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U.S. COURT OF APPEALS
FOURTH CIRCUIT

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA	)	No. 14-7543
	)	
v.	)	INFORMAL OPENING BRIEF
JEFFREY R. MacDONALD	)	(18 U.S.C. [36])
Movant	)	ON APPEAL FROM THE
	)	DISTRICT COURT FOR THE EASTERN
	)	DISTRICT OF NORTH CAROLINA
	)	August, 8, 2014

NOW COMES the Defendant, Jeffrey R. MacDonald, on his own behalf *(pro se),* respectfully seeking to appeal the District Court's denial of his claim for relief under the Innocence Protection Act of 2004.

ISSUES, FACTS and ARGUMENTS

1) The District Court did not dispute that the Defendant qualified for protection under nine of the ten prerequisites for IPA eligibility, stating only that "…the parties dispute whether MacDonald has met his burden" and that "The Court, for its part, finds that MacDonald's IPA motion is untimely under the statute and is therefore DENIED."

2) The Court's denial cites that MacDonald's motion for consideration was untimely (when submitted on September 20, 2011) even though previously, defense counsel had agreed not to file any requests for additional DNA tests prior to the results of DNA tests granted by this court in 1997. Those results did not become available until March 10, 2006 and the District Court did not make its decision regarding the impact of those results until November of 2008 when it denied MacDonald's motion for relief in total.

   Thus, the request for relief under the IPA was not untimely because it was enacted while the Defendant was waiting for then-current DNA results and then awaiting a response from the District Court regarding those results.

3) The District Court goes further to say that not allowing additional DNA tests does not constitute a manifest injustice in this case. The Defendant would respectfully disagree and state that such a denial is at cross-purposes with this Court's order to examine the totality of the evidence.

Why does the federal government continue to try to limit the scope of the evidence that can be examined by fighting all attempts to have the blood evidence in this case examined?

4) The blood evidence is crucial to the truth in that all four family members had different blood types. The original trial jury (1979) was clearly led to believe that, due to this fact, a "road map" of sorts could be construed by the government in support of its theory of the murders.

   In fact, the representation of all four blood types opens up the whole universe of perpetrators - two of whom have never been conclusively identified - but the jury only heard that the blood evidence was "Colette, Kimberley, Kristen or Jeffrey MacDonald's blood *type."* A careful reading of the trial transcript shows that the prosecution often lapsed into calling its blood evidence "Colette's blood" or "Kimberley's blood" for example, leaving out even the word *"type"*. This would confuse any jury and is just one example of a manifest injustice that could be corrected by conducting DNA tests on certain key blood and other exhibits in 2015, using the latest technology available.

5) The District Court admitted as far back as September of 2011 that it "knew nothing about DNA" and had "not read the (1979) trial transcript". In fact, the Honorable Judge Fox stated at the Defendant's September 2012 evidentiary hearing that he had "....tried to go back and start in on the transcript..." but that (unlike seeing a physical item [or a] witness testifying) "...the transcript doesn't mean anything to [you]. It can't be done. I couldn't do it. And that's a handicap that, as far as I'm concerned, that I'm going to be stuck with for the rest of this thing."

   How can the District Court deny this request and weigh the importance of it without, admittedly, having any context in which to reach such a conclusion? Wouldn't it be fairer to err in favor of the Defendant and allow forensic scientists to shed the Honorable Justice Brandeis's "disinfecting light" on *all* of the evidence?

6) At the September 2012 evidentiary hearing, Judge Fox also noted that (in reference to opening the gates for the evidence as a whole) "....something can always come up. You never know what's going to happen that might warrant some opening."

7) The Defendant respectfully suggests the Office of the Attorney General's (OAG's) findings (in the fall of 2104) findings that three government forensic experts misrepresented scientific fact in this case *is* that opening. One of the government experts involved in the first round of DNA testing (Robert Fram) was specifically pointed out by the OAG as having 'gone beyond the limits of science' in certain conclusions he reported as fact.

8) The DOJ was ordered (by the OAG) *not to impose any procedural bars* on any defendant affected by the fraudulent work of any of its experts. Soon after, the DOJ announced that new DNA tests would be offered to any affected defendant at no cost.

The Defendant contends, as does the Office of the Attorney General, that he is one of those affected. By refusing to test the blood evidence in this case, the government is not embracing the spirit of transparency and full disclosure, and has been allowed to do so by the District Court.

For these reasons, the Defendant believes the District Court's decision to deny him over a procedural matter was error and should be reversed. Further, Defendant respectfully asks this Court to provide him relief in this matter via the ability to conduct further DNA tests using the latest technology (not available at the time of the 2006 results), on certain exhibits (which can be enumerated for the Court) or alternatively, relief in total as requested in earlier motions.

Respectfully Submitted,

Jeffrey R. MacDonald, Movant
FCI Cumberland MD
PO BOX 1000
Cumberland, MD 20501

This is the 25th of ~~October~~ September, 2015.

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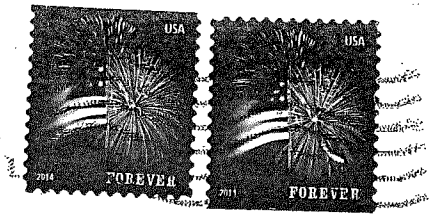
Jeffrey Macdonald
Federal Correctional
. Institution
P.O. box 1000
Cumberland, MD 21501-1000
United States

BALTIMORE MD 212
28 SEP 2015 PM 10 L



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mr. R J Warren – Clerk of the Court - 4th Circuit, US Federal Court
1100 E MAIN ST Suite #501
Court of Appeals, 4th Cir
Richmond, VA 23219
United States

Special Legal Mail

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