**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**

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**UNITED STATES OF AMERICA,**

Plaintiff,

v. **Case No. 17CR160**

**RONALD D. VAN DEN HEUVEL,**

Defendant.

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**REPLY BRIEF FOR FIRST MOTION TO SUPPRESS**

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The search warrant affidavit failed to adequately describe the officers seizing authority. *U.S. v. Bentley*, 825 F.2d 1104, 1110 (7th Cir. 1987). The warrant was not sufficiently confined and failed to tell the officers how to separate the documents to be seized from others. *Bentley* at 1110. The vast array of enumerated business entities and the directive to the seizing officers to seize "all papers" created a general search.

The government alleges that the search warrant affidavit sets forth sufficient facts to establish that the business ventures of the defendant were "permeated by fraud". The government cites a litany of cases which authorize the issuance of a search warrant under the "permeated by fraud" theory. The Seventh Circuit has addressed the same issue in *U.S. v. Bentley*, *supra*. The *Bentley* court stated:

> "This does not mean that warrants may use open-ended descriptions. The description must be as particular as

> the circumstances reasonably permit. So if the fraud infects only one part of the business, the warrant must be so limited - but within that portion of the business 'all records' may be the most accurate and detailed description possible. E.g., *United States v. Scherer,* 523 F.2d 371, 376 (7th Cir. 1975) (upholding warrant to search business premises for 'business records relating to the purchase and sale of firearms'). See also, e.g., *Richert v. Sweeney*, 813 F.2d 907, 909 (8th Cir. 7987); *Voss v. Bergsgaard*, 774 F.2d 402, 404-06 (10th Cir. 1985); *United States v. Cardwell*, 680 F.2d 75, 78 (9th Cir. 1982); *United States v. Abrams*, 615 F.2d 541, 545 (1st Cir. 1980), How detailed the warrant must be follows directly from the nature of the items there is probable cause to seize; detail is necessary only to the extent the judicial order must limit the search and seizure to those items. When there is probable cause to seize all, the warrant may be broad because it is unnecessary to distinguish things that may be taken from those that must be left undisturbed. A generic description adequately defines the officers' authority. When the probable cause covers fewer documents in a system of files, the warrant must be more confined and tell the officers how to separate the documents to be seized from others. See *Marron v. United States*, 275 U.S. 192, 196, 48 S.Ct. 74, 76, 72 L.Ed. 231 (1927); *United States v. Roche*, 614 F.2d 6, 7 (1st Cir. 1980)." *Bentley* at 1110.

The defendant maintains that the affidavits fail to establish that the business ventures were "permeated by fraud", as described in the cases cited by both the government and the defendant. Many of the allegations in support of this theory, as set forth in the affidavit, have little or nothing to do with fraudulent activity of a corporate nature or which may constitute evidence of criminal behavior. Rather, there is a recitation of alleged bad business practices which may have non-nefarious explanations.

The defendant has filed a second motion to suppress alleging that there are willful or reckless omissions and/or inclusions of

information which are inaccurate or untruthful. *Franks v. Delaware*, 438 U.S. 154 (1978). The overarching assertion by the search warrant's affiant was that the Green Box process was not viable and was a fraud. The *Franks* motion and it's attachments establish that, had the affiant exercised due diligence and/or included known and discoverable information to the contrary, she could not have, in good faith, asserted that the Green Box process was fraudulent. Green Box and it's related businesses were not "permeated by fraud".

The main focus of the search warrant was the claimed Green Box investment fraud. Schartner failed to allege how the multitude of other businesses named in the affidavit furthered or were involved in Green Box activities. Her assertions about the following failed to demonstrate that his businesses were used solely for illegal purposes or were "permeated by fraud": he was never paid wages; he transferred motor vehicle's titles; he testified in a civil suit; he misvalued his assets; he used business funds for purposes which may have been legitimate business expenditures; the nature of his personal purchases; his accounting practices; and whether or not he wrote a check which was dishonored. The attachments to the defendant's *Franks* motion establish that the Green Box process was scientifically viable and it's efficacy was recognized by a host of legitimate business entities.

The government posits, through its response brief, that the searching officers did not flagrantly disregard the warrant's limitations and that: "The officers made reasonable efforts to abide by [that] limitation and, in fact, left behind many records that proceeded that date or otherwise did not fall within the search warrant." Docket No. 91, p.21. And further: "The officers made reasonable efforts to review the documents and determine which fell within the search warrant." Docket No. 91, p.6.

It is noteworthy that the testimony adduced during the August 11, 2017 evidentiary hearing before this court, established facts which belie the government's theory. Witnesses presented evidence, that at the time of the search warrant execution the defendant and/or his corporations employed a HR Director whose job it was to oversee employee related activities of approximately 50 workers. Furthermore, at the time the warrant was executed one or more mills were operational and apparently producing a viable commercial product. The claim by Mary Schartner that the multitude of businesses listed in the affidavit should have been within the purview of the search, was further undermined by her testimony. According to Schartner, she chose these corporations without reference to their viability, their functionality, or the defendant's temporal interests in the businesses. Schartner expended virtually no effort to discern and separate which documents fell within or without the scope of the warrant. It is

further noteworthy that the government took an inexcusably lengthy period, (15 months), to review the documents and return those which it felt had no significance.

The search warrant was executed in a fashion which furthered the convenience of the agents only, and which completely ignored the rights of the defendant. The strikingly different methodology of searching employed by the FBI agents at the 2107 American Blvd. site, in comparison to that at 2077 Lawrence Drive demonstrates that Schartner and her team ignored their obligations to comply with the terms and limits of the warrant.

The government argues that the invalidity of the warrant or the means by which it was executed can be saved through the good faith exception. *U.S. v. Leon*, 468 U.S. 897 (1984). This issue is to be litigated in the second part of the motion process, during a separate hearing after the court has declared the search or warrant to be invalid. At that hearing, the government will attempt to sustain its burden. Suffice it to say that the defendant, at that proceeding, will strongly urge the court that there was no act of good faith on the part of Schartner or her searching team. Her lack of good faith began with her misrepresentations and omissions when she was the scrivener of the affidavit.

It is asserted by the prosecution that in the event the court determined that the search warrant's limitation has been exceeded, blanket suppression is not the appropriate remedy. Docket No. 91,

p. 20. It further argues that such remedy should only be implemented if the searching officials "flagrantly disregarded" the search warrant's limitations. It urges the court to evaluate "flagrant disregard" in light of the search warrant itself. In essence, it is the government's position that the massive overreaching by the searching officers should be sanctioned because the search warrant gave broad discretion to seize materials. This argument is counter intuitive. If the search warrant itself is overbroad, the officers' seizure of virtually everything that could move, and some things that had to be physically removed, cannot be boot strapped to save the search.

The search in this matter should be included in a primmer of how not to execute a warrant. Law enforcement's flagrant disregard for the warrant's limitations is evident by a examination of a sampling of the things that were seized: golf clubs; the defendant's tax records going back decades before the temporal parameters of the warrant; the defendant's wife's medical records; a will; file cabinets which are clearly labeled as predating, by years, the allowable date; family photographs; closing documents for business transactions from 2007; cabinets containing intellectual property documents prior to 2010; personal letters written by the defendant's father during World War II; personal papers belonging to employees; health and dental benefit enrollment materials for employees; personnel files for past employees; OSHA

logs; the defendant's childrens' medical records; the defendant's childrens' school records; the defendant's childrens' computers; a Kindle Fire e-reader; medical records relating to the defendant. Those enumerated items are a mere sample of what was impermissibly seized by Schartner and her team.

Schartner initially obtained what was clearly a "general warrant" by impermissible and improper means. She then exponentially compounded the constitutionally infirm warrant by conducting a "general search". She did so by blithely, deliberately, and flagrantly disregarding the theoretical limits of the warrant.

Dated at Milwaukee, Wisconsin this 31st day of August, 2018.

Respectfully submitted,

*/s/ Robert G. LeBell*

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