

EXHIBIT 1

EXHIBIT #1

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 3:75-CR-26-F

No. 5:06-CV-24-F

UNITED STATES OF AMERICA)

v.)

JEFFREY R. MacDONALD,)

Movant)

STIPULATIONS

It is stipulated and agreed, as specifically delineated herein, between Jeffrey R. MacDonald, Movant, and the United States of America, Respondent, in the above captioned case that:

1. On May 17, 1999, pursuant to the orders of the District Court entered on March 26 and April 14, 1999 [DE-96 and DE-99, respectively] a Special Agent of the Federal Bureau of Investigation (FBI) hand delivered to Suzanne M. Barritt, Senior DNA Analyst at the Armed Forces DNA Identification Laboratory (AFDIL), Armed Forces Institute of Pathology (AFIP) facility located at 1413 Research Boulevard, Rockville, MD, 20850-3125, various items of evidence from FBI Laboratory Case No. 990111018 (the above-captioned case) for DNA testing pursuant to the aforementioned orders.

2. On May 17, 1999, AFDIL Case No. 99C-0438 was assigned to the items submitted for DNA testing received from the FBI.

3. Between May 17 and June 1, 1999, AFDIL DNA Analysts, including Suzanne M. Barritt and Daniel E. Katz ("DEK") described the articles received from the FBI on a DNA Form 219 (a continuation sheet for DA Form 4137 - "Evidence/Property Document") consisting of pages 2-33, which is hereby incorporated by reference as Exhibit 1 of this stipulation.

4. In the process of inventorying and describing the articles received from the FBI, AFDIL item numbers 01A through 188A were assigned to articles as described in Exhibit 1, and the corresponding items and/or their containers were physically marked for identification with those AFDIL item numbers. Included within this category was AFDIL Item 05A, the head hair reference sample for Helena Stoeckley. Subsequently, the AFDIL "item numbers" from Exhibit 1 became the AFDIL "Specimen Nos."

reflected in Appendix 1 at 6-10, to the March 10, 2006, AFDIL Consultation Report entitled "MacDonald, Jeffrey," as more fully described in Exhibit 1. See DE-123-2 at 10-14.

5. Pursuant to the order of the District Court of March 26, 1999 [DE-96], as amended by its order of May 18, 1999 [DE-103], on June 3-4, 1999, the contents of 17 vials were inventoried by Senior DNA Analyst Suzanne M. Barritt at the AFIP's Rockville, MD, facility in the presence of defense DNA expert Dr. Terry Melton, Ph.D., Mitotyping Technologies, LLC. The results of that inventory are reflected in the attachment (Exhibit 3) to Suzanne Barritt's letter of July 28, 1999 (Exhibit 2). Pursuant to the order of the District Court, detailed still photographs of the entire inventory process, accompanied by written explanations, were generated and subsequently filed with the Court as Photographic Submissions, Volumes Seven and Eight, Photographs 282-373, filed July 16, 1999. DE-105. See also DE-147, Ex.4, CD 3 of 3.

6. On August 30, 1999, a Notice of Filing of Jeffrey MacDonald's Waiver Concerning the Armed Forces Institute of Pathology's (AFIP's) Utilization of Master Sergeant Graham To Conduct Preliminary Microscopic Examinations of Hair and Other Biological Evidence Prior to DNA Testing was filed. DE-108.

7. Between November 24-26, 1999, U.S. Air Force Master Sergeant Grant D. Graham Sr. ("M.Sgt. Graham"), Chief, Forensic Trace Materials Analysis, Office of the Armed Forces Medical Examiner (OAFME), 1413 Research Blvd., Bldg. 102, Rockville, MD 20850, received three sets of slides contained in a heat-sealed, ziplock-type bag from Senior Analyst Suzanne Barritt, AFDIL. DE-123-4 at 7. The bag was marked with the AFDIL Case No. 99C-0438 and slide specimen numbers: 45A, 46A, 48A, 51A, 52A, 55A, 56A, 58A, 62A, 63A, 75A, 76A, 91A, 93A, 94A, 98A, 104A, 112A, 113A, and 115A. Id.

8. Commencing on November 24, 1999, and continuing until August 18, 2000, M.Sgt. Graham exposed 16 rolls of Fujichrome slide film of AFDIL Specimens, including macro-photographs of 45A, 46A, 48A, 51A, 52A, 55A, 56A, 58A, 62A, 63A, 75A, 76A, 91A, 93A, 94A, 98A, 104A, 112A, 113A, and 115A, in and out of their slide mailers/containers, as well as photomicrographs of the specimens mounted on the glass microscope slides. In some instances, M.Sgt. Graham took multiple photographic slides of the same image using different photographic exposures (i.e. same exact picture taken at different "f-stops or exposures), all as accurately reflected in M.Sgt. Graham's "Photographic Log". See

DE-216-1 at 1-16. Upon receiving the developed 2" x 2" photographic slides, M.Sgt. Graham accurately transferred the information identifying the macro photographs and photomicrographs of the specimen from his Photographic Log to the paper border of each photographic slide.

9.(a) In 2007, Kimberly B. Murga ("KBM"), Assistant Technical Leader, Nuclear DNA Section, AFDIL, caused the images from the retained 2"x 2" slides from the 16 rolls of film exposed by M.Sgt. Graham to be scanned to digital images contained on CD 2 of 3. DE-147-2 at 1. In this process, AFIP did not scan the duplicate slides of the same images of the same specimen taken at different exposures by M.Sgt. Graham, and, further, did not indicate the number of the duplicate slide which had not been scanned, but rather numbered the scanned images of the slides consecutively, as reflected on the screen-captured index provided by AFDIL. See DE-147, Ex. 3, and DE-147-2, at 1.

9.(b) In addition to containing the digital images of the slides originally exposed by M.Sgt. Graham, which had been scanned, CD 2 of 3 contains "Thumbnail" or Icon images which reflect the AFDIL case number (99C-0438), the specimen number (e.g. 91A) and the film roll and photographic slide number of the scanned images (e.g., Roll 9 slide 26.jpg). The parties stipulate that the identifying information as to AFDIL case number, specimen number, film roll and slide number was accurately recorded in his Photographic Log by M.Sgt. Graham, and that he accurately transferred the information to the borders of the 2" x 2" slides.

9.(c) The parties further stipulate that the aforementioned information was accurately transferred to the digital icons contained on CD 2 of 3, except in those instances where the duplicate images were not scanned, and consequently, the photographic slide number does not correspond on the icon, or the screen captured index, to the slide number in M.Sgt. Graham's photographic log. DE-147, Exhibit 3. In those instances, the case number, Specimen number, and film roll number have been included, but the slide number has not. (See Draft Pre-Trial Order of 8/30/12, Exhibits 3402, 3415, and 3416.) The parties further stipulate that either party may utilize or publish digital images or photographs to which has been added the same identifying information as contained in the Photographic Log of M.Sgt. Graham or the digital icons contained in CD 2 of 3. DE-147, Exhibit 3, except as provided in subparagraph 9(b), supra.

10. Beginning on November 26, 1999, and continuing through August 21, 2000, M.Sgt. Graham accurately entered his observations relating to his microscopic examination of the Specimens in AFDIL Case No. 99C-0438 in his "AFIP/OAFME Trace Materials Analysis Laboratory Notes." See DE-123-4 at 7-14. The parties stipulate that either party may cite to M.Sgt. Graham's Laboratory Notes, provided that any such citation or assertion in regard to a particular specimen or specimens involves a verbatim quotation without any omission or substitutions of words from the notes.

11. On November 30, 1999, M.Sgt. Graham submitted a report reflecting his findings with respect to Specimens: 46A, 52A, 113A, 48A, 51A (Hair #1, Hair #2, and Hair #3), 63A, 75A, 58A (Hair #1 and Hair #2), 112A (Hair #1, Hair #2, Hair #3, and Hair #4), 98A, 104A (Hair #1 and Hair #2), 93A, and 91A. DE-216-3 at 1-5. On December 20, 1999, M.Sgt. Graham submitted a report reflecting his findings with respect to Specimens 99A and 100A, which contained no human hairs. DE-216-3 at 6-8. The parties stipulate that either party may cite to M.Sgt. Graham's laboratory reports, provided that any such citation or assertion in regard to a particular specimen or specimens involves a verbatim quotation without any omission or substitutions of words from the Report.

12. By letter of April 2, 2001, AFDIL Supervisory DNA Analyst Jacqueline S. Raskin ("JSR") informed counsel for the parties that on March 30, 2001, after removing the cover slip on slide 112A, she found 9 hairs of varying lengths. This letter is hereby incorporated by reference as Exhibit 4 of this stipulation. Further, according to the previous analysis by M.Sgt. Graham, slide 112A contained only 4 hairs, of which Hairs #1, #2 and #3 did not appear to have roots or tissue. Hair #4 was reported to have had a root with tissue on it. Id. Ms. Raskin sought guidance as to how to identify, among the 9 hairs, the hair (#4) which was previously reported to have had a root, and whether all 9 hairs should be processed. Id.

13. The existence of 9 hairs, or pieces of hair, from AFDIL Specimen 112A precipitated extensive correspondence between counsel. Ultimately, it was agreed that defense expert Dr. Peter DeForest, Ph.D. ("PD"), would examine the 9 hairs at AFDIL on August 6, 2001, and would provide copies of his notes and any report to the Government. Additionally, it was agreed that if further examination of the hairs by the FBI laboratory was deemed necessary, the Government would provide the defense

with copies of the examiner's report and bench notes. Dr. DeForest did examine the 9 hairs at AFDIL on August 6, 2001, and, in the process, mounted the 9 hairs on separate glass microscopic slides each marked for identification "112A #1-#9 JR 06 Aug 01 PD". Dr. De Forest's notes are attached as Exhibit 5 to this stipulation.

14. Subsequently, the 9 hairs were referred to the FBI laboratory in an effort to determine if any of the 9 hairs had ever been joined to the 4 hairs on the slide previously observed by Supervisory Special Agent Robert Fram (infra, ¶ 15) and M.Sgt. Graham. The November 1, 2001, Report of the FBI laboratory reflecting Special Agent Fram's examination of microscope slides marked, Q96.1 through 96.9, is attached as Exhibit 6, and his corresponding bench notes as Exhibit 7.

15. It is agreed that the Caucasian head hair observed by Special Agent Fram on a glass microscope slide labeled "Q-96 19 ½" during his 1999 examination (attached as Exhibit 8 to this stipulation) is the same hair observed by M.Sgt. Graham, which Graham designated as Hair #4 on Specimen 112A. It is further agreed that the hair mounted by Dr. Peter De Forest on a glass microscope slide marked "112A #5 JR PD" on August 6, 2001, is the root or proximal end of Hair #4 which has been cut or broken distally from the root in the process of demounting the hair from the slide. It is further agreed that the root end of the hair mounted on slide "112A #5 JR 06 Aug 01 PD" is the same hair as subsequently microscopically examined by Special Agent Fram in October 2001 and designated Q96.5. It is further agreed that AFDIL DNA test results for Specimen 112A #5 JR PD are equally applicable to FBI Q96.5.

16. In addition to the unique situation involving Specimen 112A #1 JR PD - 112A #9 JR PD described above, AFDIL subdivided and labeled specimens in which multiple hairs were mounted on a single glass microscopic slide, such as: 51A(1), 51A(2), 51A(3), 58A(1), 58A(2), 104A(1), and 104A(2).

17. In addition to the photographic slides taken by M.Sgt. Graham, each of the DNA analysts photo-documented their processing of the specimens. This process involved photographing the specimen to be examined, typically a microscope slide, with a scale or ruler in the picture which had been labeled with the AFDIL case number (99C-0438), the specimen number, the analyst's initials, and the date, followed by photomicrographs of the hair as it was processed. As happened with the 16 rolls of slide film exposed by M.Sgt. Graham described above, in 2007, Kimberly

B. Murga caused the images from the 2" x 2" slides from the rolls of film exposed by the DNA Analysts to be scanned to digital images contained on CD 1 of 3, and 3 of 3. DE-147-2 at 1. In addition to containing the digital images of the slides originally exposed by the DNA analysts, including photomicrographs, CDs 1 and 3 contain "Thumbnail" or Icon images which reflect the AFDIL case number (99C-0438), the Specimen number (e.g. 112A #5) and the photographic slide number (e.g. 99C-0438-112A #5 JR root end (difexp2).jpg). The parties stipulate that the identifying information as to AFDIL case number, specimen number, and film exposure or slide number was accurately transferred to the digital icons contained on CDs 1 and 3. DE-147, Exhibits 1, 4. The parties further stipulate that either party may utilize or publish digital images or photographs to which has been added the same identifying information as contained in the digital icons contained in CDs 1 and 3. DE-147, Exhibits 1, 4.

18. On August 31, 2004, AFDIL received from the AFIP Repository paraffin blocks with tissue that had been collected in 1970 at the autopsies of Colette, Kimberly, and Kristen MacDonald. These reference samples were assigned Specimen Numbers 195A through 195T (Colette MacDonald), 196A through 196J (Kimberly MacDonald), and 197A through 197E (Kristen MacDonald). DE-123-2 at 16.

19. On January 5, 2005, AFDIL received from the University of Virginia Health System in Charlottesville, VA, a Paraffin block with tissue, No. 82-5026, which was designated Specimen 198A, the reference sample for Gregory Mitchell.

20. On November 17, 2005, LTC Louis Finelli, Medical Corps, U.S. Army, drew two tubes of blood from Jeffrey R. MacDonald at the Federal Correctional Institution, Cumberland, Maryland. These two purple top tubes of blood were subsequently transported to the AFDIL Rockville, MD, premises and designated as Specimens 199A and 199B.

21. AFDIL conducted DNA testing of the reference samples using mitochondrial (mtDNA) and nuclear Short Tandem Repeat (STR) systems, and obtained mtDNA and/or STR DNA profiles as indicated below:

Autosomal STRs

AFDIL Specimen No. Specimen Reference

195A/195E/195J Paraffin Blocks Colette MacDonald

196A/196G Paraffin Blocks Kimberly MacDonald

197A/197E Paraffin Blocks Kristen Macdonald

198A Paraffin Blocks Gregory Mitchell
199A Blood Jeffrey MacDonald

Mitochondrial DNA Sequences

AFDIL Specimen No. Specimen Reference
195A/195B Paraffin Blocks Colette MacDonald
196A/196E Paraffin Blocks Kimberly MacDonald
197A/197E Paraffin Blocks Kristen Macdonald
199A Blood Jeffrey MacDonald
05A Hair Helena Stoeckley
198A Paraffin Blocks Gregory Mitchell
See DE 123-2 at 6.

22. AFDIL performed mtDNA and/or nuclear DNA (STR) testing on 29 questioned hair and vial contents specimens, identified as follows: 46A, 48A, 51A(2), 52A, 58A(1), 58A(2), 71A(1), 71A(2), 71A(3), 75A, 91A, 93A, 97A(1), 98A, 101A(1), 101A(2), 104A(1), 104A(2), 112A(1), 112A(2), 112A(3), 112A(4), 112A(5), 112A(6), 112A(7), 112A(8), 112A(9), 112B(2), and 113A.

23(a). The following samples yielded autosomal STR profiles consistent with one another: 46A, 98A, 195A/195E/195J.

23(b). Based upon autosomal STR analysis, the following specimens were not consistent any other evidentiary samples tested: 196A/196G, 197A/197E, 198A, and 199A.

23(c). Based upon autosomal STR analysis, the following specimens yielded insufficient data to render a conclusion: 05A, 52A, 195B, 196E, and 197C.

23(d). Based upon autosomal STR analysis, the following specimens yielded no reportable results: 48A, 75A, 104A(1), 104A(2), 112A(5), and 195N.

23(e). Based upon mitochondrial DNA analysis, the following specimens yielded inconclusive sequence information: 48A, 71A(2), 93A, 104A(1), 112A(1), 112A(2), 112B(2), 112A(6), and 113A.

23(f). Based upon mitochondrial DNA analysis, the following specimen yielded no mitochondrial DNA sequence information: 112A(8).

24. Of the 29 questioned specimens, 2 yielded nuclear or STR profiles consistent with one another and with the STR profile of Colette MacDonald: 46A and 98A.

25. Of the questioned hair specimens, 13 (Group A) yielded mtDNA profiles that were consistent with each other and with the reference samples of Colette, Kimberly, and Kristen MacDonald, who all have the same maternal mtDNA sequence: 46A, 52A, 71A(1), 71A(3), 97A(1), 98A, 101A(1), 101A(2), 104A(2), 112A(4), 112A(5), 112A(7), and 112A(9).

26. Of the 29 questioned specimens, 3 (Group B) yielded mtDNA sequences which were consistent with each other and with Specimen 199A, the reference blood sample of Jeffrey MacDonald: 51A(2), 58A(2), and 112A(3).

27. Based upon nuclear and mitochondrial DNA analysis, AFDIL Specimen Nos. 46A and 98A are consistent with originating from Colette MacDonald. Based upon nuclear DNA analysis, Kimberly and Kristen MacDonald are excluded as being the contributors of AFDIL Specimens 46A and 98A.

28. Based upon mitochondrial DNA analysis, the following specimens were not consistent with any other sample tested: 58A(1), 75A, 91A, 05A, and 198A.

29. The parties stipulation to the AFDIL-AFIP DNA test results set forth above in paragraphs 21 through 28, inclusive, are subject to agreement and adherence by the parties to each of the following conditions set forth below in paragraphs 30-35.

30. Without calling witnesses to testify at the evidentiary hearing, either party may rely upon any of the DNA test results for any of the tested specimens as listed in this stipulation (including reference samples), for which reportable DNA results were in fact reported by AFDIL, for purposes of inclusion or exclusion of a person as being the source of the biological material tested, and may also rely on AFDIL's determination based on its DNA testing that an individual cannot be excluded as the source of any biological material tested.

31. Neither party will contest, or in any way call into question, including by expert opinion by anyone who did not conduct the actual testing, the methodology, protocol, or accuracy of any AFDIL mtDNA or STR DNA test results, including the comparison of DNA sequences obtained.

32. Neither party will contest, or in any way attempt to dispute, any of the conclusions or assessments of any of the AFDILAFIP DNA analysts to the effect that any specimen tested yielded insufficient data to render a conclusion, yielded no reportable results, or yielded inconclusive sequence information.

33. Neither party will contest, or in any way attempt to dispute, any of the suitability or non-suitability for DNA testing assessments made by any AFIP personnel during the course of the DNA testing in this matter.

34. Neither party may rely on any statement in the AFDIL Report of March 10, 2006, filed by the Government (see Notice of Filing DE-119) pursuant to the order of the Court of March 26, 1999 (DE-96), or filed March 22, 2006, by Petitioner as part of *Appendix One to Memorandum of Evidence and Points And Authorities In Support of Petitioner's Motion To Add An Additional Predicate...* (see DE-123-2, pp 4-37) for any assertion with respect to the identity or provenance of any item examined, or tests performed or not performed by the Army CID or FBI laboratories prior to delivery of said item(s) to AFDIL on May 17, 1999, except as reflected in Exhibit 1 to this Stipulation or Appendix 1, pages 6-10 of the AFDIL Report of March 10, 2006. See DE-123-2 at 10-14.

35. The hair designated as AFDIL Specimen 58A(1) and the hair designated as AFDIL Specimen 58A(2), both mounted on a glass microscope slide marked by the FBI Laboratory as Q87, are the same hairs originally collected from the green bedspread on Kristen MacDonald's bed on February 20, 1970, by USACIL Chemist Walter F. Rowe ("WFR"), who placed them in a pill vial marked "Hair & Fibers from bedspread, WFR 20 Feb 70," all as witnessed by CID Agent William F. Ivory. The pill vial was later designated "E-52NB" at USACIL.

36. The hair designated as AFDIL Specimen 75A, along with other debris, was originally collected on March 16, 1970, in a pill vial (#14) by CID Agent William F. Ivory ("WFI"), from the trunk and legs area of the body outline of Colette MacDonald, on the rug of the master bedroom at 544 Castle Drive, Fort Bragg, NC, and placed in a plastic bag with a piece of masking tape marked "Fibers and debris from area of trunk and legs under body Master bedroom - WFI -RBS- 16 Mar 70." Upon receipt at USACIL, Chemist Dillard O. Browning marked the masking tape "E-303 PC-FP-82-70 DOB." Upon receipt at the FBI Laboratory, USACIL Exhibit E-303 was designated Q79, and "one human pubic or

body hair" (as previously described by USACIL; see DE-123 at 9 and DE-123-4 at 21) from the vial was mounted on a glass microscope slide marked for identification as "H L2082 Q79 PMS." Following receipt at AFDIL on May 19, 1999, the glass microscope slide marked "H L2082 Q79 PMS" was designated AFDIL Specimen 75A, and was so marked for identification.

37. The hair removed from the unnumbered pill vial on July 27, 1970, by USACIL Chemist Janice Glisson, a vial which she marked "#7 JSG" and subsequently mounted on a glass microscope slide, which she numbered to correspond to the vial as "#7 fibers Hair," is the same hair on the same slide the FBI marked as Q137, and AFDIL subsequently marked and tested as AFDIL Specimen 91A.

38. A breach of any of the conditions set forth in paragraphs 30-34 by either party renders the entire stipulation null and void.

This the _____ day of _____, 2012.

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