

The Defendant's REAL NAME is Ronald H. Van Den Heuvel / Ronald Hewry Van Den Heuvel. When confronted by Oneida Eye on 8/10/18 in front of U.S. Atty. Matthew Krueger about using the wrong middle initial ('D'), defense attorney Robert LeBell blamed his secretary. Yet, Atty. LeBell continued to submit court filings using the WRONG NAME for his client.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,
Plaintiff,

v.

Case No. 17 CR 160

RONALD D. VAN DEN HEUVEL,
Defendant.

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR CHANGE OF VENUE

The Due Process right to a fair trial includes being tried by an impartial jury, free from outside influences. *Sheppard v. Maxwell*, 384 U.S. 333, 349-62 (1966); *Estes v. Texas*, 381 U.S. 532, 538-52 (1965); *Rideau v. Louisiana*, 373 U.S. 723, 726-27 (1963). This Due Process Right has been clarified through F.R.Crim.P. 21(a). The prejudice referred to in both the United States Supreme Court decisions, as well as the statute, can be established by a showing that such prejudice is either presumed or actual. See *U.S. v. Campa*, 459 F.3d 1121, 1143 (11th Cir. 2006) (*en banc*); *U.S. v. Perez-Gonzalez*, 445 F.3d 39, 46 (1st Cir. 2006). In *Campa*, the court determined that prejudice necessitating a change of venue may emanate from publicity which saturates the community in which the trial is to be held. Pretrial publicity prejudice can be presumed from an analysis of the following: (1) whether the media accounts have been primarily dispassionate and factual or editorial and inflammatory in nature, (See *Murphy v. Florida*, 421 U.S. 794, 800 n.4 (1975) and *Campa*, 459 F.3d at 1144); (2) whether there is a barrage of inflammatory publicity immediately prior to trial

amounting to a huge wave of public passion, (See *Patton v. Yount*, 467 U.S. 1025, 1032-33 (1984) and *Henyard v. McDonough*, 459 F.3d 1217, 1242 (11th Cir. 2006)); (3) whether there has been a significant length of time between any inflammatory publicity and the trial, (See *Hayes v. Ayers*, 632 F.3d 500, 511-12 (9th Cir. 2011) and *U.S. v. Petters*, 663 F.3d 375, 385-86 (8th Cir. 2011)); (4) whether media accounts contained inflammatory or prejudicial information that was not admissible at trial, (See *Daniels v. Woodford*, 428 F.3d 1181, 1211 (9th Cir. 2005)); (5) whether the defense is a significant source of the publicity, (See *U.S. v. Bakker*, 925 F.2d 728, 733 (4th Cir. 1991)); and (6) whether a substantially better panel can be sworn in another place (in other words, whether the publicity is nation or local), (See *Bakker*, 925 F.2d at 733 and *U.S. v. Chapin*, 515 F.2d 1274, 1289 (D.C. Cir. 1975))." See also *U.S. v. Philpot*, 733 F.3d 734 (7th Cir. 2013) and *Skilling v U.S.*, 561 U.S. 358 (2010)

LITIGATION HISTORY

For years the defendant owned and operated various businesses in the Green Bay area. Both he and his family were involved in the paper and construction industries and were well known for their work and involvement in the community. The defendant served on various corporate boards, was publicly engaged in the support of individuals running for office, was involved in highly visible charitable events and was a frequent litigant in scores of court cases each of which could be accessed via CCAP. On April 19th, 2016, Mr. Van Den Heuvel was charged, by indictment, with 19 counts of

Bank Fraud and related charges in 16 CR 64. The government accused the defendant of engaging in a series of straw bank loans and attempted banks loans while he served as the director of various companies in the Green Bay area. The scheme alleged that the defendant induced others to secure loans from banks during a time in which he was effectively prohibited from doing so. The government asserted that he then used the proceeds for his own purposes.

The indictment was handed down after search warrants had been executed at the defendant's places of business as well as his personal residence. Hundreds of thousands of documents and other physical items were seized. The warrants were challenged by lengthy written submissions and an evidentiary hearing. Other pretrial challenges were asserted and litigated. The case received substantial media coverage through print and other media. Virtually all in-court proceedings were attended by a member of the press. As the events unfolded during the litigation they were also the subject of press and other public coverage. The description of the litigation developments was aired publicly by tv broadcasts, newspaper reporting, blogging by the Onieda Eye, Twitter tweets and perhaps radio. A reading of some of the blogs clearly reflects that the writer had access to the court filings and their contents through Pacer, (except for sealed materials). Much of the reporting also evinces the writer's editorial opinion which, with rare exception was highly uncomplimentary of the defendant. (Samples of these disseminations are attached to the instant memorandum and

will be supplemented as they are received by counsel).

The case ultimately resolved by a plea agreement, plea of guilty, and sentencing, but not before a series of intervening events transpired. The defendant entered his plea to a single count of conspiracy to commit bank fraud on 10/10/2017. He was sentenced on 1/05/2018 to 36 months of incarceration. The imposition of that sentence was preceded by the filing, on 12/27/2017 of Mr. Van Den Heuvel's pro se motion to adjourn the sentencing, a pro se motion on 12/12/2017 to adjourn his sentencing, a motion to vacate his plea, filed by counsel on 1/02/2018, a motion to adjourn sentencing filed on 1/03/2017 and a motion to withdraw filed by counsel on 1/04/2018. The government responded by filing a Notice Of Intent To Withhold Acceptance of Responsibility Recommendation.

On 12/13/2017 the court entered an order terminating the defendant's pro se motion filed on 12/12/2017 because motions were to be filed through counsel. On 12/28/2017 the court denied the defendant's motion to adjourn. Similarly the court the denied the defendant's other motion and the motion to withdraw as counsel, on 1/05/2018. In sentencing the court did not grant acceptance points. All of these events, responses and order were in the record, accessible to the public. Many were reported in the media.

While the proceedings progressed in 16 CR 64, the defendant was charged in a separate highly publicized fraud indictment, 17 CR 160. In that case the government alleged a 9 million dollar fraud scheme perpetrated by the defendant through an entity which he purportedly controlled, i.e.; Green Box. The Indictment was filed

on 9/19/2017, 5 weeks before the scheduled trial date on 10/23/2017 in 16 CR 64. On the same day the SEC publicly filed a civil fraud action, 17 CV 01261, alleging multiple Securities law violations arising from the fraud charges in 17 CR 160. All of this activity was part of the public record and was the subject of extensive press coverage. The new charges alleged that the defendant fraudulently induced various private investors, an investment group, EB5 applicants and the State of Wisconsin to invest in the defendant's Waste Reclamation Process known as "Green Box". It theorizes that Mr. Van Den Heuvel made fraudulent representations to convince the parties to fund the project, and then to misused the funds for purposes other than as had been agreed.

Part of the parties's plea agreement provided that the government would not object to continuation of the defendant's bond and liberty status for 6 months after sentencing in 16 CR 64. The court, at the time of sentencing, determined that the defendant should begin serving his sentence after 1/05/2107, but with "voluntary surrender" privilege. However, the BOP would not set a report date because of the pendency of the new matter in 17 CR 160. The court then permitted Mr. Van Den Heuvel to remain in the community under bond conditions previously set.

On 4/03/2018 the government filed a motion to amend the conditions of release in both cases, in reliance upon submissions alleging a multitude of new business transactions by the defendant. The detailed written submissions outlined burgeoning business ventures which the prosecution claimed contained

misrepresentations. A hearing was held in which testimony was taken about the defendant's activities. It is assumed that the press was in attendance. The court thereafter entered an order imposing new bond restrictions should the defendant engage in future financial endeavors. One of these requirements necessitated disclosure to pretrial services, of any activity which exceeded \$500..

On 7/03/2018 the government filed a motion seeking to revoke or modify the court's release order. The written submissions and subsequent evidentiary hearing set out a number of claimed acts which exceeded the court's \$500 limit condition and which allegedly portrayed nascent mail fraud schemes. The court revoked bond and remanded Mr. Van Den Heuvel to begin service of his sentence. This series of event was also covered by the media.

DEMOGRAPHICS AND MEDIA

The citizenry of the greater Green Bay area are exposed to and may take advantage of a host of news and social media outlets. They include but are not limited to the following: Radio, TV, Print news, Blogs, Twitter, and the entirety of the internet. The GreenBay/Appleton population is estimated to be 889,600 people. Local television estimates, as determined by Nielson, for the area is 433,970 households. Green Bay resident generally have access to numerous stations, including, but not limited to ABC,CBS,NBC,and FOX. Radio stations for the region number at least 12, of which only one highly rated station appears to be limited to news as its' focus: WTAQ-AM. The print media include the Green Bay Press Gazette and the Post Crescent, which have total weekly readership of

183,000 and 162,200, respectively. While there are countless blogs and Twitter accounts, one is notable for its' obsessive and subjectively derogatory coverage of the defendant; The Oneida Eye and its corresponding twitter account.

As part of the defendant's motion various articles, reports, blog entries and tweets are attached as Exhibit A. The total number is too large and would go into the hundreds of pages. Pursuant to the agreement with the government, recording of tv and radio broadcasts will be filed as a supplement to the instant motion, on or by Sept 4, 2018.

In addition to the extensive media and blog public coverage of the proceedings in the three Van Den Huevel case, the government itself has added to the weight of prejudicial publicity. The government Acting Public Information Officer released a statement after the defendant's sentencing, which included the court's remarks: "Mr. Van Den Heuvel presents himself as a selfless entrepreneur and philanthropist even today. It is a lie". Exhibit B. The U.S.S.E.C. releasd an announcement of the SEC lawsuit filing on September 19th, 2017. It provided the public with a one-sided detailed assessment of the defendant's alleged conduct, while also referencing the parallel action in 17 CR 164. Exhibit C. The entire complaint is online without, a need to access pacer. The complaint provides a detailed outline of the stream of conduct, in which the defendant is to have engaged.

A search of the internet also reveals an article from "Nip Impressions" a magazine which covers the paper and pulp industry.

It set out terms of the defendant's plea agreement as well as the allegations in the newest indictment and SEC complaint. Exhibit D

A summary of a 9/20/2017 TV broadcast has been included. Exhibit E. It had a photo of the defendant and a description of the 2017 indictment allegations. Attached is a picture of the defendant and summary of the WBAY broadcast describing the allegation in 16 CR 64 and resulting plea. Exhibit F. A FOX 11 news report described the defendant's guilty plea in 16 CR 64 together with the circumstances of the second indictment. Exhibit G. Recently in July, 9 2018 WBAY broadcast a description of the revocation of the defendant's release in both matters. Exhibit H. A brief search of the internet reveals a copy of the court of appeals decision affirming the judgment entered in Brown county in failure of Marco Araujo, against the defendant, for the precise fraud allegations which give rise to the charges in 17 CR 164. Araujo will be one of the government's main witnesses in the up coming trial.

The Green Bay Press Gazette has followed and published numerous articles about the defendant criminal cases. Since July 2015 there have been 27 published articles about the defendant or Green Box. Of those 27, 15 have been on the front page of the paper. Attached are some of the published pieces from that source. Exhibit J. Their titles need little explanation and summarize their contents, Examples are as follows: "Van Den Heuvel wants to dismiss attorney, federal prosecutors claim stall tactic;; "Wisconsin jobs agency writes off \$1.1 million loan the agency provided De Pere businessman jailed for defrauding investors";

"Green Box: Owner Ron Van Den Heuvel jailed, judge says fraud continued while on bond"; "Judge: Green Box owner Ron Van Den Heuvel must disclose fraud conviction to potential investors"; "Feds concerned Ron Van Den Heuvel could continue defraud investors even after conviction"; "Ron Van Den Heuvel sentenced to 3 years in federal prison on bank fraud cases"; "De Pere businessman Ron Van Den Heuvel will plead guilty to conspiracy to commit bank fraud"; "Inability to raise funds delays Green Box reorganization"; "Van Den Heuvel banker pleads in fraud case"; "De Pere businessman pleads not guilty to fraud"; "5 federal agencies investigating Green Box"; "De Pere business owner indicted for bank fraud"; "Judge issues arrest warrant in Green Box case"; "Van Den Heuvel's Green Box files for bankruptcy"; "Green Box businessman denies defrauding state"; "WEDC seeks records on De Pere business' unpaid loans"; "Bill would make it a felony to defraud WEDC"; and "CEO leaving troubled job creation agency". Many of the articles describe the precise criminal conduct in which the defendant was to have engaged. Many contain his photograph. One picture shows Mr. Van Den Heuvel in handcuffs as he is being led out of the federal courtroom.

Oneidaeye.com is a blog with an associated twitter page dedicated to NativeAmerican secular anti-crime/anti-corruption. The blogger and author of its' articles is Leah Sue Dodge. It appears that the blogger has made Mr Van Den Heuvel and Green Box a "Cause Celebre". Since 2008 the blogger has been writing about the defendants legal problems, whether they be civil, criminal or

administrative. She posts links to the actual legal documents from the proceedings, together with her own subjective analysis. A quick perusal of the blog would allow the reader to access, by way of example, the sentencing memo in 16 CR 64; the defendant's pro se motion to discharge defense counsel; the WEDC'S bankruptcy brief; and the court's order for the defendant to meet with pre trial services. Normally such filings would only be accessed through Pacer. A conservative estimate of the number of documents she has referenced is 315.

The bloggers apparent mission is to publicize everything obtainable about the defendant, whether it is irrelevant or relevant, derogatory or humiliating, or which has a damming impact on him. However, her public dissemination of "all things Van Den Heuvel" does not stop there. The blogs are replete with expression of personal sentiment about the defendant. They are not merely critical. Rather, they use pejorative disparaging terms which convey contempt and disdain. Here is the first line of the blog: "Ron Van Den Heuvel goes to jail... FINALLY!!!" It continues on the front page of the blog to say: "'PONZI RON' VAN DEN HEUVEL sentenced to 3 YEARS PRISON + 3 YEARS PROBATION for Bank Fraud Conspiracy & faces 240 Years Prison + \$2.5M Fine for new Wire Fraud & Money Laundering USDOJ Indictment & SEC Complaint over Green Box NA Detroit LLC EB-5 Immigrant Investor Fraud Scheme".

Scrolling down a few lines, but still in top pinned blog post it says: "U.S. Judge WILLIAM GRIESBACH says there's "little hope for rehabilitation" because "[Ron]'s still not gotten the message

that WHAT HE BELIEVES IS A LIE!" "Orange is the New Green Box."
"RONALD VANNED TO HOOSEGOW! There is a picture of Ron going from the courthouse to a US Marshals van in handcuffs. Looking through some of the more recent posts there is a #LockedHimUp hashtag next to his mugshot, "Once Uponzi Time" with a link to a 2014 news article about the prospective Green Box project. The flavor of the blogger's sentiments is exemplified in the attached tweets from the Oneida Eye. Exhibit I

The overwhelming negative press coverage from varying sources, including the government it itself, necessitates a change of venue. The submissions demonstrate that virtually every aspect of the three cases has been publicized, analyzed, and adjudicated. The Green Bay public knows that: he was convicted of a wide ranging bank fraud, together with the circumstances giving rise to that action; he was sentenced to prison; the comments by the court in imposing the sentence; the facts and details of the new indictment; the facts and details of the SEC complaint; the facts and allegations surrounding the government's April request for a change in the condition of release;, the allegations surrounding the government's July request for remand; the court's revocation of the defendant's release; all of the pleadings in each of the three cases, which have not been sealed; the defendant's extensive CCAP history; the appellate decision affirming the Araujo suit against the defendant; and the endless excoriating charges and commentary from the Oneida Eye and it corresponding Twitter tweets.

The defendant has, in the eyes of the Green Bay public, been

charged tried, convicted, and sentenced on the first case and, in the eyes of the media, and the government, has been similarly charged, and convicted and sentenced in the second. They have sustained a continuous bombardment of the details of the cases and opinions about the defendant's character and conduct. Before the first criminal case was filed the defendant was a man of great notoriety in the Green Bay area. Then the pre-charging public perception of the defendant was mixed, at best. Now, he faces trial shrouded by the constant adverse publicity from his first case. and the clear media prejudgment and bias surrounding the second. The publicity is both actual and presumed. The media coverage is the antithesis of dispassionate reporting or commentary. It is inflammatory and constant. There has been no cessation from the beginning prior to the indictment until as recently as the 10th of this month. Both the news accounts and blogging contain information which would not be admissible in the trial for 17 CR 164, to wit: a discussion of the events surrounding the litigation of 16 CR 64; the allegations supporting the governments post conviction motion for modification and revocation of release; the courts comments at sentencing and during post trial motion hearings; the bankruptcy of Green Box and the SEC filings. account. The defense, in no way encouraged or contributed to the inflammatory reports. Lastly, The publicity is largely confined to the Green Bay area from which the jury pool will be chosen.

It respectfully suggested that the court change venue to Milwaukee. Jury management for the Eastern District of Wisconsin in

Milwaukee has advised that it seeks to secure jurors from a geographical area close in proximity to the city. Milwaukee jurors would not have been infected with the same taint as prospective jurors from Green Bay. Furthermore, it is not believed that jurors would be chosen from the Green Bay area.

It is of further note that the proposed change of venue will serve to further the goal of cost containment. The trial of this matter will last at least two, and, quite possibly, three weeks. Counsel, pro hac vice counsel, Eric Hart and the defense paralegal will be needed in the courtroom during the trial. Their participation will necessitate C.A. funding for hotels and travel during the trial. If the matter were tried in Milwaukee, such costs would be obviated.

Inconvenience to witnesses in Green Bay, by requiring travel to Milwaukee to testify, is far outweighed by the reasons set forth herein. Ron Van Den Heuvel cannot get a fair trial if jurors are selected from the Green Bay area.

Dated at Milwaukee, Wisconsin this 17th day of August, 2018.

Respectfully submitted,

/s/ Robert G. LeBell

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