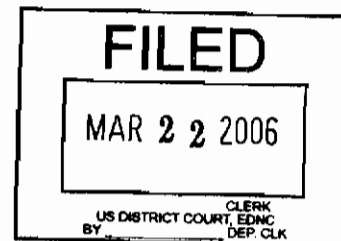


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA



UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JEFFREY R. MacDONALD,)
)
 Applicant/Defendant,)

Crim. No. 75-26-CR-3
No. 5:06-CV-24-F
Judge James C. Fox

PETITIONER’S MOTION TO ADD AN ADDITIONAL PREDICATE TO HIS PREVIOUSLY FILED MOTION UNDER 28 U.S.C. SECTION 2255 TO VACATE HIS CONVICTION – NAMELY NEWLY DISCOVERED DNA EVIDENCE PROVING THE PRESENCE OF UNSOURCED HAIRS AT THE CRIME SCENE, INCLUDING ONE SUCH HAIR FOUND WITH BLOOD RESIDUE IN A CRITICAL LOCATION, UNDER THE FINGERNAIL OF KRISTEN MacDONALD, AND ONE TWO INCH HAIR WITH ROOT AND FOLLICLE INTACT FOUND UNDER THE BODY OF COLETTE MacDONALD

Comes now, the petitioner/defendant, Jeffrey R. MacDonald, through undersigned counsel, and respectfully moves this court, in support of his Motion Pursuant to 28 U.S.C. Section 2255 to Vacate His Sentence, to add an additional predicate for that motion, namely newly discovered DNA evidence of three unidentified hairs found at the crime scene, one of which was found with its root intact along with blood residue under the fingernail of three-year-old Kristen MacDonald, who was murdered in her bed, and one of which was over two inches long with its root and follicle intact, and was found under the body of Colette MacDonald.

As grounds for this motion, the petitioner states as follows:

1. Petitioner, with leave from the U.S. Court of Appeals for the 4th Circuit, filed before this Court on January 17, 2006 a Motion Pursuant to 28 U.S.C. 2255 to Vacate His Conviction. The basis for that motion was newly discovered evidence that could not previously have been discovered through due diligence, and that when taken in light of the evidence as a whole, establishes the petitioner's innocence. The new evidence referred to in the motion concerns testimony by a retired deputy U.S. Marshal, Jim Britt, that alleges egregious prosecutorial misconduct that violated the petitioner's rights under the U.S. Constitution.

2. Petitioner now has learned of additional new evidence that could not previously have been discovered through due diligence, namely DNA results from tests ordered to be conducted by the U.S. Court of Appeals for the 4th Circuit, and conducted under the supervision of this Court.¹

3. The petitioner submits that since these DNA tests were previously ordered by the U.S. Court of Appeals for the 4th Circuit, and since the matter was remanded to this Court to oversee and manage such testing, it is implicit in the 1997 Order from the 4th Circuit that this Court has been authorized to consider the effect of the results of such testing.

4. The DNA report from the Department of Defense Armed Forces Institute of Pathology [hereinafter "AFIP"] was issued on March 10, 2006. [It is attached hereto as

¹ As set forth previously in the petitioner's pleadings, in April 1997, MacDonald filed a motion to reopen his previous 1990 *habeas corpus* petition based on government fraud. The motion also contained a request to have DNA tests run on evidence taken from the crime scene. On September 2, 1997, this court denied the motion to reopen the *habeas* proceeding and transferred the remaining matters to the United States Court of Appeals for the 4th Circuit as a petition for leave to file a successive *habeas corpus* petition. *U.S. v. MacDonald*, 979 F.Supp. 1057 (E.D.N.C. 1997). The court of appeals granted defendant's motion for DNA testing. *In Re MacDonald*, No. 97-713 (4th Cir. October 17, 1997.) Per the 4th Circuit's order regarding DNA testing, the case was remanded to this Court, which has been supervising such DNA testing.

Appendix 1, tab 1.] As the report sets forth, 28 biological specimens were deemed by the AFIP laboratory sufficient for testing for DNA results to be matched against known exemplars from the MacDonald family members, as well as Helena Stoeckley and Greg Mitchell.² Of these 28 specimens tested, 9 specimens either produced no useable result or produced an inconclusive result.³ Of the remaining 19 specimens, 13 specimens were consistent with members of the MacDonald family who were killed.⁴ Of the 6 specimens remaining, three were consistent with the DNA of Jeffrey MacDonald.⁵ The three remaining specimens, specimens 58A1, 75A, and 91A, provided DNA results that did not match any of the MacDonald family members or Helena Stoeckley or Greg Mitchell.

5. Regarding the unidentified specimens, specimen 58A1 was a hair found at the crime scene on the bedspread in Kristen MacDonald's room. Specimen 75A was a 63 mm. (2 ¼ inch) hair with root and follicle intact retrieved at the crime scene from off or under the body of Colette MacDonald. And also, most tellingly, specimen 91A was a hair with the root intact, found along with blood residue underneath the fingernail of three-year-old Kristen MacDonald, who at the crime scene was found murdered in her bed. (The genesis

² The following specimens were tested: 46A, 48A, 51A2, 52A, 58A1, 58A2, 71A1, 71A2, 71A3, 75A, 91A, 93A, 97A1, 98A, 101A1, 101A2, 104A1, 104A2, 112A1, 112A2, 112A3, 112A4, 112A5, 112A6, 112A7, 112A9, 112B, 113A.

³ The following specimens produced no useable result or an inconclusive result: 48A, 71A2, 93A, 104A1, 112A1, 112A2, 112A6, 112B2, 113A.

⁴ The following specimens were consistent with slain MacDonald family members: 46A, 52A, 71A1, 71A3, 97A1, 98A, 101A1, 101A2, 104A2, 112A4, 112A5, 112A7, 112A9.

⁵ The following specimens were consistent with the DNA of Jeffrey MacDonald: 51A2, 58A2, 112A3. (One of these, #51A2, was a hair without a root found in or on Colette MacDonald's hand. The defense contends that this is in no way inculpatory given that Jeff MacDonald testified that he repeatedly tried to revive his injured wife, and gave her mouth to mouth resuscitation, moved her body, etc.)

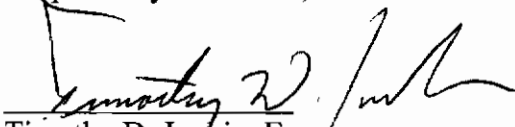
of these biological specimens is set forth in detail in the petitioner's Memorandum in Support of this Motion).

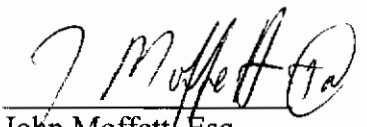
6. The petitioner submits that these unidentified hairs, and particularly the ones found in such critical places as underneath the fingernail (along with blood fragments) of a child who was murdered in her bed, and who clearly suffered other defensive wounds and was trying to defend herself at the time she was murdered, and a hair of over two inches in length with hair and follicle intact found under Colette MacDonald's body is profound new evidence that could not have previously been discovered through due diligence, and that when viewed in light of the other evidence taken as a whole, entitles the petitioner to have his sentence vacated. Further, the petitioner contends that this new evidence, irrespective of the new evidence submitted through witness Jim Britt, entitles the petitioner to have the entire panoply of evidence reviewed (both evidence adduced at trial, and developed post-trial), and to have a determination now made of whether of this evidence, analyzed in its entirety, proves the petitioner's innocence.


The petitioner respectfully submits herewith a Memorandum of Evidence and Points and Authorities in support of this motion, such to be incorporated herein by reference.

WHEREFORE, THE PETITIONER REQUESTS THAT THE NEW DNA EVIDENCE RECENTLY DISCOVERED BE ADDED AS A SECOND PREDICATE TO HIS MOTION UNDER 28 U.S.C. SECTION 2255 TO VACATE HIS SENTENCE.

Respectfully submitted,


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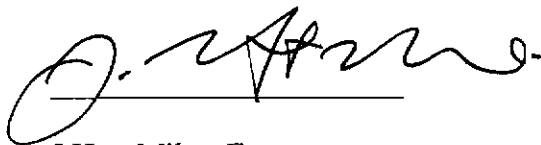
Certificate of Service

I hereby certify that a copy of this motion and accompanying memorandum were mailed by me, first class mail, postage pre-paid, on the 22 day of March, 2006, to the United States Attorney for the Eastern District of North Carolina, at the following address:

Honorable Frank D. Whitney
United States Attorney
Att. John Stuart Bruce
Terry Sanford Federal Building
310 New Bern Avenue, Suite 800
Raleigh, North Carolina 27601-1461

And to U.S. Justice Department counsel of record at the following address:

Brian Murtaugh, Senior Trial Attorney
U.S. Department of Justice
Domestic Security Section, Room 6747
Criminal Division
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

A handwritten signature in black ink, appearing to read "J. Hart Miles", written over a horizontal line.

J.Hart Miles, Esq.