

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 17-CR-160

RONALD VAN DEN HEUVEL,

Defendant.

**UNITED STATES' RESPONSE TO DEFENDANT'S
MOTION TO SUPPRESS PHYSICAL EVIDENCE**

The United States of America, by and through its undersigned attorneys, hereby responds to defendant Ronald Van Den Heuvel's motion to suppress physical evidence seized by the Brown County Sheriff's Office ("BCSO") pursuant to search warrants on July 2, 2015 (Doc. 62). In support of his motion, Van Den Heuvel presents two arguments: First, he claims that the search warrants were "facially overbroad," and second, he claims that execution of the warrants greatly exceeded the scope of the warrants. This response principally addresses the first issue, which can be resolved on the face of the warrants. It is proper for a search warrant to authorize as broad a search as is justified by the underlying probable cause. Here, the search warrant affidavits established probable cause to believe that Van Den Heuvel's enterprises were permeated with fraud, justifying the search warrant's breadth. Although broad, the search warrants provided sufficient limits to guide the officers by specifying the businesses at issue, a particular time frame (December 31, 2010 forward), and the particular scheme at issue. To the extent certain terms of the search warrant were broad, they can be severed and, in all events, the exclusionary rule should

not apply because the searching officers acted in good faith reliance on the independent magistrate's judgment in issuing the search warrants.

The second issue, concerning the execution of the search warrants, will be resolved after an evidentiary hearing scheduled for September 4, 2018. Consequently, this response provides only a brief overview of the anticipated evidence and relevant legal authorities regarding the execution of the search warrants. The Seventh Circuit has not recognized blanket suppression of all evidence as an available remedy; rather, suppression is only appropriate for evidence seized beyond the scope of a search warrant. Case law from other circuits have supported blanket suppression only when officers act in bad faith and flagrantly disregard a search warrant's limits. Here, the evidence will show that the officers acted in good faith, seeking to act reasonably in executing a search warrant that sought evidence of a complicated fraud scheme. Thus, at most, the Court should only suppress evidence seized outside the scope of the search warrant.

BACKGROUND

A. Van Den Heuvel's Businesses

As alleged in the indictment, Van Den Heuvel had some success in the recycling and paper-making industry earlier in his career. *See* Doc. 1 ¶ 3. He had formed and controlled numerous business entities, many of which were not active. *Id.* By the end of 2010, Van Den Heuvel did not own or control any facilities that generated any significant revenue. *Id.* He nonetheless maintained offices at 2077 Lawrence Drive, Suites A and B. In approximately 2013, Van Den Heuvel arranged for one of his business entities to take control of a converting facility, which was renamed Patriot Tissue, LLC. The Patriot Tissue business could purchase parent rolls of paper and convert them into products like napkins. Patriot Tissue was located at 2107

American Boulevard. As alleged in the search warrant affidavits, in 2015, Patriot Tissue was the only business associated with Van Den Heuvel that produced a product and generated some revenue. *See* Doc. 63-2, ¶ 27.a (Exhibit 2).

B. BCSO Investigation into Van Den Heuvel and Search Warrants

The BCSO began investigating Ronald Van Den Heuvel and his companies in approximately January 2015. The BCSO's investigation determined that around 2010, Ronald Van Den Heuvel had begun promoting his "Green Box" business plan for converting fast food waste into consumer products and energy without any need for landfills or waste water discharges. Van Den Heuvel induced lenders and investors to provide funding for his companies but diverted large sums to other uses, including his own personal spending.

The affidavit used to obtain the search warrants at issue relied on victim statements, court and government records, and statements by Van Den Heuvel's own employees to establish ample cause to believe that he conducted his businesses through a series of interlocking fraudulent maneuvers. The following numbers refer to the affidavit's paragraphs, Doc. 63-2 (Ex. 2)):

- Van Den Heuvel made false representations to a series of investors to get them to make large investments in his Green Box enterprises (4-12, 23, 28, 29)
- Van Den Heuvel pledged the same collateral to multiple creditors (14)
- Van Den Heuvel represented Green Box to be a functioning entity to possible investors when it was not (14, 16, 27)
- Money obtained from investors for Green Box was moved between companies and used by Van Den Heuvel for clearly personal expenses, not for stated purposes (13, 15, 19, 21, 24, 25, 26, 28)
- Those expenditures included items like alimony to his ex-wife, payments on a house for his ex-wife, payments on a Green Bay Packers luxury box, and a trip to Las Vegas (15)

- Van Den Heuvel directed his employees to make false accounting entries in order to mask his financial activities (13, 22, 27)
- In order to stall creditors, Van Den Heuvel wrote large checks that he knew had insufficient funds to cover them (17)
- He regularly withdrew money from his business entities for his own personal purposes (20, 21)
- He inflated the value of his purported assets (25)
- He knowingly made false representations in a civil suit (26)
- Van Den Heuvel transferred titles to company vehicles to his son in law in order to use as collateral to obtain loans for Van Den Heuvel's benefit (26)
- He took money out of the company but did not pay himself wages in order to avoid paying tax debts to the IRS (26)
- In that regard, he regularly failed to file required tax returns (26)

In short, the affidavit establishes that Van Den Heuvel ran his businesses as a fraudulent enterprise meant to finance his high-end lifestyle with other people's money.

Based upon this showing, Brown County Circuit Judge Zuidemulder issued six search warrants on July 2, 2015. *See* Doc. 63-1 (Ex. A). The search warrants listed particular businesses associated with Van Den Heuvel. *See* Doc. 63-1, at 1. The search warrants then authorized the seizure of 10 categories of items "which things were used in the commission of, or may constitute evidence" of particular crimes involving those businesses, namely theft and securities fraud as established by the underlying affidavit. *See id.* at 2-3. The categories overlap and fall into three basic groups. *Id.* First, categories one to four covered computers and digital devices that could store electronic records, as well as the software and information necessary to access those electronic records. Second, categories five through nine covered business and financial records for Van Den Heuvel's organizations. Thus, category five covered "Papers,

including, but not limited to, spreadsheets, binders, accounting ledgers.” Category six covered “Microfiche files.” Category seven covered “[a]ll business and financial records for organizations associated with Ronald Van Den Heuvel from December 31, 2010, to present,” including a list of examples. Category eight covered tax returns. Category nine covered Schedule K-1s. Finally, category ten covered “[i]tems that would tend to show dominion and control of the property searched” such as “utility bills, telephone bills, correspondence, rental agreements, and other identification documents.” Doc. 63-2, at 2.

The search warrants were executed at these locations:

1. 2077 Lawrence Drive, Suite A, an office suite used by Van Den Heuvel.
2. 2077 Lawrence Drive, Suite B, another office suite used by Van Den Heuvel.
3. 2302 Lost Dauphin Road, the Van Den Heuvel residence.
4. 2107 American Boulevard, the site of Patriot Tissue.
5. 500 Fortune Avenue, De Pere, WI, a facility in which Van Den Heuvel stored equipment for Eco Fibre, a Van Den Heuvel entity.
6. 821 Parkview Drive, a warehouse with equipment controlled by Van Den Heuvel.

All six warrants were identical but for the identification of the place to be searched, and all six supporting affidavits were identical as well.

C. Execution of the Search Warrants

The BCSO led the operations to execute the search warrants. Because the operation involved searching multiple locations for a broad range of materials, the BCSO obtained the assistance of other law enforcement agencies, including local police departments, Brown County Drug Task Force, and the FBI. On the morning of July 2, 2015, the BCSO briefed all officers involved in the search. The briefing included instructions on the nature of the investigation, the

officers' respective roles, and the materials to be seized. The officers executed the searches at the respective locations, summarized below. The search warrant returns are attached here as Exhibit A. Nothing was seized from 500 Fortune Avenue or 821 Parkview Drive; only photographs were taken of those facilities.

1. 2077 Lawrence Drive, Suites A & B

As alleged in the search warrant affidavits, Ronald Van Den Heuvel maintained office Suites A and B at 2077 Lawrence Drive. Doc. 63-2, ¶ 6-7, 9, 22, 27. Van Den Heuvel used that address for Green Box NA Green Bay LLC as well as other numerous other entities that he promoted to induce investments and loans, to transfer funds to avoid creditors, and to pay personal expenses. He did not operate any business that actually provided any goods or services in these suites. The vast majority of records seized came from these suites. *See* Ex. A.

The officers began searching the suites at 10:37 am. Doc. 63-3, at 6. Employees were escorted out of the premises. Because the search warrant authorized the seizure of electronic devices that could store relevant records, the officers seized such devices from the employees, including computers, tablets, and smartphones. The officers also seized computers of the businesses. In order to seize the computers, the officers had to disconnect the computers from the network. The officers did not intentionally damage any equipment or network connections.

Within the suites, the officers encountered a large volume of records that fell within the scope of the search warrant. In many areas, documents that predated December 31, 2010, were intermingled with records that followed that date. Nonetheless, the officers did not seize all documents. The officers made reasonable efforts to review the documents and determine which fell within the search warrant. The officers also seized some physical items that had evidentiary

value, including a golf bag that contained drawings and documents related to Green Box and samples of pellets and oil that Van Den Heuvel used in promotional pitches. The officers' searches of the suites lasted until approximately 7:00 p.m. *See* Doc. 63-3, at 17 (Ex. 3).

2. 2302 Lost Dauphin Road (Residence)

The officers conducted a comparatively brief search of the Van Den Heuvel residence. The search began at approximately 10:30 a.m. and concluded about two hours later. According to the search warrant return, the officers seized eleven digital devices that could hold relevant records, a briefcase with files, a checkbook, and a small amount of hard copy files. *See* Ex. A; Doc. 63-8 (Ex. 8).

The hard copy records seized from the residence included Green Box business plans and promotional materials, Ronald Van Den Heuvel's call logs, credit card statements, and receipts from furniture purchased with funds from an account used in the Green Box fraud. These hard copy records also included bank records and correspondence between Kelly Van Den Heuvel and banks regarding bank accounts involved in the Green Box fraud scheme. The defense claims that the BCSO seized medical records and children's education records. To the extent such records reflected billing and payment information, they fell within the search warrant as potential evidence of how ill-gotten funds were spent. *See* Doc. 63-1, at 2. The affidavit expressly notes by way of example that one victim's investment into Green Box was diverted to pay Kelly Van Den Heuvel's dental bill. *See* Doc. 63-2 ¶¶ 26.b.

3. 2107 American Blvd. (Patriot Tissue)

As noted, the building at 2107 American Boulevard housed Patriot Tissue, the only Van Den Heuvel-related entity that actually produced or sold a product. *See* Doc. 63-2, ¶ 27. The

search warrant affidavit stated that Patriot Tissue employees were paid by Green Box NA Green Bay, LLC, and that employees would occasionally move between various entities controlled by Van Den Heuvel. *Id.* The affidavit further stated that documents related to Green Box NA Green Bay were located at the Patriot Tissue facility. *See id.*

Because Patriot Tissue was an operating business, the officers sought to minimize their search's intrusiveness. The officers imaged, rather than seized, computers that may have relevant records. The officers encountered a large volume of Van Den Heuvel's hard copy business and financial records. The officers made reasonable efforts to review the records and seize only records that fell within the search warrant. At one point, the officers determined that they had inadvertently seized several pallets of records that predated the search warrant's December 31, 2010 limit, and so the officers returned those pallets the same day.

The officers also encountered an office and living quarters occupied by Attorney Ty Willihnganz. The officers took steps not to seize records related to any entities that were not associated with Van Den Heuvel. The officers then instituted procedures to segregate any materials that arguably contained privileged communications.

The search warrant return indicates that, in total, the officers seized only nine (9) file boxes from the front office storeroom, two file boxes from Willinganz's living quarters, a file box and paperwork from the front office, and samples of oil/chemicals from the a production room. *See Ex. A, at 11.*

4. The BCSO's Subsequent Review of Seized Material

Given the probable cause to believe that Van Den Heuvel was operating a pervasively fraudulent enterprise, and given the large volume of records Van Den Heuvel maintained, the

BCSO ultimately seized a large volume of records and stored them in a secure warehouse at the BCSO facility. The BCSO reviewed the seized materials as part of its investigation. Given the volume and complexity of the materials, as well as the BCSO's limited resources, the review required a substantial amount of time.

D. Federal Investigation into Green Box Fraud and Review and Return of the Search Warrant Materials

In early 2015, the BCSO apprised the FBI that it was investigating Van Den Heuvel for the Green Box fraud scheme. At that time, the FBI was working with the Federal Deposit Insurance Corporation ("FDIC") to investigate Van Den Heuvel for bank fraud, which resulted in Van Den Heuvel's conviction in Case No. 16-CR-64. In late 2015, the FBI and the United States Attorney's Office decided to investigate the Green Box fraud scheme actively, assigning prosecutors and case agents from their Milwaukee offices, which resulted in this case.

As that federal investigation progressed into 2016, the FBI took the lead in processing the materials seized by the BCSO. In June 2016, the FBI devoted significant resources to completing review of the materials. The FBI segregated materials that could have significant evidentiary value for the Green Box fraud investigation from other materials that, although potentially relevant and properly seized within the search warrant, were not significant enough to retain. The FBI took custody of the significant materials and scanned them. The United States has provided them to defense counsel in discovery. Those retained materials totaled seven pallets and approximately 313,000 pages.

In late June 2016, the Brown County District Attorney initiated discussions with defense counsel, counsel for Green Box NA Green Bay, and the United States regarding the return of materials not being retained for evidentiary value. Discussions continued through July and

August 2016, partly because Ronald Van Den Heuvel changed counsel. In August 2016, the BCSO returned to the defendant the materials deemed not to have evidentiary value.

ARGUMENT

Van Den Heuvel has the burden to show that the search warrant was invalid or that the officers violated the Fourth Amendment in executing the warrant. *See, e.g., United States v. Scott*, 731 F.3d 659, 663 (7th Cir. 2013). He cannot meet that burden.

I. THE WARRANTS IN THIS CASE SUFFICIENTLY PARTICULARIZED THE ITEMS TO BE SEIZED.

The Fourth Amendment requires that a search warrant particularly describe the things to be seized. This prevents the use of a warrant for exploratory rummaging and ensures that the scope of the search will be confined to evidence relating to the crime under investigation, as to which the application should establish probable cause. *See, e.g., Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). To satisfy this requirement of specificity, a search warrant “must describe the objects of the search with reasonable specificity, but need not be elaborately detailed.” *United States v. Reed*, 726 F.2d 339, 342 (7th Cir. 1984); *see also, e.g., United States v. Vitek Supply Corp.*, 144 F.3d 476, 480-481 (7th Cir. 1998). As the Seventh Circuit has explained, “a warrant must explicate the items to be seized only as precisely as the circumstances and the nature of the alleged crime permit.” *Vitek Supply Corp.*, 144 F.3d at 480-481; *see also, e.g., United States v. Wenzel*, 854 F.3d 957, 961 (7th Cir. 2017); *United States v. Schoffner*, 826 F.2d 619, 630 (7th Cir. 1987).

In cases involving searches for evidence of complex financial crimes, courts have often upheld search warrants seeking to seize a broad array of typical business and financial records. For example, in *United States v. Hills*, 618 F.3d 619, 634 (7th Cir. 2010), the warrant authorized the seizure of all files and electronic media capable of storing business records relating to complex

financial crimes under investigation, as established by the accompanying affidavit. Also, the defendants did not identify any particular evidence seized that was not authorized by the warrant. On those bases, the Seventh Circuit held that the warrant sufficiently specified the items to be seized.

Other courts have similarly found that when “complex financial crimes are alleged, a warrant properly provides more flexibility to the searching agents.” *United States v. Dupree*, 781 F. Supp. 2d 115, 149 (E.D.N.Y. 2011) (rejecting claims of lack of particularity and over-breadth despite broad search warrant); *see, e.g., United States v. Yusuf*, 461 F.3d 374, 395 (3d Cir.2006) (“the government is to be given more flexibility regarding the items to be searched when the criminal activity deals with complex financial transactions”); *United States v. Rankin*, 442 F. Supp. 2d 225 (E.D. Pa. 2006) (rejecting claim of overbroad warrant for evidence of tax crimes, despite long list of items to be seized, because more precise description was not feasible); *United States v. Gotti*, 42 F.Supp.2d 252, 274 (S.D.N.Y.1999) (“where a particularly complex scheme is alleged to exist, it may be appropriate to use more generic terms to describe what is to be seized”). As the Fourth Circuit observed, in “choosing to uphold contested seizures pursuant to inclusive language, courts have insisted that the ‘complexity of an illegal scheme may not be used as a shield to avoid detection.’” *United States v. Phillips*, 588 F.3d 218, 226 (4th Cir. 2009).

For example, in *United States v. Gardiner*, 463 F.3d 445, 471 (6th Cir. 2006), the search warrant broadly authorized the seizure of a wide range of categories of business and financial records. The Sixth Circuit noted that all those items would likely contain evidence of the bribery and extortion scheme being investigated. The search was limited by date—1994 to the date of the

search. The court held that such limitation in the warrant sufficiently specified the items to be seized. *Id.*

As in the cases cited above, the search warrants here adequately specified the items to be seized, given the complex financial fraud under investigation. First, the search warrants specified the particular businesses associated with Van Den Heuvel. Doc. 63-1 (Ex. 1). Second, the search warrants required that the items to be seized relate to particular crimes (theft in violation of Wis. Stat. § 943.20(1)(d) and securities fraud under Wis. Stat. Ch. 551), and the affidavit referenced “the facts . . . given under oath by Sergeant Mary Schartner.” *Id.* Thus, the search warrant expressly guided the officers to search for records related to the scheme laid out in the affidavit. Finally, the search warrants’ list of ten categories limited the officers to seizing computers and records dating from December 31, 2010 forward, to the extent they related to the scheme alleged in the affidavit. These limits bring the search warrants squarely within similar search warrants for evidence of complex financial crimes that courts have affirmed in the above-cited cases.

Van Den Heuvel argues that category 5’s reference to “papers” is so broad as to “nullif[y]” other limits in the search warrant. In context, however, the reference to “papers” is reasonably understood to mean *financial* papers, since category 5’s following examples are “spreadsheets, binders, accounting ledgers.” *See* Doc. 63-1. Moreover, categories 5 through 9 are reasonably read as a group, given their similarity and overlapping nature. Read together, categories 5 through 9 authorize the seizure of Van Den Heuvel’s and his companies’ financial and business records, subject to critical limitations—namely, that they relate to (1) the specified companies, (2) the scheme alleged in the affidavit, and (3) the specified date period of December 31, 2010 forward.

Although the date restriction of December 31, 2010 appears only in category 7, that date restriction applied to all the categories. That is so for two reasons. First, the probable cause established in the affidavit concerned a fraud scheme that began in approximately 2011. Consequently, the warrants' requirement that seized items constitute evidence of that scheme necessarily restricted the search to the scheme's time frame. In *United States v. Dupree*, the district court reached the same conclusion regarding a search warrant that included date restrictions on only certain times. *See* 781 F. Supp. 2d 115, 155 (E.D.N.Y. 2011) ("The court finds that neither the time frame provided for in the warrant as to some items, nor the lack of time frame as to other items, renders the warrant overbroad."). Second, category 7's breadth—"[a]ll business and financial records for organizations associated with Ronald Van Den Heuvel"—essentially encompasses the other categories, such that its date restriction is reasonably read to apply to the other categories. Importantly, the evidence will show that the searching officers understood the date restriction to apply and sought to limit their search accordingly.

Even if the Court concludes that certain terms of the warrants, such as category 5's "papers," is overbroad, the remedy would be to sever the overbroad section, rather than suppress all evidence. *See Reed*, 726 F.2d at 342 (declining to suppress evidence properly seized under a particularized term, despite presence of an arguably overbroad term); *United States v. Klebig*, 228 F. App'x 613, 619 (7th Cir. 2007) (severing overbroad term "any oil" from a search warrant, and affirming seizure of evidence under narrower terms); *see also, e.g., United States v. SDI Future Health, Inc.*, 568 F.3d 684, 706-07 (9th Cir. 2009); *United States v. Greene*, 250 F.3d 471, 477 (6th Cir. 2001); *United States v. Brown*, 984 F.2d 1074, 1077 (10th Cir. 1993); *United States v. Falon*, 959 F.2d 1143, 1149 (1st Cir. 1992). As the Fourth Circuit has explained, "[w]hile a

sufficiently particular qualifying phrase may have the effect of bringing an otherwise ‘general’ warrant within the constitutional standard, a defective qualifying phrase will not defeat a warrant which is otherwise sufficiently specific.” *United States v. Jacob*, 657 F.2d 49, 52 (4th Cir. 1981). So also here, the presence of the broad terms “papers” should not be read to defeat the warrant’s restrictions on companies, dates, and the alleged scheme, especially given that the search officers understood themselves to be so restricted.

Van Den Heuvel also complains that the warrants did not specify any protocol for the searching of the computers seized. A similar claim was rejected in *Hills*. See 618 F.3d at 634. *Hills* cited *Dalia v. United States*, 441 U.S. 238, 257-58 (1979) to hold that the authority to determine how a warrant should be executed is best left to the officers executing the warrant. The Seventh Circuit saw no reason not to apply that rule to computers. *Id.*; see also *United States v. Norris*, 640 F.3d 295, 302 (7th Cir. 2011); *United States v. Husband*, 226 F.3d 626, 634 (7th Cir. 2000).

Thus, the warrants here specified items to be seized, their relevance to the crimes under investigation, and provided a timeframe for the items sought. That explicates the items to be seized as precisely as the circumstances and the nature of the crimes alleged permit. See *Vitek*, 144 F.3d at 481.

II. THE SEARCH WARRANTS PROPERLY AUTHORIZED THE SEIZURE OF A WIDE RANGE OF MATERIALS BECAUSE THE BUSINESSES WERE PERMEATED BY FRAUD.

In *United States v. Bentley*, 825 F.2d 1104, 1110 (7th Cir. 1987), the Seventh Circuit held that “[w]hen the whole business is a fraud, the warrant properly may permit the seizure of everything the agents find.” In that case, the Seventh Circuit considered a warrant to search the

office of a fraudulent investment firm. *Id.* The defendant argued that there was insufficient specificity in the search warrant as to the items to be seized. *Id.* The court of appeals held that there were certain cases in which a warrant directing searches to take every piece of paper related to the business was sufficiently specific because the whole business was a fraud. *Id.*

Courts have applied this “permeated by fraud” doctrine to approve of broad search warrants when there was probable cause to believe an enterprise was fraudulent. *See United States v. Sigillito*, 759 F.3d 913, 924 (8th Cir. 2014); *see also, e.g., United States v. Smith*, 424 F.3d 992, 1006 (9th Cir. 2005); *United States v. Falon*, 959 F.2d 1143 (1st Cir. 1993); *United States v. Oloyede*, 982 F.2d 133, 141 (4th Cir. 1992); *United States v. Durham*, No. 11-CR-42, 2012 WL 1623051 (S.D. Ind. 2012) (following *Bentley* to approve a broad search of a financial firm engaged in a Ponzi scheme); *United States v. Hollnagel*, No. 10 CR 195, 2011 WL 4375891, at *9 (N.D. Ill. Sept. 20, 2011) (approving a broad search when the “[a]ffidavit establishes probable cause to believe that Defendants were engaged in an extensive, widespread scheme to defraud their investors and others”).

This rule applies here. As detailed above, the affidavit underlying the search warrants provided substantial, reliable information showing that Van Den Heuvel ran his businesses as a fraudulent enterprise meant to finance his high-end lifestyle with other people’s money. Further, the affidavit established that his methods were likely to be evident in a wide variety of records throughout his business. Van Den Heuvel created numerous business entities, moved funds between them frequently, inflated the value of assets, pledged assets to multiple creditors, and directed the creation of false accounting records. Those allegations alone created probable cause to find that all of Van Den Heuvel’s business files would be proof of fraud. In addition, the

affidavit established that Van Den Heuvel regularly misappropriated lenders' and investors' funds, using them for improper purposes and for his own personal lifestyle. Consequently, all records of how Van Den Heuvel expended funds were likely evidence of the crime. Thus, Van Den Heuvel's criminal activities were inextricably entwined with his businesses, which justified the seizing of all of his business records from the Lawrence Drive suites in the timeframe of the scheme.

Likewise, the affidavit provides probable cause to believe that evidence of that pervasive fraud would also be found at Van Den Heuvel's residence. The very nature of the fraud—diverting investors' and lenders' funds to personal spending—gives reason to think Van Den Heuvel would have relevant records at his home. Indeed, the affidavit notes that records and information related to financial crimes are often located at a suspect's residence (39). In that vein, the affidavit recounts specific examples of personal expenditures, including payment of personal credit cards, alimony, insurance for his wife and children, and vacations, that were likely to result in records found in the home. (13, 15). Thus, the nature of the probable cause justified a broad search also of Van Den Heuvel's residence, though the search officers were careful not to seize many records from the home. *See* Doc. 63-8.

III. THE OFFICERS EXECUTING THE SEARCH WARRANT ACTED IN GOOD FAITH RELIANCE ON A FACIALLY VALID WARRANT.

Even if there were imperfections in the search warrant or its execution, the items found and seized would still be admissible into evidence under the “good faith” exception to the warrant requirement. In *United States v. Leon*, 468 U.S. 897 (1984), the Supreme Court held that the exclusionary rule did not apply to evidence obtained by officers acting in reasonable reliance upon a search warrant, even if that warrant would ultimately be found to be unsupported by probable cause. *See United States v. Garey*, 329 F.3d 573, 577 (7th Cir. 2003); *United States v. Koerth*, 312

F.3d 862, 868 (7th Cir. 2002). Indeed, “an officer’s decision to obtain a warrant is prima facie evidence that he or she was acting in good faith.” *Koerth*, 312 F.3d at 868. Thus, *Leon*’s good faith rule has been applied to overbroad warrants. *Id.*; see also, e.g., *United States v. Maxwell*, 920 F.2d 1028, 1034 (D.C. Cir. 1991) (warrant overbroad but good faith seizure upheld); *United States v. Diaz*, 841 F.2d 1 (1st Cir. 1988) (same); *United States v. Lee*, 2015 WL 5667102 (N.D. Ga 2015) (same).

The Court in *Leon* explained that the exclusionary rule should not apply in such “good faith” circumstances because its application would deter unconstitutional conduct. 468 U.S. at 923. Instead, *Leon* held that searching agents would not be able to rely upon “good faith” only in these four circumstances: (1) the affidavit contained information which the affiant knew or should have known was false; (2) the issuing magistrate was not detached and neutral but instead traded his judicial role for a prosecutorial one; (3) the affidavit fell so short of probable cause that no official could reasonably believe that probable cause existed; and (4) the warrant was so deficient on its face that no executing officer could reasonably presume it to be valid. *Id.*

None of those circumstances are present here. Although Van Den Heuvel has sought a *Franks* hearing, alleging that the affidavit contained knowingly false information, that argument lacks merit, as the United States has contended in its response. See Doc. 83. There is no allegation that the issuing judge, Brown County Circuit Court Judge Donald Zuidmulder, was not detached and neutral. And, as discussed above, there is ample cause to believe that Van Den Heuvel and his businesses were engaged in investment fraud. Even if this Court felt that it would not have issued this warrant, that would be a close question, about which reasonable jurists could disagree.

Finally, there is no glaring deficiency on the warrants' face that would signify to any executing officers that they could not reasonably presume the warrant to be valid. Van Den Heuvel has argued that the warrant inadequately specifies the items to be seized. But, as detailed above, the strong probable cause showing, combined with the nature of the crime (complex fraud), the evidence to be seized (documentary evidence), and the place to be searched (offices and a residence) could have led a prudent officer to rely on the broad search warrant. That is especially so given that the officers executing a search warrant cannot be expected to know the nuances of the law discussed by the attorneys in this case. *Cf. Sigillito*, 759 F.3d at 923 (applying *Leon*'s good faith rule to sustain a broad warrant based upon a showing that the business was permeated with fraud); *Durham*, No. 11-CR-42, 2012 WL 1623051, at *7-*8 (same).

Under *Leon*'s good faith doctrine, even if this Court were to find some technical defect in this warrant or its execution, there is no basis to suppress any evidence which was seized under these warrants.

IV. THERE IS NO BASIS FOR BLANKET SUPPRESSION BASED UPON HOW THE OFFICERS EXECUTED THE SEARCH WARRANTS

Van Den Heuvel's second argument is that all the seized evidence should be suppressed on the ground that the officers "flagrantly disregarded" the search warrants' limitations. Doc. 63, at 19-20. Although the United States will respond to this argument in full after the evidentiary hearing, this preview is offered in advance of the September 4, 2018 evidentiary hearing. This argument fails both because blanket suppression is not an available remedy and because, in all events, the officers executed the search warrant reasonably.

A. Blanket Suppression Is Not an Available Remedy

When officers execute their search in the authorized places but seize items outside the scope of the warrant, “there is certainly no requirement that lawfully seized evidence be suppressed as well.” *Waller v. Georgia*, 467 U.S. 39, 43 n.3 (1984). Rather, the remedy in such cases is to suppress only the evidence that does not fall within the warrant. *See United States v. Buckley*, 4 F.3d 552, 557–58 (7th Cir. 1993). Moreover, it is a defendant’s burden to identify the evidence that he or she believes fell outside the warrant. *Id.* Thus, if defendants “wish for suppression of all the evidence, they must assert that all of the evidence was beyond the scope of the warrant.” *Id.* “The seizure of uncontested evidence remains valid and is ‘severable from any invalid search.’” *Id.* (quoting *United States v. Reed*, 726 F.2d 339, 342 (7th Cir. 1984)).

The defendants rely on decisions from outside the Seventh Circuit to argue that blanket suppression of all the evidence is required when officers “flagrantly disregard” the search warrant’s limitations. *See* Doc. 63, at 20. Although the Seventh Circuit has not squarely decided the issue, in *Buckley*, the Court expressly rejected the invitation to apply blanket suppression. *See* 4 F.3d at 557-58. Since then, the Seventh Circuit has followed *Buckley*’s traditional approach, reserving suppression only for evidence seized outside the scope of the search warrant. *See, e.g., Klebig*, 228 F. App’x at 619. Thus, the defendants have the burden to identify specific evidence they believe was seized outside the warrant and should be suppressed.

As a practical matter, the United States has agreed to provide defense counsel with a list of potential trial exhibits that derived from the search warrants in advance of the pretrial conference. That will allow defense counsel to raise claims about whether those exhibits were seized outside the scope of the search warrants, and the United States could then present its responses, including alternative bases for admission, such as independent source or inevitable

discovery. That process fits with *Buckley*'s approach to tailoring the suppression remedy to the harm. Accordingly, the Court should follow that process and deny the request for blanket suppression.

B. Blanket Suppression Is Not Appropriate Because the Officers Did Not “Flagrantly Disregard” the Search Warrant’s Limitations

Even if blanket suppression were a possible remedy, it would not be appropriate here because the officers did not “flagrantly disregard” the search warrant’s limitations. The circuits that have recognized the doctrine have treated blanket suppression as an extraordinary remedy that applies “only when (1) [government agents] effect a ‘widespread seizure of items that were not within the scope of the warrant,’ and (2) do not act in good faith.” *United States v. Shi Yan Liu*, 239 F.3d 138, 140 (2d Cir. 2000).

Accordingly, courts have applied blanket suppression rarely, in cases involving extreme circumstances of officers who willfully disregarded a search warrant and embarked on exploratory, general searches. For example, the remedy has been applied when officers holding a narrow search warrant for firearms and drugs consciously treated the warrant as authorizing a “general search,” “simply seized anything of value,” and sought “to turn up evidence of additional crimes.” *United States v. Foster*, 100 F.3d 846, 851 (10th Cir. 1996). By contrast, even when officers collect substantial records beyond the scope of a search warrant, blanket suppression is not warranted if the “record does not reflect a flagrant general search.” *United States v. Sedaghaty*, 728 F.3d 885, 915 (9th Cir. 2013).

Whether the officers acted in “flagrant disregard” of the search warrant must be determined in light of the search warrant itself. When a search warrant authorizes officers to seize a broad array of documents, the officers act reasonably in doing so. Here, the officers

searched and seized broadly because they were executing a broad search warrant, based on that type of broad probable cause. This is fundamentally different than officers who execute a narrow search warrant and willfully disregard its limits.

Even when an enterprise is not entirely permeated with fraud, courts recognize that searches for evidence of fraud schemes often will result in some over-collection. Fraud schemes frequently involve a wide array of records, and relevant records may be mixed throughout the business's files. In such instances, it is reasonable for officers to seize entire groups of files to be reviewed in closer detail off site. *See, e.g., Shi Yan Liu*, 239 F.3d at 140 (approving seizure of entire file cabinets); *United States v. Hargus*, 128 F.3d 1358, 1363 (10th Cir. 1997) (same). For example, in *United States v. Tomkins*, officers executing a search warrant for financial documents and other records seized an entire file cabinet, which contained some records that were outside the scope of the warrant. No. 07 CR 227, 2009 WL 590237, at *6 (N.D. Ill. Mar. 6, 2009), *aff'd*, 782 F.3d 338 (7th Cir. 2015). The court rejected the defendant's claim that all evidence must be suppressed because "as a practical matter given the size of the cabinet, it was reasonable for the agents to search it off-site." *Id.* at *6. Such over-collection does not constitute a flagrant, general search.

Applied here, because there was probable cause to believe Van Den Heuvel's businesses were pervasively fraudulent, the officers could seize all records related to his business dealings and misuse of funds, within the bounds of the search warrant. The warrants included significant limits, such as the date (December 31, 2010). The officers made reasonable efforts to abide by that limitation and, in fact, left behind many records that preceded that date or otherwise did not fall within the search warrant.

As it turned out, in many areas, records that preceded December 31, 2010 were intermingled with records that followed that date. In addition, given the volume of records and the nature of the scheme, the officers could not reasonably scrutinize each record on site. Consequently, to some extent, the officers had to over-collect records and review them more carefully off-site. That over-collection was reasonable in the circumstances and did not constitute a flagrant disregard of the search warrant's limits.

After the search, the BCSO worked diligently to review the materials and segregate only the materials likely to have evidentiary value—even if other records also fell within the bounds of the search warrant and could have been retained. Given the wide-ranging, long-term, and complex nature of Van Den Heuvel's fraudulent schemes, however, the review necessarily was time-intensive. After federal law enforcement agencies decided to investigate Van Den Heuvel's Green Box fraud actively, they worked with the BCSO, devoted substantial resources to completing the review, and expedited the return of materials that did not have significant evidentiary value. In addition, the United States has made digital copies of all the retained materials available to the defendant. In sum, given the circumstances, the officers search, seizure, and subsequent review and return of the material was reasonable. At a minimum, the officers did not act in such flagrant disregard of the search warrant's limits as to justify the draconian remedy of blanket suppression.

CONCLUSION

For the reasons stated above, the United States respectfully requests that the Court deny the motion to suppress physical evidence.

Dated at Milwaukee, Wisconsin this 24th day of August, 2018.

Respectfully Submitted,

MATTHEW D. KRUEGER
United States Attorney

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SHERIFF'S OFFICE

Brown County

2684 Development Drive
Green Bay, WI 54311
(920) 448-4200

RETURN OF SEARCH WARRANT BY LAW ENFORCEMENT OFFICER

Brown County Circuit Court, State of Wisconsin

I hereby certify that, by virtue of the within warrant, the following listed items were found and seized and are now being processed/custody from the listed location:

ADDRESS/LOCATION: 2077 Lawrence Drive Suite A, De Pere WI 54115

ITEM(S) SEIZED: Documents associated with the businesses listed on the Search Warrant

FILED
JUL 07 2015

CLERK OF COURTS
BROWN COUNTY - WI

10:45am
CF

See attached list for additional seized items found and in custody.

Dated this 6th day of July, 2015

Officer Name: Sgt. Mary Schartner

Signature:

Sgt. Mary Schartner
177

Page 1 of 5

Suite A

110

2 boxes - Documents - Stuckart
1 bag - Documents - Stuckart
1 bundle - hard copy - documents - Stuckart
2 boxes - Product - Atlas

113

1 bag - Electronics - Kinard
2 Computer towers - Kinnard

112

1 4-drawer file cabinet - documents - Linsmeyer
1 bag - documents - Linsmeyer

119

3 boxes - documents - Stuckart
1 bag - electronics - Stuckart
2 bags - electronics - Burger

108

1 box - electronics - Guth
1 box - documents - Guth

111

1 bag - documents- Kinard

109

1 Box - documents Wilson
1 Box - documents Wisch

Chair 11

2 boxes - documents - Stuckart
2 box - documents - Guth
2 boxes - documents - Linsmeyer

107

1 box - documents - Wilson

116

1 box - documents - Linszmeyer

123

1 4-drawer file cabinet - documents - Wilson

106

cashbox with will and passports - Guth

4 boxes documents - Guth

1 bag electronics - Guth

101

1 2 drawer file cabinet documents - Wilson

1 4 drawer file cabinet of documents - Wilson

2 bag electronics - Steffens

1 box documents - Steffens

Closet A

16 box documents - Atlas

3015

3 boxes documents - Wisch

3020

16 plastic totes -documents - Stuckart

8 boxes documents - Stuckart

3021

1 2 drawer file cabinet - Kinnard

4 boxes documents - Kinard

1 golf bag documents- Guth

1 box documents - Linsmeyer

105

2 boxes Documents Wisch

1 box electronics - Wisch

3 bag documents - Wisch

Conference A

7 boxes documents - Olmstead

4 boxes documents - Tilly

1 bag electronics - Olmstead

Conference room A -office #123

Misc. Papers, Emails CDRs IMPORTANT PAPERS

3038

2 boxes - Documents - Wilson

3018

3 boxes - documents - Linsmeyer

2 box - documents - Wilson

2 plastic totes - documents - Wilson

104

1 4-drawer file cabinet - Stuckart

3035

2 box - documents - Steffens

2 bag - electronics - Steffens

3011

1 box - documents - Wisch

1 box - Product - Guth

3 bag - Product - Guth

1 bag - documents - Guth

102 - Shelf

3 boxes - documents - Atlas

1 box - documents from wall - Atlas

102

6 boxes - documents - Atlas

1 box - documents - Guth

103

1 Boxes - documents - Atlas

1 4-drawer file cabinet - documents - Atlas

122

2 bag - Electronic - Steffens

1 box - documents Stuckart

123

1 bag - electronics - Steffens

Entry

1 box Product - Stuckart



SHERIFF'S OFFICE
Brown County

2684 Development Drive
Green Bay, WI 54311
(920) 448-4200

RETURN OF SEARCH WARRANT BY LAW ENFORCEMENT OFFICER

Brown County Circuit Court, State of Wisconsin

I hereby certify that, by virtue of the within warrant, the following listed items were found and seized and are now being processed/custody from the listed location:

ADDRESS/LOCATION: 2077 Lawrence Drive Suite B, De Pere WI 54115

ITEM(S) SEIZED: Documents associated with the businesses listed on the Search Warrant

FILED
JUL 07 2015

CLERK OF COURTS
BROWN COUNTY - WI

10:44am
CR

See attached list for additional seized items found and in custody.

Dated this 6th day of July, 2015

Officer Name: Sgt. Mary Schartner

Signature:

Sgt. Mary Schartner
#177

SUITE B

Conference room B

281 boxes - documents - Messer
16 4-drawer file cabinets - documents - Messer
1 3-drawer file cabinet - documents - Messer
3 5-drawer file cabinet - documents - Messer
35 plastic totes - documents - Messer
1 bag - electronics - Laptop - Steffens
1 bag - electronics - Steffens
1 box - documents - Steffens
2 boxes - documents - Guth
1 box - misc tapes - Olmstead
1 deck box - documents- Messer

Telephone room

6 computer towers - Steffens
1 box - electronics - Steffens

5

16 bags - electronics (14 HDs, 1 thumb drive, 1 Laptop) -Atlas

6

23 boxes documents - Stuckart

1 box of electronics - Stuckart

3

2 bag - electronics (1 laptop, 1 of discs,) - Steffens

2 boxes - documents - Linsmeyer

Workroom

28 boxes - documents - Wilson

1 4-drawer file cabinet - documents - Wilson

1 - 2 drawer file cabinet - documents - Wilson

1 - hard drive - steffens

1 bag floppy discs - Valley

4

8 boxes - documents - Racine/Wisch

1 box product - Stuckart

1

1 5-drawer file cabinet - documents - Linsmeyer

5 boxes - documents - Tilly

1 Cellphone - Tilly

1 electronic Steffens - Laptop

Storage 1

17 boxes - documents - Steffens

7

27 -boxes - documents - Guth

1 4-drawer file cabinet - documents - Guth

1 2-drawer cabinet - documents - Guth

1 bag - electronics (laptop &CD) - Guth

1 box - documents - Kinnard

Reception

1 box documents - Steffens
1 bag floppy discs - steffens

2
9 boxes documents - Steffens
1 plastic tote - documents - Steffens

Suspect Phil

1 cell phone - Steffens-



SHERIFF'S OFFICE

Brown County

RETURN OF SEARCH WARRANT

By Law Enforcement Officer

Brown County Circuit Court, State of Wisconsin

I hereby certify that, by virtue of the within warrant, the following listed items were found and seized and are now in my possession/custody from the listed location:

ADDRESS/LOCATION:

2303 Lost Dauphin Road, Town of Lawrence, Brown County, Wisconsin

ITEMS SEIZED:

Apple computer/monitor (office)
iPad/iPad mini/keyboard/Mac hard drive (office)
Black briefcase (office)
Miscellaneous files (office desk)
Thumb drive (dining room)
Checkbook/life insurance policy (kitchen)
Three (3) papers/binders/black notebook/Green Box binders (east sitting room-1st floor)
Investment book-Merrill Lynch file folder (sitting room end table)
Business cards/Delta Jet paperwork/miscellaneous files (office desk)
Miscellaneous file (master bedroom closet)
Laptop/iPad mini/iPad mini (hall closet)
iPad mini (living room piano)
Laptop (upstairs hallway)
Thumb drive containing photos/video of house

Dated this 6th day of July, 2015.

FILED
JUL 07 2015

CLERK OF COURTS
BROWN COUNTY - WI

10:44am

CR

Sgt. Mary L. Schartner #177 #177
Brown County Sheriff's Office



SHERIFF'S OFFICE

Brown County

RETURN OF SEARCH WARRANT

By Law Enforcement Officer

Brown County Circuit Court, State of Wisconsin

I hereby certify that, by virtue of the within warrant, the following listed items were found and seized and are now in my possession/custody from the listed location:

ADDRESS/LOCATION:

2107 American Boulevard, City of De Pere, Brown County, Wisconsin

ITEMS SEIZED:

Nine (9) file boxes (front office storeroom)
Two (2) file boxes (attorney living quarters)
Miscellaneous file box & paperwork (front office)
Samples of oil/chemicals (southeast oil/fuel production room)

Dated this 6th day of July, 2015.

FILED
JUL 07 2015

CLERK OF COURTS
BROWN COUNTY - WI

10:47am

GR

Sgt. Mary L. Schartner

Sgt. Mary L. Schartner #177

#177

Brown County Sheriff's Office



SHERIFF'S OFFICE

Brown County

2684 Development Drive
Green Bay, WI 54311
(920) 448-4200

RETURN OF SEARCH WARRANT BY LAW ENFORCEMENT OFFICER

Brown County Circuit Court, State of Wisconsin

I hereby certify that, by virtue of the within warrant, the following listed items were found and seized and are now being processed/custody from the listed location:

ADDRESS/LOCATION: 500 Fortune Avenue, De Pere, WI, Brown County

ITEM(S) SEIZED: Thumb drive of photos and or video taken of machinery and contents of warehouse

F I L E
JUL 07 2015

CLERK OF COURTS
BROWN COUNTY - WI

William
CR

See attached list for additional seized items found and in custody.

Dated this 6th day of July, 2015

Officer Name: Sgt. Mary Schartner

Signature: *Sgt. Mary Schartner*
177



SHERIFF'S OFFICE

Brown County

2684 Development Drive
Green Bay, WI 54311
(920) 448-4200

RETURN OF SEARCH WARRANT BY LAW ENFORCEMENT OFFICER

Brown County Circuit Court, State of Wisconsin

I hereby certify that, by virtue of the within warrant, the following listed items were found and seized and are now being processed/custody from the listed location:

ADDRESS/LOCATION: 821 Parkview Drive, Village of Ashwaubenon, Green Bay, WI, Brown County

ITEM(S) SEIZED: Thumb drive of photos taken of machinery and contents of warehouse

See attached list for additional seized items found and in custody.

Dated this 6th day of July, 2015

Officer Name: Sgt. Mary Schartner

Signature:

Sgt. Mary Schartner
177

Page 1 of 1