titled in the name of one of his many business entities to be transferred to P.H., even though P.H. was not given custody or control of the vehicles. Van Den Heuvel also was alleged to have caused false and

fraudulent pay stubs to be created for P.H. so that it appeared he had an annual salary substantially higher than his actual salary. The applications were denied, and thus these additional counts were charged as attempts to commit bank fraud.

Paul Piikkila, the loan officer at Horicon Bank who allegedly conspired with Van Den Heuvel, entered a guilty plea on July 22, 2016, admitting his part in the conspiracy involving the Horicon Bank loans. Because the government was intending to call Piikkila as a witness at Van Den Heuvel's trial, his sentencing has been put off until Van Den Heuvel's case is resolved.

Despite the massive amount of discovery materials the government produced, mostly documents seized from Van Den Heuvel's home and businesses in a separate investigation, this case does not appear particularly complex, at least from the defendant's standpoint. The key question from the beginning was whether Van Den Heuvel and Piikkila concocted a scheme with others to lie to the bank in order to get it to loan him money. Nevertheless, at the urging of the parties, trial was not scheduled to commence until October 23, 2017, more than a year and a half after the indictment was filed. By the time Van Den Heuvel entered his plea on October 10, 2017, he had more than sufficient time to review all of the discovery and documents concerning the seven separate loans that gave rise to the charges in the Indictment. Moreover, since he was personally involved in each of the transactions, he had direct knowledge of the events upon which the Indictment was based. On October 10, 2017, after a thorough plea colloquy under oath, Van Den Heuvel entered his plea of guilty to the conspiracy charge in the indictment, and the case was scheduled for sentencing. It is with this history that the court must view Van Den Heuvel's last minute motions to withdraw his plea and adjourn his sentencing.

ANALYSIS

A. Motion to Vacate Plea

In his motion to vacate his plea, Van Den Heuvel contends that his plea was not knowingly and voluntarily made, that he is both legally and factually innocent, that there has not been an unreasonable amount of time between the guilty plea and his motion to withdraw his plea would not prejudice the government. He argues that he has a fair and just reason to withdraw his plea and, since he filed his motion before sentencing, it must be granted.

"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, 584 (7th Cir. 2016). That occurred in this case. Van Den Heuvel was placed under oath and unequivocally testified that, after fully consulting with his attorney, he understood the elements of the offense, the potential punishment, the application of the sentencing guidelines and the rights he was giving up by entering a plea of guilty.

Van Den Heuvel testified that his attorney had been very good with giving him enough time to discuss the case and that he had met with him for a full Saturday. ECF No. 175-1 at 10:18–21. In response to the court's question whether he was satisfied with the representation that his attorney had provided up to that point, Van Den Heuvel responded, "I couldn't have paid better." *Id.* at 11:9–12. After confirming that Van Den Heuvel did not have a mental illness and was not under the influence of anything, such as alcohol, drugs or medication, that could affect his ability to understand the proceedings and make a decision, the court proceeded to explain to him the elements of the

offense to which he was pleading guilty and invited him to read along in the written plea agreement he acknowledged he had signed and discussed fully with his attorney. *Id.* at 11:17–13:10. The court explained that the crime of conspiracy as charged in the indictment required to government to prove: (1) that the conspiracy alleged in the indictment actually existed; (2) that Van Den Heuvel knowingly became a member of the conspiracy with the intent to advance the conspiracy; and (3) that at least one of the conspirators committed an overt act in an effort to advance the goals of the conspiracy. *Id.* at 12:8–24. The court explicitly explained that a conspiracy was an agreement between two or more people to commit a crime and described the conspiracy alleged in the indictment as the agreement to commit the crime of bank fraud. *Id.* at 12:12–17.

When asked if he understood the elements, Van Den Heuvel responded, "I do. I also understand that there was no intent." *Id.* at 13:9–12. At that point, counsel asked to have a word with his client and the court agreed, noting that intent to enter into an agreement to commit a crime was an element and warning Van Den Heuvel "we're not going to play games here." *Id.* at 13:16–21. The court continued:

> 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?

Id. at 14:3–8. Van Den Heuvel responded, "I do."

The court continued to advise Van Den Heuvel of the maximum penalties, how the United States Sentencing Guidelines worked, the fact that relevant conduct would be considered and the rights he was giving up be entering a plea of guilty, including the right to have each element of the offense proven beyond a reasonable doubt. Van Den Heuvel acknowledged he fully understood all

that the court told him. *Id.* at 14–20. He denied that anyone had made any promises to him other than those set forth in the plea agreement or any threats against him or anyone else to get him to waive his rights and enter a plea of guilty, and admitted that he was pleading guilty to the offense because he was guilty of the offense. *Id.* at 20:25–21:22. He was asked if he had any questions about anything in the plea agreement or anything the court had said before he would enter his plea, and responded, "No, sir." *Id.* at 21:23–22:1. Counsel for both parties were then asked if there was anything else they thought the court should inquire into before it asked Van Den Heuvel for his plea. Both declined. Id. at 22:2–7. The court then asked Van Den Heuvel to state out loud for the record his plea to the charge of conspiracy as alleged in the indictment. Van Den Heuvel responded, "guilty." *Id.* at 22:8–17. It was only then that the court accepted the plea upon its findings that Van Den Heuvel had knowingly and voluntarily waived his rights, entered his plea and a factual basis was set forth on the record that supported it.

The Seventh Circuit has repeatedly made clear that "[a] defendant's motion to withdraw is unlikely to have merit if it seeks to dispute his sworn assurances to the court." *Graf*, 827 F.3d at 584; *see also United States v. Collins*, 796 F.3d 829, 834 (7th Cir. 2015) (district court may presume truth of defendant's prior sworn statements in plea colloquy); *United States v. Mays*, 593 F.3d 603, 607 (7th Cir. 2010) (answers to proper Rule 11 colloquy are presumed true, imposing heavy burden on defendant and leaving the "fair and just" escape hatch "narrow"). A hearing on a motion to withdraw a plea should be granted if the movant offers "substantial evidence that impugns the validity of the plea." *United States v. Jones*, 381 F.3d 615, 618 (7th Cir. 2004). "[I]f 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.* (quoting *United States v. Redig*, 27 F.3d 277, 280 (7th Cir. 1994)).

Here, Van Den Heuvel offers no grounds for an evidentiary hearing. In the face of the thorough record made at his change of plea hearing, he offers no evidence that he did not fully understand the elements of the offense. Indeed, in his Memorandum In Support Of Motion To Vacate Plea, Van Den Heuvel did not even claim he did not understand the elements of the offense. Instead, he argued that his plea was not voluntary because it was "forced and precipitated, in large measure, in order to exculpate and free his wife and co-defendant." ECF No. 172 at 2. In addition, he now argues that he has since his plea discovered evidence among the thousands of pages of discovery in the case that exonerates him and shows that the loans were fully collateralized and that others at Horicon Bank were aware of and implicitly authorized the loans. *Id.* at 2–3. He offers no evidence in support of either reason that would warrant an evidentiary hearing.

It is true that in return for Van Den Heuvel's plea, the government agreed to dismiss the charges against his wife and co-defendant Kelly Van Den Heuvel. This part of the agreement was placed on the record and made clear at the time Van Den Heuvel entered his plea. ECF No. 175-1 at 3:5–21, 21:4–10. The fact that the charges against his wife were dismissed as part of his plea agreement, however, does not make his guilty plea involuntary. "'Package' plea agreements in which dismissal of charges against a spouse or other family member of the principal malefactor is part of the deal are common. They are not improper or forbidden." *United States v. Spilmon*, 454 F.3d 657, 658 (7th Cir. 2006) (citing *Politte v. United States*, 852 F.2d 924, 929–30 (7th Cir. 1988); *United States v. Marquez*, 909 F.2d 738, 741–43 (2d Cir. 1990); *United States v. Mescual–Cruz*, 387 F.3d 1, 7–8 (1st Cir. 2004); *United States v. Hodge*, 412 F.3d 479, 490–91 (3d Cir. 2005)).

Spilmon explains why:

> It would be in no one's interest if a defendant could not negotiate for leniency for another person. From the defendant's standpoint the purpose of pleading guilty is precisely to obtain a more lenient outcome than he could expect if he went to trial. It is a detail whether the leniency he seeks is purely selfish or encompasses additional persons, provided that his plea is not coerced.

454 F.3d at 658.

In other words, obtaining leniency for his wife was clearly one of the reasons for Van Den Heuvel's guilty plea, perhaps even the primary one. But a reason is not the same as a cause. People do things for reasons, sometimes very good reasons, without losing their freedom. Indeed, acting for a reason, i.e., rationally, is the very hallmark of human freedom. Nevertheless, a "package deal" can be improper and unfairly coercive if the government believes the spouse is wholly innocent of the crime charged and used a phony charge to coerce the defendant to plead guilty. *Id.* at 658–59. Here, there is no suggestion that the government did not believe Kelly Van Den Heuvel was guilty of the crimes with which she was charged, and the information contained in the presentence report supports the government's belief. ECF No. 167 at ¶¶ 30, 45, 47. The fact that dismissal of charges against her was a condition of the plea agreement does not render Van Den Heuvel's plea involuntary.

Van Den Heuvel's claim of newly discovered evidence fares no better. Van Den Heuvel contends that he has now conducted further review of the available discovery and has concluded that evidence from the search warrants executed on his businesses and home by the Brown County Sheriff's Department in July 2015 was used by investigators to conduct follow-up interviews, and thereby obtain evidence which would be used at trial. ECF No. 172 at 2. Van Den Heuvel notes that the documents seized by the Brown County Sheriff's Department were the subject of a

suppression motion. Indeed, the validity of the warrants and the search and seizure of evidence under them was the subject of motion practice before the court in July and August of 2017. ECF Nos. 114, 126, 127. The parties resolved the issue by a signed stipulation that in return for the government agreeing that it would not use any of the evidence seized in the July 2, 2015 searches in its case in chief, the defendants would withdraw all motions challenging those searches. ECF No. 134 ¶¶ 1, 2. Van Den Heuvel also agreed that he "cannot assert a challenge to the issuance of the search warrants used to search on July 2, 2015 or their execution at any later time in case 16-CR-64." *Id.* ¶ 4.

In addition to claiming that some of the documents were used in follow up interviews and investigation, Van Den Heuvel now also claims that some of the documents support his claim of factual and legal innocence. He claims that he recently obtained evidence that Steve Peters, one of the "straw borrowers," had a monetary interest in ST Papers businesses which adversely impacted his credibility and impartiality; that the loans taken out by Peters and his wife Kelly were repaid; that there were additional individuals at Horicon Bank who were aware of the loan to William Bain, another of the "straw borrowers"; that the Bain loan was fully collateralized with a loan assignment; 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. Based on these assertions, Van Den Heuvel now claims there were no violations of the law and both a factual and legal defense exists. Further, he contends that had he known of this newly discovered evidence, he would not have entered his plea. ECF No. 172 at 3.

Other than the general description of the evidence he says he discovered, however, Van Den Heuvel offered nothing by way of affidavit or the actual documents he claims to have discovered to

support his motion to vacate his plea. This is not evidence. *See United States v. Galbraith*, 313 F.3d 1001, 1009 (7th Cir. 2002) ("Galbraith presents no affidavit from himself or his trial counsel supporting his version of his attorney's conduct, nor any other available, probative evidence that would effectively support Galbraith's claim. Without any such evidence, there is no clear error in the district court's denial.").

He also fails to explain how the "newly discovered evidence" regarding the government's alleged use of the seized documents renders him innocent. He does not identify what evidence was used for follow up interviews with witnesses, nor explain why that would be problematic even if true. The stipulation did not limit the government's use of the materials for investigative purposes; it only prohibited the government from using the evidence in its case in chief. Regardless, his guilty plea waives any Fourth Amendment violation. *United States v. Combs*, 657 F.3d 565, 568 (7th Cir. 2011) ("When a defendant enters an unconditional guilty plea, he waives all nonjurisdictional defects arising before his plea, including Fourth Amendment claims.").

Van Den Heuvel also fails to explain how the other "newly discovered evidence" renders him innocent. His claim that Steve Peters' monetary interest in another company adversely affected his credibility and impartiality might be relevant if the case went to trial, but Van Den Heuvel waived his right to trial and to cross examine witnesses. Whether some of the loans were paid off was known long ago and is irrelevant to whether they were obtained by fraud. What other unnamed Horicon Bank employees knew or should have known is also beside the point. A bank's negligence or lack of diligence in uncovering fraud is not a defense to a crime of bank fraud. *United States v. Peterson*, 823 F.3d 1113, 1123 (7th Cir. 2016). He offers no evidentiary support for his claim that the loan to Bain was fully collateralized, which directly contradicts the factual basis he agreed to for

his plea. ECF No. 151 ¶ 5. He also fails to explain how the fact that LLC owners may have had legal authority to borrow funds relates to the claim that he conspired to obtain the loan proceeds by fraud.

On a more fundamental level, Van Den Heuvel's claim of innocence runs directly counter to his plea of guilty made under oath less than three months earlier. As explained above, "Judges need not let litigants contradict themselves so readily; a motion that can succeed only if the defendant committed perjury at the plea proceedings may be rejected out of hand unless the defendant has a compelling explanation for the contradiction." *United States v. Peterson*, 414 F.3d 825, 827 (7th Cir. 2005). And the fact that he was not fully aware of the evidence at the time his plea was entered does not render it involuntary. "[A] defendant can offer a knowing and voluntary plea without having received full discovery from the government." *Graf*, 827 F.3d at 584 (citing *United States v. Underwood*, 174 F.3d 850, 853–54 (7th Cir. 1999)).

Finally, although a showing of prejudice is not required to deny a motion to withdraw a guilty plea when no fair and just reason for withdrawal has been shown, *United States v. Thompson*, 680 F.2d 1145, 1152 (7th Cir. 1982), the government notes that the lead prosecutor in the case was scheduled to retire after the case was tried as scheduled in October and has since retired. As a result, he is no longer available, and if Van Den Heuvel's motion was granted, a new government attorney would be required to expend substantial time and resources learning the case and preparing for trial. In this connection, it should also be noted that Van Den Heuvel's CJA appointed attorney has already been paid a substantial amount of taxpayers' funds in attorneys fees and expenses needed to provide Van Den Heuvel effective representation. Allowing Van Den Heuvel to withdraw his plea at this point will significantly increase the costs to the taxpayers. While the costs of an indigent

defendant's defense is not a reason to deny a motion to withdraw a plea when there is a fair and just reason to allow withdrawal, it is not unreasonable to consider the additional time and expense that would be required to resolve the case upon withdrawal of a plea when no such reason is shown. Because no fair and just reason has been shown here, Van Den Heuvel's motion to vacate his plea of guilty is denied.

B. Motion to Adjourn

Two days before sentencing, Van Den Heuvel renewed his motion to adjourn the sentencing. Van Den Heuvel states in his motion that "within the last three to four weeks, he has made inquiries of various lawyers who represented him in civil litigation matters, which in part relate to Horicon Bank activities and his involvement with that institution and its loans" and "has secured from the lawyers, approximately 38 bankers boxes and six CD and/or thumb drives which contain materials generated during their representation." ECF No. 176 at 1–2. Van Den Heuvel states that "a preliminary review of the documents has revealed evidence that a civil litigant (Tak) assigned a multimillion dollar note to Horicon Bank and that such assignment fully collateralized all of the Horicon Bank loans which are the subject of the indictment." *Id.* at 2. "Furthermore," Van Den Heuvel maintains, "the documents support the position that bank officials were aware of this collateralization and approved of same." *Id.* He also contends that uncovered corporate records of his multiple corporations and business entities may support his assertions. He believes that documents were created which "it is believed would demonstrate that he did not cause others to act as a 'straw borrower' and that the loans were made with the full approbation of banking officials, and not just co-defendant Paul Piikkila." *Id.* Van Den Heuvel stated that the review of materials is a laborious process and requires them to be manually sorted. He estimated he could complete the

review in four months and thus asked that his sentencing be postponed for such a period. *Id.* at 2–3.

It is clear from his motion that Van Den Heuvel was not seeking additional time to prepare for sentencing. Indeed, his attorney had already filed an extensive sentencing memorandum, with several published articles attached addressing collateral consequences Van Den Heuvel's family would suffer if a prison term was imposed, and noting his philanthropic activities. ECF No. 172. Instead, Van Den Heuvel was seeking additional time to find support for his motion to withdraw his plea on the ground that he was innocent. He wanted to avoid sentencing altogether. As with his motion to vacate his plea, however, he provided no affidavit or other evidence in support of his motion; only conclusory assertions about unidentified documents. Given the denial of his motion to vacate his plea, his request for an adjournment to allow additional time to find support for his motion was likewise denied.

It should also be noted that Van Den Heuvel's claim that he only just discovered this information is not credible in light of the nature of the charges and the history of the case. As already noted, the case is almost two years old. The very document Van Den Heuvel now claims collateralized the loans, the Tak note, was part of the discovery that, the government observes, was produced to the defense back in April of 2016. ECF No. 177 at 2–3. If it was key to his defense, Van Den Heuvel had more than sufficient time to explain how and why before entering his plea of guilty. Even aside from the fact that Van Den Heuvel had the Bank's loan files since the case was commenced, by his own account he was directly involved in each of the transactions. Of all people involved in the case, he alone has the most direct knowledge of what information was provided to the Bank and what his state of mind was at the time he, along with Piikkila and the other coconspirators, submitted the applications for the various loans described in the indictment. Given

his intimate involvement with the facts of the case, the claim that he had just discovered a defense is not credible. Under these circumstances, the court concluded the motion to adjourn was simply a delaying tactic and denied it accordingly.

C. Motion to Withdraw as Counsel

On the afternoon prior to sentencing, counsel for Van Den Heuvel filed a motion to withdraw on the ground that "a breakdown in communications has occurred to the extent that further competent representation cannot be provided." ECF No. 180. As noted above, when counsel declined to answer the court's request that he explain what he meant by a breakdown in communications on the record in open court, the court, counsel and Van Den Heuvel had an *ex parte* conference in chambers where a further explanation was given. Based on that explanation, the court concluded that there was no breakdown in communication but that Van Den Heuvel was convinced that despite his plea of guilty, there was evidence in the documents he received in discovery and the documents he had recently acquired that would establish his innocence. His explanation was vague and confusing, however, reflecting the assertions made in his motions to vacate his plea and adjourn sentencing. Neither Van Den Heuvel, nor counsel, gave the court any reason to believe that the same problem would not arise even if counsel's motion was granted and a new attorney appointed. The court noted that at the plea hearing, Van Den Heuvel had not only expressed satisfaction with the representation his attorney had provided, but noted "I couldn't have paid better." ECF No. 175-1 at 11:9–12. Under these circumstances and given the status of the case, the length of time counsel had represented Van Den Heuvel, and the fact that he had already filed a sentencing memorandum on his behalf, the court denied the motion to withdraw and proceeded with the sentencing hearing. In so ruling, the court noted that there was no reason to believe that counsel could not advance a

strong sentencing argument and bring to the court's attention any pertinent legal issue or mitigating factors that would bear on sentencing.

At that hearing, counsel noted Van Den Heuvel's objection to some of the facts set forth in the presentence report. Counsel had raised the objections earlier, the government responded, and the presentence author had included the objections and response in the report. When asked if he wanted to offer evidence in support of his objections, Van Den Heuvel indicated he would and was invited to take the stand. Citing concerns for professional responsibility and the good of his client, counsel declined to ask his client questions and Van Den Heuvel was permitted to testify in narrative fashion concerning his objections. Counsel did, however, make a strong sentencing argument on his client's behalf and Van Den Heuvel expressed appreciation for his efforts.

In deciding whether to grant a motion by court-appointed counsel to withdraw, the court considers a number of factors including "the timeliness of the motion, the adequacy of the court's inquiry into the motion, and whether the conflict was so great that it resulted in a total lack of communication preventing an adequate defense." *United States v. Harris*, 394 F.3d 543, 552 (7th Cir. 2005). Notwithstanding counsel's refusal to examine Van Den Heuvel regarding his objections to the facts set forth in the presentence report, the court concludes that its denial of counsel's motion was proper. While Van Den Heuvel may have regretted pleading guilty by the time of sentencing and was upset that his attorney may not have believed it was in his interest to seek to withdraw his plea, there had been no conflict before that time. All that remained was sentencing, and counsel had already filed a sentencing memorandum and was prepared to make a sentencing argument. Neither counsel, nor Van Den Heuvel pointed to any problem that prevented them from communicating effectively to each other.

Finally, the fact that counsel elected not to ask Van Den Heuvel questions about his objections to the facts in the presentence does not undermine this conclusion. Whether counsel's refusal to question his client was due to ethical concerns that he would perjure himself, *see Nix v. Whiteside*, 475 U.S. 157, 175–76 (1986), or merely a disagreement over what strategy was in his client's best interest, Van Den Heuvel was able to say what he wanted on his disputes with the factual statements in the presentence report, and the brief testimony offered at sentencing and not before a jury resulted in no prejudice. The court was already aware of the disagreement that had arisen between Van Den Heuvel and his attorney, and the manner in which Van Den Heuvel was allowed to testify did not influence the sentencing determination. The court remains convinced that given the force of Van Den Heuvel's personality, there is no reason to believe the same problems would not have arisen even if the motion to withdraw had been granted and a new attorney appointed. It would have only resulted in greater delay and expense.

CONCLUSION

For the reasons set forth above and on the record at the sentencing hearing on January 5, 2018, Van Den Heuvel's motion to vacate his plea (ECF No. 171) and to adjourn sentencing (ECF No. 176), and counsel's motion to withdraw (ECF No. 180) are **DENIED**. Once Van Den Heuvel receives a reporting date from the Bureau of Prisons, counsel may renew his motion to stay sentence pending resolution of Case No. 17-CR-160. Conditions of pretrial release will continue.

SO ORDERD at Green Bay, Wisconsin this 8th day of January, 2018.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

v.

RONALD H. VANDEN HEUVEL

JUDGMENT IN A CRIMINAL CASE

Case Number: 16-CR-64
USM Number: 15653-089

Robert G. LeBell
Defendant's Attorney

Matthew D. Krueger
Assistant United States Attorney

THE DEFENDANT pled guilty to count one of the superseding indictment and is adjudicated guilty of these offense(s):

Title & Section	Nature of Offense	Date Concluded	Count(s)
18 U.S.C. §§ 371, 1344 and 1014	**Conspiracy to Commit Fraud**	**September, 2009**	**1s**

The defendant is sentenced as provided in this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

All remaining counts are dismissed upon motion of the United States.

IT IS ORDERED, that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the Court and the United States Attorney of material changes in economic circumstances.

Date Sentence Imposed: January 5, 2018

s/ William C. Griesbach
Chief Judge, United States District Court

Date Judgment Entered: January 9, 2018

DEFENDANT: RONALD H. VANDENHEUVEL
CASE NUMBER: 16-CR-64

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of thirty-six (36) months.

☐ The court makes the following recommendations to the Bureau of Prisons:

_____

☐ The defendant is remanded to the custody of the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ with a certified copy of this judgment.

_____
United States Marshal

_____
By: Deputy United States Marshal

DEFENDANT: RONALD H. VANDENHEUVEL
CASE NUMBER: 16-CR-64

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons and shall report to the probation officer in a manner and frequency as reasonably directed by the Court or probation officer. The defendant shall not commit another federal, state or local crime. The defendant shall not unlawfully possess a controlled substance and shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☒ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.

☒ The defendant shall not possess a firearm.

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer.

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.

☐ The defendant shall participate in an approved program for domestic violence.

If this judgment imposes a fine or a restitution obligation, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. the defendant shall not leave the State of Wisconsin without permission of the court or probation officer;
2. the defendant shall answer truthfully all inquiries by the probation officer, subject to his/her Fifth Amendment right against self-incrimination, and follow the reasonable instructions of the probation officer;
3. the defendant shall use his/her best efforts to support his dependents;
4. the defendant shall use his/her best efforts to find and hold lawful employment, unless excused by the probation officer for schooling, training, or other acceptable reasons;
5. the defendant shall notify the probation officer at least ten days prior to any change in his/her place of residence or employment. When such notification is not possible, the defendant shall notify the probation officer within 72 hours of the change.
6. the defendant shall not associate with any persons known by him/her to be engaged, or planning to be engaged, in criminal activity. "Associate," as used here, means reside with or regularly socialize with such person;
7. the defendant shall permit a probation officer to visit him or her at reasonable times at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
8. the defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;

DEFENDANT: RONALD H. VANDENHEUVEL
CASE NUMBER: 16-CR-64

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant is to pay restitution at a rate of not less than $200.00 per month or 10% of his or her net earnings, whichever is greater. The defendant will also apply 100 percent of his or her yearly federal and state tax refunds toward the payment of restitution. The defendant shall not change exemptions without prior notice of the supervising probation officer.
2. The defendant shall not open new lines of credit, which includes the leasing of any vehicle or other property, or use existing credit resources without the prior approval of the supervising probation officer. After the defendant's court-ordered financial obligations have been satisfied, this condition is no longer in effect.
3. The defendant is to provide access to all financial information requested by the supervising probation officer including, but not limited to, copies of all federal and state tax returns. All tax returns shall be filed in a timely manner. The defendant shall also submit monthly financial reports to the supervising probation officer.
4. The defendant shall not hold employment having fiduciary responsibilities during the supervision term without first notifying the employer of his or her conviction. The defendant shall not hold self-employment having fiduciary responsibilities without approval of the supervising probation officer.

DEFENDANT: RONALD H. VANDENHEUVEL
CASE NUMBER: 16-CR-64

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on the attached page.

Total Special Assessment	**Total Fine**	**Total Restitution**
$100.00	**$**0.00	**$316,445.47**

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

PAYEE	AMOUNT
Horicon Bank Horicon, WI 53032	$316,445.47
TOTAL:	**$316,445.47**

If a defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ Restitution amount ordered pursuant to plea agreement: $_____.

☐ The defendant must pay interest on any fine or restitution of more than $2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that the interest requirement is waived for the ☐ fine ☐ restitution.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

DEFENDANT: RONALD H. VANDENHEUVEL
CASE NUMBER: 16-CR-64

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☒ Lump sum payment of $100.00 due immediately

B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, ☒ E, or ☐ F below; or

C ☐ Payment in equal monthly installments of not less than $_____ or 10% of the defendant's net earnings, whichever is greater, until paid in full, to commence 30 days after the date of this judgment; or

D ☐ Payment in equal monthly installments of not less than $_____ or 10% of the defendant's net earnings, whichever is greater, until paid in full, to commence 30 days after release from imprisonment to a term of supervision; or

E ☒ Payment during the term of supervised release will commence within 30 days after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties: _____

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several (Defendant and Co-Defendant Names, Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate): _____

☐ The defendant shall pay the cost of prosecution; or ☐ The defendant shall pay the following court costs:

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

No. 18-1147

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. RONALD H. VAN DEN HEUVEL, Defendant-Appellant.	Appeal from the United States District Court for the Eastern District of Wisconsin Case No. 16-CR-64 Hon. William C. Griesbach, United States District Judge, Presiding.

NOTICE OF FILING AND PROOF OF SERVICE

TO: Mr. Gino Agnello, Clerk, United States Court of Appeals, 219 South Dearborn Street, Chicago, Illinois 60604

Mr. Ronald H. Van Den Heuvel, Reg. No. 15653-089, 3030 Curry Lane, Green Bay, WI 54311

Mr. Matthew D. Krueger, Office of the United States Attorney, 205 Doty Street, Suite 301, Green Bay, Wisconsin 54301

PLEASE TAKE NOTICE that on August 9, 2018, the undersigned attorney electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. I further certify that some of the participants in the case are

not CM/ECF users. I have mailed the foregoing documents by First Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier within three calendar days, to the non-CM/ECF participants.

s/ Johanna M. Christiansen
JOHANNA M. CHRISTIANSEN
Assistant Federal Public Defender
Office of the Federal Public Defender
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Peoria, Illinois 61602
Phone: (309) 671-7891