

EXHIBIT NO. 2



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C., 20535-0001

**MICROSCOPIC HAIR COMPARISON ANALYSIS
RESULT OF REVIEW**

Date: August 15, 2013

To: Innocence Project
Microscopic Hair Comparison Analysis Review Team

From: Federal Bureau of Investigation
Microscopic Hair Comparison Analysis Review Team
Laboratory Division

FBI File Number: 70A-CE-3668

Criminal Docket Number: 3:75-CR-26-3, 506-CV-24-F

Defendant: MacDonald, Jeffrey Robert

Victim: MacDonald, Kimberly (Age: 5); MacDonald, Kristen (Age: 2); MacDonald, Collette (Age: 26)

Trial Plea Stipulation

Transcript enclosed

Lab Report enclosed

Pursuant to the Letter of Agreement between our organizations, this letter serves to provide your office with the results from the Federal Bureau of Investigation (FBI) Microscopic Hair Comparison Analysis Review regarding the analysis of testimony and lab reports provided in the above-referenced case. Please notify the FBI, within 14 days of receipt of this letter, as to whether or not the Innocence Project (IP) agrees with the FBI's conclusions.

The FBI has conducted its review of the report issued in this case and found it to contain:

Appropriate Statements

Inappropriate Statements

The FBI has conducted its review of the FBI testimony transcript and/or stipulation in accordance with the November 9, 2012 agreed upon scientific standards between the IP and FBI with the following results:

Error Type 1: The examiner stated or implied that the evidentiary hair could be associated with a specific individual to the exclusion of all others. This type of testimony exceeds the limits of the science.

Error Type 2: The examiner assigned to the positive association a statistical weight or probability or provided a likelihood that the questioned hair originated from a particular source, or an opinion as to the likelihood or rareness of the positive association that could lead the jury to believe that valid statistical weight can be assigned to a microscopic hair association. This type of testimony exceeds the limits of the science.

Error Type 3: The examiner cites the number of cases or hair analyses worked in the lab and the number of samples from different individuals that could not be distinguished from one another as a predictive value to bolster the conclusion that a hair belongs to a specific individual. This type of testimony exceeds the limits of the science.

Appropriate

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Do not disseminate further without the prior written authorization of the FBI Office of the General Counsel.
03/26/13

Exhibit No. 2

Response Sheet

Please send completed form within 14 days to:

Cherise B. Dreyfus

FBI Laboratory

2501 Forensic Way

Quantico, VA 22135

Fax: 703-632-7714

Email: FBICaseReview2@ic.fbi.gov (please include in the subject line "IP response" and the name of the defendant)

Referenced FBI Case Number: 70A-CE-3668

Court Docket Number: 3:75-CR-26-3, 506-CV-24-F

Subject(s)/ Defendant(s): MacDonald, Jeffrey Robert

Findings of the Innocence Project (IP):

The IP concurs with the conclusion reached by the FBI Microscopic Hair Comparison Analysis Review, or

The IP disagrees with the conclusion reached by the FBI Microscopic Hair Comparison Analysis Review for the following reasons:

Error 1

Error 2

Error 3

Appropriate

The IP would like to meet with the FBI (in person or by phone) to discuss the differing opinions regarding the appropriateness of FBI testimony and/or lab reports.

Response Sheet

Please send completed form within 14 days to:

FBI POC

FBI Laboratory
Quantico, VA 22135
Fax: 703-632-7714

Email: FBICaseReview2@ic.fbi.gov (please include in the subject line "IP and NACDL response" and the name of the defendant)

Referenced FBI Case Number: 70A-CE-3668

Court Docket Number: 3:75-CR-26-3, 506-CV-24-F

Subject(s)/Defendant(s): **Jeffrey MacDonald**

Findings of the Innocence Project (IP) and National Association of Criminal Defense Lawyers (NACDL):

The IP and NACDL concur with the conclusion reached by the FBI Microscopic Hair Comparison Analysis Review that the materials reviewed contain no instances of Error 1, Error 2, or Error 3.

The IP and NACDL concur with the conclusion reached by the FBI Microscopic Hair Comparison Analysis Review that the materials reviewed contain the following Error Types:

Error 1

Error 2 (lab report)

Error 3

The IP and NACDL disagree with the conclusion reached by the FBI Microscopic Hair Comparison Analysis Review because, contrary to that conclusion, the IP and NACDL have found that the materials reviewed contain the following error types:

Error 1

Error 2

Error 3

Comments: **The trial testimony mentions microscopic hair comparison analysis was conducted by the Army CID Lab in Fort Gordon Georgia, but those lab reports or any testimony were not included in these materials.**

The following testimony on p. 4158 is unclear and partially obscured in this copy of the transcript due to copying what appears to be highlighting. A: "The conclusion on that was that it contained the tip portion of a limb hair and did not have enough points of comparison to be of value for comparison purposes.A: It was of Caucasian origin, yes."

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03/26/13

**FBI Microscopic Hair Comparison Analysis Review
Evaluation Form**

Case Information:	
Case Number:	70A-CE-3668
Defendant(s):	JEFFREY ROBERT MACDONALD
Date of Review:	8/8/2013
Standard Applied:	MHCA Standards dated 11/9/2012

Review of Laboratory Report(s):	
Date of Laboratory Report:	11/5/1974
Examiner Issuing Report:	STOMBAUGH
Lab Report Results (mark as appropriate):	
Positive Association:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Inappropriate Statements :	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Limitations Language Included in Report?	<input type="checkbox"/> Yes (page #) <input checked="" type="checkbox"/> No
If Laboratory report contained an Inappropriate Statement, cite statement by Error type(s) and page number(s) (quote if necessary):	

Review of Laboratory Report(s):	
Date of Laboratory Report:	12/31/1990
Examiner Issuing Report:	MALONE
Lab Report Results (mark as appropriate):	
Positive Association:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Inappropriate Statements :	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Limitations Language Included in Report?	<input type="checkbox"/> Yes (page #) <input checked="" type="checkbox"/> No
If Laboratory report contained an Inappropriate Statement, cite statement by Error type(s) and page number(s) (quote if necessary):	

Review of Laboratory Report(s):	
Date of Laboratory Report:	2/4/1991
Examiner Issuing Report:	MALONE
Lab Report Results (mark as appropriate):	
Positive Association:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Inappropriate Statements :	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Limitations Language Included in Report?	<input checked="" type="checkbox"/> Yes (page #) 2 <input checked="" type="checkbox"/> No
If Laboratory report contained an Inappropriate Statement, cite statement by Error type(s) and page number(s) (quote if necessary):	
Error 2: Page 2 - "...consistent with having originated from Jeffrey MacDonald."	

**FBI Microscopic Hair Comparison Analysis Review
Evaluation Form**

Defendant: Jeffrey Robert MacDonald**Case File Number: 70-51728****Review of Laboratory Report(s):**Date of Laboratory Report: **5/19/1999**Examiner Issuing Report: **FRAM**

Lab Report Results (mark as appropriate):

Positive Association: Yes NoInappropriate Statements : Yes NoLimitations Language
Included in Report? Yes (page #) **TEU 1** No

If Laboratory report contained an Inappropriate Statement, cite statement by Error type(s) and page number(s) (quote if necessary):

Error 2: Page TEU 1 – "...consistent with having originated from KIMBERLY MACDONALD."**Review of Testimony:**Date of Testimony: **August 7-9, 1979**Testifying Examiner: **STROMBAUGH**Name of Prosecutor: **BLACKBURN**Name of Defense: **SEGAL**

Testimony Results (mark as appropriate):

Inappropriate Statements : Yes NoLimiting Language
Included in Testimony? Yes NoIdentify by Page and
Line Number(s):

If testimony contained Inappropriate Statements, cite each by Error type, page(s) and line number(s):

Error 1: Page 4294, ln 1-6

Approved By:

Max L. Bean

Date: 08/09/2013