

FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

APR 22 1997

DAVID W. DANIEL, CLERK
U.S. DISTRICT COURT
E. DIST. NO. CAR

UNITED STATES OF AMERICA)

v.)

JEFFREY R. MacDONALD)

Nos. 75-26-CR-3
90-104-CIV-3-D

JEFFREY R. MacDONALD'S MOTION TO REOPEN
28 U.S.C. § 2255 PROCEEDINGS AND FOR DISCOVERY

Jeffrey R. MacDonald, petitioner in the above-captioned action, hereby moves this Honorable Court to reopen the proceedings which led to this Court's dismissal of his petition for post-conviction relief that was filed with this Court pursuant to 28 U.S.C. § 2255 on October 19, 1990 (hereinafter "the 1990 petition").¹

MacDonald seeks to have the 1990 petition re-opened on the ground that the government submitted to this Court affidavits of FBI Special Agent Michael P. Malone which were materially false and misleading concerning facts which were central to this Court's dismissal of the 1990 petition, and to the Fourth Circuit Court of Appeals' affirmance of that dismissal, namely, whether or not certain long blond fibers made from a substance called Saran, found at the crime scene, were used in the manufacture of wigs for human cosmetic purposes prior to the time of the crime. The grounds for this motion are fully set forth in the "Memorandum of Law in Support of Jeffrey R. MacDonald's Motion to

¹ The 1990 petition was denied by this Court (Dupree, J.) on July 8, 1991, and that judgment was affirmed by the United States Court of Appeals for the Fourth Circuit on June 2, 1992.

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Reopen 28 U.S.C. § 2255 Proceedings and for Discovery," filed herewith, along with the supporting affidavits and attachments thereto.

MacDonald respectfully seeks the following relief from this Court:

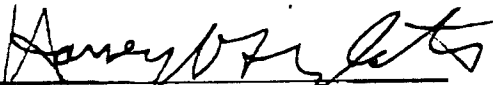
(1) An order to the government directing it to respond to this motion to reopen.

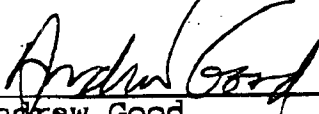
(2) In the event contested factual issues remain after the government's response to this motion, the Court should (a) grant MacDonald discovery, including access to various items of physical evidence which were examined by the FBI in connection with the 1990 petition, as well as other items such as unsourced hairs which were found in critical locations at the crime scene, and which, if subjected to testing using new DNA technology, may very well permit Dr. MacDonald to further demonstrate his factual innocence, and then (b) convene an evidentiary hearing on the motion to reopen, followed by (c) allowance of the motion to reopen and (d) an evidentiary hearing on the underlying 1990 petition, if needed, or, if no evidentiary hearing is required, by allowance of the petition.

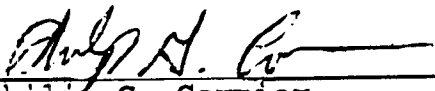
The items to which Dr. MacDonald seeks access for the purpose of conducting his own independent laboratory examinations are detailed in the Affidavit of Philip G. Cormier No. 2 — Request for Access to Evidence to Conduct Laboratory Examinations — in Support of Jeffrey R. MacDonald's Motion to Reopen and for Discovery, which is filed herewith.

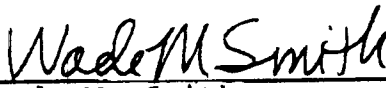
Dated: April 22, 1997

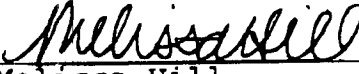
Respectfully submitted,

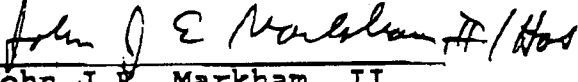

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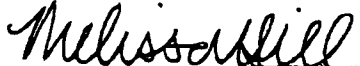
On the Brief:

Lisa M. Kavanaugh
Paralegal

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CERTIFICATE OF SERVICE


I hereby certify that on this 22nd day of April, 1997, a true copy of the foregoing was served via hand delivery upon Eric Evenson, Assistant United States Attorney, Eastern District of North Carolina, New Bern Avenue, Suite 800, Federal Building, Raleigh, NC 27601



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I hereby certify that on this 21st day of April 1997, a true copy of the foregoing was served via first class mail upon

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