

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
FAYETTEVILLE DIVISION

No. 75-26-CR-3  
No. 90-104-CIV-3-F

FILED

UNITED STATES OF AMERICA, )  
 )  
 v. )  
 )  
 JEFFREY R. MacDONALD, )  
 Petitioner/Defendant. )

DEC 11 1998

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

On April 22, 1997, Jeffrey R. MacDonald ("MacDonald") filed a Motion to Reopen 28 U.S.C. § 2255 Proceedings and for Discovery in which he alleged the existence of certain physical evidence which, if analyzed properly, would demonstrate his actual innocence. This court construed his claim of innocence as a distinct request for habeas relief requiring consideration by the court of appeals under the successive petition provisions set forth in 28 U.S.C. § 2244. By order of October 17, 1997, the Fourth Circuit Court of Appeals denied MacDonald leave to file a successive habeas petition, but remanded the matter to this court, stating, "the motion with respect to DNA testing is granted and this issue is remanded to the district court." *In re Jeffrey MacDonald*, No. 97-713 (4<sup>th</sup> Cir. Oct. 17, 1997). Following the issuance of the appellate court's mandate, issues have arisen regarding the scope of items to be tested and the testing methodology to be employed.

In pertinent part, MacDonald explained to the Court of Appeals precisely what evidence he sought to re-test, and how:

Further, MacDonald requested that the District Court order the government to give him access to certain items of physical evidence in the case which, if analyzed properly, would demonstrate his actual innocence. These items, which are documented in the handwritten laboratory bench notes of the Army and FBI Lab examiners, consist primarily of hairs and blood debris found in extraordinarily telling locations – namely, *under the fingernails of the victims, on their hands, on their bodies, or on their bedding*. The lab notes reveal that the government's lab examiners had attempted to source these hairs by comparing them to known hairs taken from the victims and from Dr. MacDonald, but *they were never able to match these hairs to any member of the MacDonald family*, resulting in the obvious and highly exculpatory conclusion that these strategically-located hairs came from outsiders, thus corroborating MacDonald's account. With respect to certain blood debris found under the fingernails or on the hands of the victims, the government was able to determine the blood type in some instances but not in others. See Affidavit of Phillip G. Cormier No. 2 – Request for Access to Evidence to Conduct Laboratory Examinations – in Support of Jeffrey R. MacDonald's Motion to Reopen 28 U.S.C. § 2255 Proceedings and for Discovery . . . which describes these hairs and blood debris in detail.

MacDonald sought access to this highly specific and crucial category of physical evidence for the purpose of subjecting these unsourced hairs and blood debris to *DNA testing* in an effort to establish MacDonald's innocence by demonstrating definitively that these items did not originate from any MacDonald family member nor from MacDonald himself, but instead originated from one or more of the intruders whom MacDonald described seeing in his home on the night of the murders.

Memorandum in Support of Jeffrey MacDonald's Motion for an Order Authorizing the District Court for the Eastern District of North Carolina to Consider a Successive Application for Relief Under 28 U.S.C. § 2255, at 6-7 (Sept. 17, 1997) (emphasis in original). It is the Government's position in opposition to the instant motion that the appellate court's mandate limits MacDonald's access to only those items of biological evidence specifically identified in his motions papers before the Fourth Circuit Court of Appeals.

MacDonald, on the other hand, contends the Fourth Circuit Court of Appeals' mandate entitles him to the "full universe of exhibits that contain biological evidence – hairs, bloodstains, tissue and body fluids – collected from the crime scene to which the government has full access." Memorandum in Support of Jeffrey MacDonald's Motion for an Order to Compel the Government to Provide Access to All Biological Evidence for Examination and DNA Testing by His Experts, at 2 (Sept. 11, 1998).


The court has examined carefully the parties' respective arguments in light of the context of the appellate court's order, and concludes that the Fourth Circuit Court of Appeals has mandated that the Government provide to MacDonald's experts access to the existent and known unsourced hairs, blood stains, blood debris, tissue and body fluids specifically identified in the April 22, 1997, 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 28 U.S.C. § 2255 Proceedings and for Discovery, for non-destructive DNA testing in all current and existing forms including, without limitation, both nuclear and mitochondrial testing.

Accordingly, it hereby is ORDERED that the United States produce and make available to MacDonald's experts within sixty (60) days of the date of this order the biological evidence described in the preceding paragraph so that such experts may conduct any appropriate non-destructive DNA examinations thereof. All testing of such items shall be completed prior to September 1, 1999.

MacDonald's request for further discovery is DENIED as beyond the mandate of the Court of Appeals.

SO ORDERED.

This the 10<sup>th</sup> day of December, 1998.

  
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JAMES C. FOX  
United States District Judge

I certify the foregoing to be a true and correct  
copy of the original.  
David W. Linnick, Clerk  
United States District Court  
Eastern District of North Carolina

