

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 15-7136

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JEFFREY R. MACDONALD,

Defendant-Appellant.

INFORMAL OPENING BRIEF

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
AT WILMINGTON

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INTRODUCTION

Dr. Jeffrey MacDonald (“MacDonald”) was a 26-year old Army captain and doctor stationed at Fort Bragg when his pregnant wife and two young daughters were brutally murdered on 17 February 1970. MacDonald was severely wounded and found unconscious by military police. Ever since his first statement to the responders to his emergency call on that date, MacDonald has consistently maintained that the murders of his family were committed by a group of intruders. MacDonald described a woman with long blond hair wearing a floppy hat, who along with at least three others entered his home in the middle of the night and attacked him and killed his family. Now 72 years old, MacDonald has never wavered from his initial account of the events, nor his assertion that he is innocent. He has now been imprisoned for almost 35 years.

MacDonald was convicted at a trial in the United States District Court for the Eastern District of North Carolina in 1979 -- nine years after the murders, and after he had been cleared of the crimes by a military tribunal. The Government’s case at trial was entirely circumstantial, and there was no direct proof of MacDonald’s alleged involvement in the murders. In fact, the trial judge wrote a letter to one of the lawyers involved in the trial shortly after the verdict, noting that

during the trial he had “confidently expected that the jury would return a not guilty verdict in the case.” (DEHX 5115).¹

Since the trial in 1979, a steady flow of exculpatory evidence has come to light demonstrating that MacDonald did not commit the murders. A significant amount of this evidence relates to the key defense witness at trial, Helena Stoeckley, who almost immediately was identified by police as a suspect. She was a woman local to the area, heavy into the drug scene, who routinely wore a long blonde wig and a floppy hat. Between the murders in 1970 and MacDonald’s trial in 1979, Stoeckley made incriminating statements to numerous persons implicating herself, her boyfriend Greg Mitchell, and others in the killings.

At trial, however, Stoeckley testified when called as a defense witness that she could remember nothing about the four-hour period during which the murders occurred, despite her many statements otherwise, and despite her ability to remember events before and after those four hours. After this occurred, the trial judge refused to permit MacDonald to call seven witnesses that he had present, who would have testified to Stoeckley’s specific admissions made to each of them,

¹ Citations to filings in the district court are cited by docket entry as (DE-). Citation to the trial transcript are cited as (TT-). Citations to the transcript of the 2012 evidentiary hearing are cited as (EHT-). Citations to Government exhibits or Defendant’s exhibits at the 2012 evidentiary hearing are cited as (GEHX-) or (DEHX-). Citations to the Addendum to this Brief are cited (Addendum-).

prior to trial, of being present in the MacDonald home at the time of the murders with the killers. (TT 5508-5799).

After the trial, Stoeckley continued to make admissions contrary to her trial testimony, implicating herself as present during the murders, and implicating Greg Mitchell as one of the killers. (DE-124); (DE-115, Ex. 6). MacDonald also uncovered other evidence, such as the presence of unsourced fibers on a murder weapon and in the home, discrediting the Government's case. MacDonald submitted this evidence to the courts in an effort to obtain a new trial, but was denied relief.

This appeal involves the denial of a successive § 2255 Motion filed by MacDonald in 2006 seeking to vacate his convictions. The Motion is based on newly discovered evidence showing that MacDonald's trial was infected with constitutional error, and showing his actual innocence. This newly discovered evidence shows that Stoeckley, during MacDonald's 1979 trial, confessed her involvement in the murders to a deputy U.S. Marshal (Jimmy Britt), a young lawyer working for the defense team (Wendy Rouder), and her own lawyer (Jerry Leonard) appointed by the trial judge, contrary to her sworn trial testimony at trial. The newly discovered evidence shows that Stoeckley also subsequently confessed her involvement in the murders to her own mother and to the caretaker of her child, shortly before her death in 1983. And the newly discovered evidence shows why

Stoeckley would not make these admissions at MacDonald's trial and instead testify falsely -- because she had been threatened by one of the prosecutors (who has since been prosecuted, imprisoned, and disbarred for unrelated fraudulent criminal conduct) in violation of MacDonald's constitutional rights, when she confessed to him during an interview at the trial.

Were this not enough, the newly discovered evidence also includes DNA evidence showing that unsourced hairs that indisputably do not belong to MacDonald were found in places on the victims of the murders where they could only have been left by the real murderers. No reasonable juror, upon hearing the new evidence on which MacDonald's motion is based, would convict him of any crime in this case, and in light of the constitutional violations proven by this new evidence, MacDonald is entitled to Section 2255 relief.

ISSUES PRESENTED FOR APPEAL

- I. DID THE DISTRICT COURT ERR IN CONCLUDING THAT THE NEW EVIDENCE OFFERED BY MACDONALD FAILED TO MEET THE SECTION 2255(h)(1) PROCEDURAL GATEKEEPING STANDARD?
- II. DID THE DISTRICT COURT ERR IN DENYING MACDONALD'S SECTION 2255 MOTION ON THE MERITS?
- III. DID THE DISTRICT COURT ERR IN DENYING MACDONALD'S RULE 59 MOTION?

STATEMENT OF THE CASE

The successive Section 2255 Motion at issue in this appeal was originally filed by MacDonald on 17 January 2006, after this Court granted MacDonald a pre-filing authorization under 28 U.S.C. § 2244 and 2255. The district court in 2008 denied the Motion without a hearing. This Court reversed on appeal, and on remand instructed the district court to first evaluate MacDonald's Motion under the § 2255(h)(1) gatekeeping standard, and if it found that standard met, to then consider the constitutional claims set out in the Motion on the merits. *United States v. MacDonald*, 641 F.3d 596, 614 (4th Cir. 2011).

This is an appeal from the district court's order on 24 July 2014 denying MacDonald's Motion under the procedural "gatekeeping" provision of 28 U.S.C. § 2255(h)(1) and alternatively on the merits, (DE-354), and from the district court's 18 May 2015 order denying MacDonald's Rule 59 Motion. (DE-383). These orders were entered after a seven (7) day evidentiary hearing held in September 2012. Notice of appeal was filed on 16 July 2015. The lengthy procedural history of this case is summarized in the district court's order. (DE-354 at 2-13).

STATEMENT OF FACTS

In the early morning hours of 17 February 1970, the pregnant wife and two young daughters of MacDonald were murdered in their home located on Fort Bragg. MacDonald was severely wounded at the time, suffering a collapsed lung

and multiple wounds. From the very beginning, MacDonald told investigators that the murders had been committed by a group of intruders, including a blond-haired woman wearing a floppy hat, who had attacked him and his family, knocking him unconscious and severely wounding him in the struggle.

Initially, the investigation was handled by military authorities. The Army brought murder charges against MacDonald and a Uniform Code of Military Justice Article 32 hearing commenced on 15 May 1970, and lasted six weeks. On 13 October 1970, the presiding officer filed a report recommending that all charges be dropped, concluding that “the matters set forth in all charges and specifications are not true.” (DE-115 at 8). The presiding officer further urged the civilian authorities to investigate the alibi of Helena Stoeckley. *Id.* All military charges against MacDonald were dropped, and he was subsequently honorably discharged.

Approximately nine years later, in August 1979, MacDonald went on trial after being indicted in federal district court for three counts of murder. The trial lasted twenty-nine days. On 29 August 1979, MacDonald was convicted and was sentenced to three consecutive terms of life imprisonment.

I. The Government’s Evidence at Trial

At approximately 3:30 a.m. on 17 February 1970, military police were summoned to MacDonald’s home at Fort Bragg. Upon arrival, the police found that MacDonald’s pregnant wife, Colette, and his two young daughters, Kristen

age two, and Kimberly age five, had been brutally murdered, and found MacDonald unconscious and seriously wounded. Upon being revived, MacDonald told the military police that his family had been attacked by at least four intruders, three men and a woman. The woman he described as having long blond hair, wearing a floppy hat and boots, and bearing a flickering light such as a candle.

The Government's theory at trial was that MacDonald, an army physician with no history of violence and no record of prior arrests, got into a fight with his pregnant wife because his youngest daughter, Kristen, had wet the bed; that he picked up a club to strike his wife and accidentally struck and killed his daughter, Kimberly, who was trying to intervene; and that then, in order to cover up his accidental misdeed, killed his wife and then mutilated and killed his youngest daughter and tried to make it look like a cult slaying. (TT 7138-7141). The Government further argued that MacDonald either wounded himself to defer suspicion or was wounded when fighting with his wife.

The evidence the Government adduced at trial to support this bizarre theory was exclusively circumstantial physical evidence from the crime scene. It included evidence such as in what rooms certain blood types were found, where the murder weapons were found, where MacDonald's pajama fibers were and were not found, where a pajama pocket was found and on which side it was bloodied, and an experiment involving the possible ways the ice-pick holes were made in

MacDonald's pajama top. Much of the evidence was speculative. The Government presentation was designed primarily to disprove the version of events given by MacDonald as to what happened on the night of the murders, thereby casting suspicion on him as the murderer. This Government strategy was interwoven with its repeated theme that, given MacDonald's version of events, there should have been ample physical evidence of intruders, and the lack of such evidence of intruders proved MacDonald's guilt.

There was, however, some evidence at trial from the crime scene supporting MacDonald's account that intruders committed the murders. Numerous fingerprints and palm prints were collected at the crime scene that did not match with MacDonald family members or other investigators or individuals whose prints were available for comparison. (TT 3116, 3141). Moreover, there was evidence showing the presence of wax drippings of three different kinds of wax in three different areas of the home. None of these samples matched any candles found in the MacDonald home. (TT 3837-43).

There were, of course, no eyewitnesses to the murders other than the perpetrators. There was no evidence of MacDonald's fingerprints or blood on the murder weapons. The Government's case was entirely circumstantial, directed at disproving MacDonald's version of events, rather than proving what had actually occurred.

II. The Defense Case at Trial

MacDonald testified in his own defense at trial. MacDonald testified that he awoke in the early morning hours of 17 February 1970 in his living room to the screams of his wife and one of his daughters, saw four strangers in his house, and was immediately set upon, attacked, and knocked down. (TT 6581-82).

As he was trying to get up, MacDonald heard a female saying “Acid is groovy; kill the pigs.” MacDonald testified in detail about how he fought with the attackers, and was stabbed in the process. (TT 6513-14; 6587-88). During the struggle, his hands became bound up in his pajama top, and he used the top as a “shield” to attempt to ward off blows from the attackers. (TT 6586; 6808-13).

MacDonald testified that the woman intruder had blond hair, was wearing a floppy hat, appeared to be carrying a candle, and was with several men. (TT 6588-92). At some point during the struggle, MacDonald was knocked unconscious. Upon coming to, MacDonald testified in detail to finding his family members bloodied and dead, his efforts to revive them, and his phone call for help. (TT 6595-6605). He was unconscious when help finally arrived.

MacDonald remembered describing the group of intruders to one of the MPs² before being taken out of the house on a stretcher. (TT 6518-20).

² Kenneth Mica, one of the first MP’s to arrive at the scene, was the person to whom MacDonald gave this description. (TT 1414). Mica testified at trial that enroute to the MacDonald house at approximately 4 a.m. he saw a woman with

MacDonald was taken to the intensive care unit at Womack Army Hospital, where he was treated for a punctured lung and other wounds. (TT 5367). He remained in the intensive care unit for nine days.

MacDonald's lawyers sought to underscore through cross-examination how equivocal and speculative the physical evidence put forth by the Government was, and to expose the lack of any real evidence of guilt on MacDonald's part. In addition to presenting MacDonald's testimony, the defense called numerous character witnesses to testify about MacDonald's good character.

The most important facet of the defense strategy, however, was to bring before the jury the significant evidence pointing to Helena Stoeckley's involvement in the crime. This included evidence of:

- her possession of a blond wig, which she burned shortly after the crime (TT 5602-04);
- the clothes she routinely wore, which matched the clothes of the woman MacDonald described seeing in his house the night of the murders (a blond wig, floppy hat, and boots) (TT 5583-90);
- her participation in a drug cult that ingested LSD, worshipped the devil, and used candles (TT 5525, 5542-43);
- her obsession with the MacDonald murders, such that she had hung wreaths all along her fence the day of the burials (TT 5633-34);

shoulder-length hair, wearing a "wide-brimmed...somewhat 'floppy'" hat. (TT 1453-54). Mica saw this woman "something in excess of a half mile" from the MacDonald home, thinking it strange that she would be out at that hour on a rainy night. (TT 1401, 1454).

- a woman matching her description being seen by several unbiased witnesses near the crime scene at or around the time of the murders (TT 1453-54; 5454-56);
- and of critical importance, evidence that she had actually admitted to her participation in the crime to numerous people. (TT 5508-5799).

Based on all of this, it was the defense belief she would come to court and actually admit her involvement in the murders. *See United States v. MacDonald*, 632 F.2d 258, 264 (4th Cir. 1980) (noting the “substantial possibility that she [Stoeckley] would have testified to being present in the MacDonald home” during the murders).

Regarding the many prior admissions that Stoeckley had made to her involvement in the murders, the defense had placed under subpoena, and had present at the trial, seven different individuals to whom Stoeckley had made statements incriminating her in the MacDonald slayings. Three of these were individuals involved in law enforcement.³ (TT 5508-5799). The defense intended to call Stoeckley as a witness, obtain from her admissions to the crime, and then call the other seven witnesses to whom Stoeckley had also confessed.

When called by the defense to testify, however, Stoeckley did not deny being present but instead denied any memory of the four hour period during which

³ One witness, P.E. Beasley, testified on voir dire that while a detective with the Fayetteville Police Department, Stoeckley acted as drug informant for him, and that Stoeckley was “[t]he most reliable informant I ever had.” (TT 5739).

the murders occurred. (TT. 5513-5671). Stoeckley did testify that she had a floppy hat, wore a shoulder-length blond wig, and that her appearance at the time of the murders was similar to the description MacDonald had given of the female intruder.

After Stoeckley denied memory of the time period of the murders, the defense intended to call the seven witnesses to whom Stoeckley had made incriminating statements prior to trial. The Government, however, objected to these witnesses, and after a voir dire hearing the district court ruled that Stoeckley's out-of-court admissions to the seven defense witnesses were inadmissible under Rule 804 (b)(3) of the Rules of Evidence because the admissions were not trustworthy or corroborated. *See United States v. MacDonald*, 688 F.2d 224, 231 (4th Cir. 1982) (summarizing the seven witnesses and their voir dire testimony).

Left without the key defense evidence, the jury convicted MacDonald of all three murders, and he was sentenced to three consecutive terms of life imprisonment.

III. Evidence Discovered Post-Trial Before the Present § 2255 Motion

After the trial, MacDonald discovered additional evidence that was suppressed at trial that would have supported the fact that there were intruders in the home that night, and further implicated Stoeckley as one of the assailants. In

1984, and again in 1990, MacDonald filed motions to vacate his convictions based on the discovery of evidence of this nature. This evidence includes the presence of unsourced fibers (1) on the murder weapon that were dark purple and black (Stoeckley testified that she wore purple and black) and (2) at the murder scene that were inconsistent with the Government's representations at trial that there was no evidence of intruders, as well as the presence of wig hairs in the MacDonald home (Stoeckley testified that she owned a blond wig that she destroyed) unmatched to any synthetic fiber found in the MacDonald home. *See, e.g.* (DE-115 at 21-26) (outlining new evidence underlying 1984 and 1990 motions). In each instance, relief was denied. *MacDonald*, 640 F. Supp. 286 (E.D.N.C. 1985), *aff'd*, 779 F.2d 962 (4th Cir. 1985); *MacDonald*, 778 F.Supp. 1342 (E.D.N.C. 1991), *aff'd*, 966 F.2d 854 (4th Cir. 1992).

IV. The Present Section 2255 Motion

A. Claims

1. The Britt Affidavit and Associated Evidence

First, the Motion is based upon a disclosure by Jimmy Britt, a now-deceased deputy marshal who had custody of Helena Stoeckley during the trial. DUSM Britt came forward in 2005 to MacDonald's trial counsel. DUSM Britt, by that time retired, worked at the Raleigh courthouse during the 1979 trial. In his affidavit, he sets out how he went to South Carolina to transport Stoeckley, who

was in custody on a material witness warrant, back to North Carolina, and that he then maintained custody of her at several times during the trial in Raleigh until she was released from the warrant. In his affidavit, Britt sets out how Stoeckley made admissions to him, after he took custody of her, that she was present in MacDonald's home on the night of the murders. (DE-115, Ex. 1, ¶15).

Britt also explains in his affidavit that he was present when the lead prosecutor, AUSA Jim Blackburn, interviewed Stoeckley before she was to testify at trial. Britt avers that during that meeting in the prosecutor's office during the 1979 trial, Stoeckley told the prosecutor that she was in fact present in the MacDonald home on the night of the murders. (DE-115, Ex. 1, ¶ 20-23). Britt avers further that AUSA Blackburn responded to this admission by telling Stoeckley that if she testified in court to that fact, he would indict her for murder. Britt states in his affidavit that he is absolutely certain that these words were spoken. (DE-115, Ex. 1, ¶ 24-25).

In support of DUSM Britt's recitation of events and the constitutional error shown thereby, MacDonald also submitted additional affidavits and evidence with his Motion showing that Stoeckley was present during the murders, and that MacDonald did not kill his family. This evidence includes:

- affidavits from three individuals testifying that Greg Mitchell (a boyfriend of Helena Stoeckley continually linked to the murders) confessed involvement to them in the murders of MacDonald's family prior to his own death (DE-115, Ex. 7);

- an affidavit from Lee Tart, a former Deputy United States Marshal who worked with Britt, testifying that Britt told him in 2002 the things that Britt has brought forward in this Motion relating to Stoeckley's confession to AUSA Blackburn and Blackburn's threat in response, and the fact that Britt was troubled greatly by carrying the burden of his knowledge of those matters (DE-115, Ex. 3);
- an affidavit from Wendy Rouder, who at the time of trial was a young lawyer assisting MacDonald's lawyers, testifying that she had interaction with Stoeckley the weekend after Stoeckley's interview with AUSA Blackburn and subsequent appearance in court, and testifying that during that contact Stoeckley told her that she (Stoeckley) had been present in MacDonald's home during the murders and could name the murderers, but did not testify to those facts in court because she was "afraid ... of those damn prosecutors sitting there," adding that "they'll fry me" (DE-115, Ex. 5);
- an affidavit from Helena Stoeckley's mother, averring that Stoeckley had told her on two occasions that she was present in the MacDonald home during the murders of MacDonald's family in February 1970, and providing details from Stoeckley that corroborated both MacDonald's account of the murders and Rouder's account of Stoeckley's statements to her (DE-144).

This evidence was buttressed by further evidence adduced at the evidentiary hearing, set out *infra*, showing that Stoeckley confessed, during MacDonald's trial, her presence at the murders to her own lawyer.

2. The DNA Evidence

In 1997, MacDonald obtained permission from this Court to conduct DNA testing on the physical evidence from the scene of the killings. The DNA testing was subsequently done by the Armed Forces Identification Laboratory. There was much procedural haggling over the testing, resulting in it taking nine years to

complete. There were 28 specimens for testing. Three of the 28 could not be matched to any relevant person.⁴

a. Specimen 91A

Specimen 91A is noted in the DNA report as a human hair that the chain of custody describes as found in “fingernail scrapings from the left hand of Kristen MacDonald.” (DE-123 at 2). It is a human hair with hair root intact, measuring approximately 1/4” in length. The DNA testing of this hair produced a profile that is not consistent with MacDonald or the other comparison samples. (DE-123 at 3).

Kristen MacDonald, by all accounts, was killed in her bed where she was found. The doctor who performed the autopsy of her testified at trial that she had numerous defensive wounds on and around her fingers. (TT 2576-77). Thus, the presence of a hair belonging to a person who is not MacDonald, underneath one of Kristen’s fingernails, is strong evidence that while Kristen was defending herself from her killer, a hair from her killer came to reside under her fingernail, and that killer is not MacDonald. Given the entirely circumstantial case presented by the Government at trial, the exculpatory effect of this evidence cannot be overstated.

b. Specimen 75A

⁴ In addition to samples from MacDonald and his family, known DNA samples from Helena Stoeckley and Greg Mitchell were also submitted for comparison in this testing.

Specimen 75A is a human body or pubic hair, approximately 2 1/4 inches in length, that the chain of custody describes as found under the body of Colette MacDonald at the crime scene. (DE-123 at 3). The DNA testing of this hair produced a profile that is not consistent with MacDonald or the other comparison samples. (DE-123 at 3).

Again, the presence of this unmatched human hair under the body of Colette MacDonald is strong proof of the presence of unknown intruders in the MacDonald home.

c. Specimen 58A1

Specimen 58A1 is a hair approximately 1/4 inch in length, with root intact, that the chain of custody describes as recovered from the bedspread on the bed in the bedroom occupied by Kristen MacDonald. (DE-123 at 4). As with the previous two hair samples, the DNA testing of this hair produced a profile that is not consistent with MacDonald or the other comparison samples. (DE-123 at 4).

Thus, a hair belonging to an unidentified individual was found on the bedspread on the bed where Kristen MacDonald was murdered. The fact that this hair was on Kristen's bed -- not a common area of the home and not a place some

casual visitor to the home would likely be -- is further evidence supporting the presence of intruders who committed the murders.⁵

B. Evidence at the September 2012 Evidentiary Hearing.

MacDonald called six witnesses initially at the hearing. The Government called twelve witness, and MacDonald then called one additional witness. The witness evidence adduced at the hearing relevant to the issues raised in this Brief is as follows:⁶

MacDonald's Witnesses

1. Wade Smith

Wade Smith is a Raleigh lawyer who, with Bernard Segal of the Pennsylvania Bar, represented MacDonald in the 1979 trial. (EHT 21). Smith described how in January 2005, now-deceased DUSM Jimmy Britt contacted Smith “and told me that something had worried him and had been heavy on his mind and heart for all the years since the MacDonald case and he needed to talk to me about it and sort of unload his soul.” (EHT 24). They met at Smith’s office, and Britt told Smith about the events that form the basis of Britt’s affidavit

⁵ The Motion, on remand from this Court’s 2011 opinion, contained only these two claims. In the district court’s order denying the Motion, it made clear that it was also considering MacDonald’s earlier *Brady* claims relating to the physical evidence as a separate claim as well. (DE-354 at 132-33 at n. 48; 158-62).

⁶ A full recitation of the hearing testimony of all witnesses is set out in the parties’ pleadings below. (DE-343 at 15-31; DE-344 at 32-64).

underlying the Motion. Smith testified about taking a sworn statements and obtaining two affidavits from Britt, including the one that is attached to the Motion. (EHT 43-53; DEHX 5058-59) Smith also arranged for a polygraph examination of Britt, which was conducted and showed no deception on the part of Britt. (EHT 37-42; DEHX 5057).

2. Mary Britt

Mary Britt was Jimmy Britt's wife at the time of the MacDonald trial in 1979. They were married in 1957, and divorced in 1989. (EHT 222; 241).

During the trial in 1979, Jimmy Britt told her that he was going to South Carolina to pick up a witness, and "when he got home that evening, when he came in the door, he was very excited, and that's the only word I know to describe it, because he felt the woman talked in the car coming back about her involvement, that he said, his words, she described the inside of the apartment where the MacDonalds lived, and he used the term that she described it to a T even to the fact of a child's hobby horse that was broken." (EHT 223). Mary Britt was absolutely certain that during the 1979 trial Jimmy Britt told her these things. (EHT 239-40).

Jimmy Britt returned home the next day from the trial, and "as soon as he walked in that night, of course, I asked him and I know very well the words that he used to tell me. He said they say they can't use her testimony because her brain is fried from the use of drugs." (EHT 225).

3. Eugene Stoeckley

Eugene Stoeckley is the younger brother of Helena Stoeckley. (EHT 267). After the murders of the MacDonald family, there were rumors in town of Helena's involvement that caused stress in the family and to him particularly. (EHT 269). As he grew up, the issues continued until one day he confronted Helena about the stress caused to the family by the allegations of her involvement, and Helena "told me to be careful because she had certain friends and she told me she also had an ice pick." (EHT 271). The topic became taboo at their family home and was not discussed, through Helena's death in 1983. (EHT 273-74).

In the mid 2000s, Eugene's mother's physical health deteriorated, and she ending up in an assisted living facility in Fayetteville. (EHT 279-80). Eugene was in charge of her care and close to her. (EHT 280-81). As his mother's health deteriorated and they understood that "her time was drawing short," Eugene and his mother "would have some intimate discussions about our family." (EHT 283). Eugene started questioning his mother about Helena's involvement in the MacDonald murders, because he wanted to know the truth, and "she said that Helena was there that night." (EHT 283). Eugene's mother told him that Helena had confided that in her when Helena came to visit her with Helena's newborn child in October 1982, because at that time Helena knew she was dying. (EHT

282-83). Eugene testified: “My mother said that Helena was there and that Dr. MacDonald was not guilty of the crimes.” (EHT 284).

This information weighed heavily on Eugene. Eventually, he contacted Kathryn MacDonald, the wife of Jeffrey MacDonald, which led ultimately to his mother agreeing to execute an affidavit setting out the events of Helena’s confession to her, which his mother approved before signing as accurate. (EHT 284-97).

Eugene also testified that his mother told him that Helena wanted to testify at trial, but was threatened with prosecution for murder: “What my mother would say along those lines was that they wouldn’t let her testify, she wanted to testify, but she was threatened with prosecution for murder.” (EHT 331).

4. Wendy Rouder

At the time of the trial in 1979, Wendy Rouder worked for the defense team as an assistant attorney after just having passed the bar. (EHT 345). She was present in Raleigh for the entire trial.

On the weekend of 18 August 1979 during the trial, a call came into their office asking that Helena Stoeckley be removed from the motel where she was staying. (EHT 346). Rouder went to the motel and assisted in Stoeckley getting moved to another location. (EHT 347-49). Rouder spent several hours with Stoeckly, and during this time Stoeckley would make references to her

involvement in the murders of the MacDonald family, by saying things like “she thinks she was there, she feels guilty,” and other statements to that effect. (EHT 348-49); (DEHX 5080).

During Rouder’s time with Stoeckley in moving from location to location, Stoeckley continued to make statements about her involvement. Rouder “eventually said to her at some point in time, Helena, why are you telling me all this, why don’t you testify that way on the stand, or something to that effect.” (EHT 350). Stoeckley’s response was that “she said I can’t with those damn prosecutors sitting there,” adding “I believe she added they’ll burn me, fry me, hang me, you know, those words are not specific.” (EHT 350-51).

Rouder testified that she signed an affidavit in 2005 regarding these events. (EHT 351-53; DEHX 5080). Rouder testified that she was informed around that time by Kathryn MacDonald that there was a deputy U.S. Marshal to whom Stoeckley had made “remarkably similar statements,” and that the deputy marshal “had sworn that also in his presence one of the prosecutors, James Blackburn, had threatened to indict Ms. Stoeckley for murder if she were to make the same admissions regarding her involvement in the MacDonald murders in the courtroom.” (EHT 353-54).

Rouder testified that this information “rang a bell for me ... a-ha, that’s why she said she can’t testify with those damn prosecutors sitting there. In ’79, I had

no such association with that phrase.” (EHT 354). Rouder testified that hearing the information from the Britt affidavit was her “eureka moment” in explaining Stoeckley’s statements to her in 1979 about “those damn prosecutors” want to “fry me.” (EHT 357).

Rouder testified on cross-examination that during her interaction with Stoeckley that weekend, she received a phone call at Stoeckley’s motel room from the trial judge instructing her to not ask Stoeckley any questions. (EHT 394-95; DEHX 5080 at ¶ 13). In addition, Rouder testified that after trial, she received a letter from the trial judge (Judge Dupree) wherein the judge told her that he could not offer her employment as a law clerk due to the appeal on the MacDonald case pending. In the letter, the trial judge makes the statement that he “confidently expected that the jury would return a not guilty verdict in the case.” (DEHX 5115).

5. Sara McCann

In 1982, Sara McCann lived in South Carolina with her husband, and befriended Helena Stoeckley through a church. (EHT 418-19). Stoeckley had a newborn child that they assisted Stoeckley with, and Stoeckley moved in with them during the period October through December 1982. (EHT 421). When Stoeckley told her that she was from Fayetteville and involved in an “FBI case,” they realized her connection to the MacDonald case. (EHT 422).

McCann asked about the case, and Stoeckley told her that “the men that did the murdering, okay, Jeffrey’s wife, children, and almost killed Jeffrey, that they were going to rough Jeffrey MacDonald up and that she would become a wizard in the occult group.” (EHT 423). Stoeckley told her that she ran out screaming and continued to have nightmares about the events. (EHT 423-24). Based on her conversations with Stoeckley, McCann testified that “I know as well as I know that I’m sitting here today that Jeffrey MacDonald is innocent.” (EHT 424).

Government Witnesses

1. Frank Mills

Mills was an FBI agent from 1962 to 1990. On 14 August 1979, he arrested Helena Stoeckely on a material witness warrant, and took her to the Pickens County Jail, which is about 40 minutes from Greenville, SC. (EHT 474-86; 505). Mills testified that he interviewed Stoeckley on the way to the jail and she said that she used drugs on the night of the murders that “put her out” and she could not remember anything further about the night. (EHT 480-81).

Mills testified that he released Stoeckley the next day (8/15/1979) into the custody of Vernoy Kennedy, a deputy U.S. Marshal. (EHT 488). The Government then introduced a sworn statement from Kennedy, dated 23 August 2006, wherein Kennedy stated that he picked up Stoeckley at the Pickens County Jail on 15 August 1979 and transported her to the intersection of I-85 and I-77 in

Charlotte, where he met someone from the Marshal Service from North Carolina. (EHT 511-13).

2. Dennis Meehan

Meehan was a deputy U.S. Marshal in the Eastern District of North Carolina from 1978 to 2001. (EHT 515). Meehan testified that during the MacDonald trial, he was assigned to pick up Stoeckley, who had been arrested on a material witness warrant. (EHT 518). Meehan testified that he was instructed to go to Charlotte, NC, to pick up Stoeckley, and that he and his wife (acting as guard matron) did so and drove to the area of I-85 and I-77 in Charlotte, where they met a deputy marshal from South Carolina and picked up Stoeckley. (EHT 521-22). Meehan testified that they took Stoeckley directly to the Wake County Jail in Raleigh, where Stoeckley was booked into the jail. (EHT 522-25). Meehan testified that no other deputies were involved in the transport of Stoeckley to Raleigh. (EHT 525-26).

Meehan testified that Stoeckley was transported the next day, 16 August 1979, from the Wake County Jail to the federal courthouse in Raleigh by deputy marshal Jimmy Britt and Geraldine Holden, another marshal's office employee. (EHT 527). Meehan testified that this trip is approximately 6 city blocks. (EHT 527). Meehan identified Government Exhibit 2074 as a photograph from the 17

August 1979 edition of a Raleigh newspaper, showing Stoeckley with Britt at the federal courthouse, with Stoeckley's boyfriend in the background. (EHT 527-29).

3. Eddie Sigmon

Sigmon was the chief deputy U.S. Marshal at the time of trial in 1979. Sigmon testified that Stoeckley was arrested on a material witness warrant in South Carolina during the trial and had to be transported to Raleigh. (EHT 546-47). Sigmon could not recall specifically who he assigned to perform the transport. (EHT 548). When asked by the Government who he would have chosen between Meehan and his wife or Britt and clerical employee Geraldine Holden, Sigmon testified that he would have used Meehan and his wife for the transport to avoid having a clerical person out of the office. (EHT 548).

Sigmon testified that, contrary to Britt's affidavit, he did not instruct Britt to go to a motel and check Stoeckley out of the motel and into a different hotel. (EHT 558).

5. James L. Blackburn

Blackburn was one of the prosecutors at MacDonald's trial. He prosecuted the case with U.S. Attorney George Anderson, AUSA Jack Crawley, and DOJ Attorney Brian Murtagh. He and Murtagh did the actual questioning and argument in court. (EHT 596).

Blackburn testified that Stoeckley was arrested on a material witness warrant and brought to Raleigh to be interviewed by the defense and prosecution. (EHT 599-601). Court was suspended on Thursday, 17 August 1979, for these interviews to take place. (EHT 602). Blackburn testified that at approximately 2 p.m., Stoeckley was brought to U.S. Attorney's Office for interview, though he does not know how she was transported there. (EHT 606). Blackburn testified that Stoeckley was interviewed in Anderson's office, in the presence of him, Anderson, Crawley, and Murtagh. (EHT 607-08). According to Blackburn, no one else was present. (EHT 608). Blackburn testified that he asked Stoeckley questions, and Stoeckley denied being present or participating in the murders. (EHT 610). Blackburn denied threatening Stoeckley with prosecution. (EHT 611). Blackburn testified that DUSM Britt was not present during this interview with Stoeckley. (EHT 640). Blackburn testified that the next day at trial, Stoeckley testified and thereafter was released from the material witness warrant but placed under defense subpoena. (EHT 619-625).

Blackburn left the U.S. Attorney's Office in September 1981, and entered private practice. (EHT 633). In private practice, Blackburn began embezzling funds from his law firm and forging documents, and in 1993 was convicted of felony embezzlement and obstruction of justice offenses in state court, sent to prison, and disbarred. (EHT 634-37; DE-115, Ex. 10). In committing these

offenses, Blackburn stole money and forged 17 judge's signatures to false pleadings, including Judge Dupree's signature. (EHT 637-38; 680). His embezzlement involved approximately \$234,000. (EHT 679). Blackburn conceded that he had lied to his clients continually in committing his criminal offenses. (EHT 655-56). Blackburn also conceded that in the 2000s, he accepted a \$50,000 advance for writing a book about this case but did not do so, and has not returned the money despite entering a promissory note to do so. (EHT 688-89).

6. Jack B. Crawley, Jr.

Crawley was an AUSA on the trial team in the MacDonald case. (EHT 714). When Stoeckley was interviewed by the Government during trial, Crawley recalls the interview taking place in Anderson's office, but he does not recall "all of the specifics of that interview." (EHT 721). Crawley testified that during the interview, Stoeckley denied being present at the murders of the MacDonald family. (EHT 722). Crawley testified that he thought that DUSM Britt was not present at the Stoeckley interview, (EHT 721), but he was "not positive" of that fact. (EHT 738). Crawley testified that he does not remember if he or Murtagh left during the Stoeckley interview. (EHT 738-39).

After leaving the U.S. Attorney's Office, Crawley worked in private practice and for a short time was a state court judge. (EHT 728-30). Several bar complaints were filed against him in the 1990s relating to his failure to complete

work and his trust account, and eventually the result of those complaints were that he was placed in disability inactive status by the bar. (EHT 731-32).

MacDonald's Additional Witness

After the conclusion of the Government evidence, MacDonald requested the ability to call Jerry Leonard, the attorney appointed by the trial judge to represent Stoeckley during the 1979 trial, to testify about his communications with Stoeckley. Earlier in the hearing, the district court had ordered Leonard to produce an affidavit of his communications with Stoeckley and submit it under seal to the Court for a determination as to whether the privilege should be set aside under the principles of *Swidler & Berlin v. United States*, 524 U.S. 399 (1998). (EHT 708). The district court ordered Leonard to testify to Stoeckley's communications to him because it found, under the relevant case law, that the "question of innocence trumps the other aspects of the privilege" and therefore found that the privilege should be set aside, and unsealed Leonard's affidavit. (EHT 1238).

1. Jerry Leonard

Leonard is a lawyer in Raleigh and in 1979 was in private practice. He had previously worked in 1971 as a law clerk to Judge Dupree. (EHT 1107). During the MacDonald trial, he received a call to represent Stoeckley from Judge Dupree's office. (EHT 1108). Leonard believes that the call took place on Sunday, 19 August 1979. (EHT 1139). Leonard picked up Stoeckley and took her to his

house to talk with her and try to build trust with her. (EHT 1110). Stoeckley fell asleep in a chair at his home, and the next morning he took her to court. (EHT 1111). They were given a room in the courthouse in which to wait. That morning, Leonard asked Stoeckley about her involvement in the murders of MacDonald's family, and she told Leonard that she did not remember anything about the evening of the killings. (EHT 1112-13).

In a later conversation that afternoon, Stoeckley asked Leonard "what would you do if I told you I was there." (EHT 1114). Leonard told Stoeckley that he would continue to represent her, but needed to know the truth. Stoeckley then told Leonard that she was present during the murders. (EHT 1114-15; DEHX 5113). Leonard's affidavit sets out the particulars of Stoeckley's confession to him, including that she was present at the murders with the men who did it, at least one of whom had some grudge against MacDonald. Importantly, Stoeckley also told Leonard that during the murders, the phone rang, she answered it, and quickly hung up when instructed to do so by the other men. (DEHX 5113). This statement is corroborated by other evidence showing that such a phone call did take place. (DEHX 5021). Leonard testified unequivocally that the matters in his affidavit regarding the statements made to him by Stoeckley were true and accurate, and he was willing to testify to them under oath. (EHT 1231).

C. The District Court's Order Denying the Motion.

On 24 July 2014, the district court entered an order denying MacDonald's Section 2255 Motion, under the gatekeeping provision of 28 U.S.C. § 2255(h) and alternatively on the merits. After a lengthy recitation of the record evidence in the case, (DE-354 at 1-128), the district court first addressed the legal standard involved. With respect to the gatekeeping standard in § 2255(h), the district court adopted MacDonald's position that all of the newly discovered evidence, viewed in light of the evidence as a whole, must be considered in assessing the § 2255(h) standard:

The court, accordingly, will assess whether all the newly discovered evidence, viewed in light of the evidence as a whole, is sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found him guilty of the murders of his wife and daughters.

(DE-354 at 132-33).

The district court then examined the evidence and held that MacDonald did not meet this standard. First, with respect to the "unsourced hairs evidence," the district court dismissed this evidence because a juror could find that the unsourced hairs were "mere artifacts or debris, and not indicative of intruders" and were similar to other unsourced hair evidence previously offered by MacDonald that had been rejected by the courts. (DE-354 at 134-35).

Next, the district court addressed the Britt evidence. The district court found that Britt's statements were internally inconsistent, contradicted by other evidence,

and highly unlikely to have occurred, and therefore concluded that Britt's statements were "neither probably reliable nor likely credible." (DE-354 at 137-38).

Next, the district court addressed Stoeckley's confession to her attorney, Jerry Leonard. The district court dismissed Leonard's testimony as "unreliable" because Leonard's testimony about certain events that occurred during his representation "is contradicted by other matters in the record" and that Leonard's poor memory of certain events occurring in 1979 shows that he is likely "remembering" information he learned at a later date." (DE-354 at 139-43).

The district court then, adopting the conclusions of the trial judge in excluding the seven Stoeckley witnesses at trial, further held that no relief could be based on the evidence from Leonard or Britt or Stoeckley's mother because of the inherent unreliability of Helena Stoeckley. (DE-354 at 144-146).

The district court then addressed the threat to Stoeckley as testified to by Britt, and the resulting fraud on the court. The district court found Britt's assertions to be unreliable in light of the testimony of the prosecutors, Blackburn and Crawley, and in light of other evidence refuting Britt's recitation of events occurring during the trial. (DE-354 at 146-47).

Finally, the district court considered the evidence as a whole, and after setting out some of the trial evidence offered by the Government to rebut

MacDonald's version of events, concluded that the evidence as a whole supported rejection of MacDonald's claims under the § 2255(h) procedural gatekeeping bar. (DE-354 at 152),

In the alternative, the district court then considered MacDonald's motion on the merits. The district court reviewed the Britt and DNA claims and found that they did not establish a constitutional violation, essentially for the same reasons they did not meet the § 2255(h) gatekeeping standard. (DE-354 at 154-68). The district court also denied a certificate of appealability.

D. MacDonald's Rule 59 Motion.

On August 21, 2014, MacDonald filed a Rule 59 Motion to alter the judgment on his § 2255 Motion, in light of new evidence relating to several of the Government's expert witnesses. (DE-357). Specifically, the motion is based on (1) a DOJ Inspector General report issued in July 2014 that concludes that former FBI Analyst Michael Malone "repeatedly created scientifically unsupportable lab reports and provided false, misleading, or inaccurate testimony at criminal trials." (DE-357-1 at 45);⁷ and (2) a September 2014 letter from Special Counsel to the

⁷ MacDonald's 1990 motions were based in part on the post-trial discovery of handwritten lab notes that revealed numerous long blond synthetic hairs had been found in a hairbrush in the kitchen of the MacDonald home after the murders. These hairs were not matched to any item in the MacDonald home, and the analyst who was the author of the notes did not mention the synthetic hairs when she testified at trial. These suppressed hairs were powerful corroborative evidence of MacDonald's defense -- Stoeckley was known to wear a blond wig at the time of

DOJ to the prosecutors in this case, informing them that at least three laboratory examiners involved in this case -- Malone, Paul Stombaugh, and Robert Fram -- had “exceeded the limits of science by overstating the conclusions that may appropriately be drawn from a positive association between evidentiary hair and a known hair sample,” (DE-363-2), and identified three items in MacDonald’s case where such errors had occurred: (1) a lab report from Malone identifying a hair as belonging to MacDonald; (2) a lab report from Fram identifying a hair as originating from Kristen MacDonald; and (3) Stombaugh’s trial testimony regarding the origin of a hair. (DE-383 at 4) (summarizing issue).

MacDonald argued that this new evidence was especially vital because it showed the propensity of the experts offered by the Government to offer unreliable opinions. MacDonald stressed that Stombaugh’s reliability especially was at issue, because he was the chief architect of the Government’s pajama top experiment at trial that the Government has consistently touted as its best evidence, as recently as the closing arguments on the Motion in the district court in September 2012. (DE-364 at 5-8; EHT at 1338).

the murders. The Government countered the 1990 motions with an affidavit from Malone, opining the blond synthetic hairs were not wig hairs, but were made of a saran fiber used only in doll’s hair. Malone’s opinion figured prominently in the denial of MacDonald’s habeas petition. *MacDonald*, 778 F.Supp. at 1350-51 (citing Malone report).

After response by the Government, the district court denied MacDonald's Rule 59 motion. (DE-383).

STANDARD OF REVIEW

In an appeal from the denial of a Section 2255 Motion, this Court reviews the district court's legal determinations *de novo*. *United States v. Linder*, 552 F.3d 391, 395 (4th Cir. 2009).

ARGUMENT

I. The District Court Erred in Concluding That the New Evidence Offered by MacDonald Failed to Meet the 28 U.S.C. § 2255(h)(1) Procedural Gatekeeping Standard.

The district court concluded that the evidence offered by MacDonald failed to meet the § 2255(h)(1) procedural gatekeeping bar for the filing of a successive § 2255 motion. To overcome the procedural bar present in Section 2255(h), a movant must present:

Newly discovery evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense.

28 U.S.C. § 2255(h)(1). In conducting this inquiry, the district court must consider the proffered evidence “with due regard for the likely credibility and the probable reliability thereof.” *Macdonald*, 641 F.3d at 610. “Simply put, the ‘evidence as a

whole’ is exactly that: all the evidence put before the court at the time of its ... § 2255(h)(1) evaluation.” *Id.*⁸

The district court correctly found that it must consider all of the newly discovered evidence offered by MacDonald in assessing this standard. (DE-354 at 132-33). But the district court grossly misapplied this standard in finding it not met, because (a) the trial evidence of guilt was weak, and (b) the newly discovered evidence is strong evidence of innocence.

A. Application of the § 2255(h) Standard Must Account for the Weakness of the Trial Evidence.

By its very terms, § 2255(h)(1) requires a district court to assess the newly discovered evidence in light of the strength of the trial evidence, because it requires the court to consider the new evidence “in light of the evidence as a whole” and consider its effect on a “reasonable factfinder” in assessing guilt for the charged offense. The district court’s order here assesses the trial evidence to some degree, but fails entirely to consider the weakness of that evidence.

There can be no question that the evidence offered at trial against MacDonald was not strong. Most tellingly, in a letter to Wendy Rouder shortly after the trial, the trial judge noted that he “confidently expected that the jury

⁸ Presumably due to the rarity of application of this standard, there is no specific guidance in the caselaw as to how a district court should conduct the § 2255(h)(1) procedural gatekeeping analysis, beyond the instructions of this Court in the 2011 opinion.

would return a not guilty verdict in the case.” (DEHX 5115). There can be no more clear evidence of the weakness of the Government’s evidence at trial.

The Government offered no direct evidence of guilt. There were no eyewitnesses to the crimes other than the perpetrators. Both the trial judge and the Government contend that the most “incriminating” or “compelling” evidence against MacDonald was his pajama top and the pajama top “experiment.” *See MacDonald*, 640 F.Supp. at 312; (EHT 1338) (statement of prosecutor at 9/2012 hearing). But a brief examination of this evidence reveals the weakness of the Government’s proof.

MacDonald told the police that he had used his pajama top as a shield. During his struggle, it was pulled over his head, torn, and wound up wrapped at his wrists. He later placed it on his wife’s chest. The Government introduced threads matching the pajama top that were found in the master bedroom, the children’s bedrooms, and on the club outside. Yet the Government found no threads in the living room where MacDonald was attacked. This was considered by the Government to be strong evidence that MacDonald’s version was fabricated.

But overlooked in this conclusion is the fact that MacDonald was wearing at all times in his home his matching pajama bottoms as well, which were ripped from ankle to crotch, thereby exposing threads. (TT 2661-62). When MacDonald frantically tried to revive his wife and children, threads from his ripped pajama

bottom likely would have been scattered wherever he went. It is therefore not surprising, given MacDonald's account, that threads from his torn pajama bottoms were all around the house.

The Government also relied heavily on its pajama top "experiment," whereby its "experts" sought to show that the holes in the pajama top could be lined up with the puncture marks in Colette's chest.⁹ This test was badly flawed. The Government "experts" failed to consider vitally important information in conducting the experiment. They failed to even try to line up the holes in MacDonald's pajama top with the thirty-odd holes in Colette's pajama top -- if MacDonald had laid his pajama top on top of her, and then stabbed her through it as the Government contended, then the holes would have gone through both articles of clothing in the same pattern. The experiment also failed to account for the directionality of the thrusts or threads in any way.

There were numerous other problems with the pajama top experiment explained by the defense. (DE-383 at 13-18) (summarizing defense showing at trial of inaccuracy of experiment). Indeed, in the end, the Government "experts" could not even opine that the thrusts were made through MacDonald's pajama top as the Government contended -- they could state only that in their opinion it was

⁹ The Government's theory underlying this experiment is summarized in this Court's opinion on direct appeal. *MacDonald*, 688 F.2d 224, 227-28 (4th Cir. 1982).

possible that it *could* have happened. (TT 4371). The fact that the Government even now, more than thirty years after the trial, clings to this evidence as its best proof of guilt is itself the best proof of the *weakness* of the Government's case.¹⁰

In the end, this was an extremely weak Government case that turned entirely, as observed by the district judge during trial,¹¹ on the Government's attempts to disprove MacDonald's version of events, rather than prove what actually happened.

B. The Newly Discovered Evidence, In Light of the Evidence as a Whole, Establishes by Clear and Convincing Evidence That No Reasonable Factfinder Would Convict MacDonald.

This Court, in 1980, recognized the vital importance of Stoeckley's testimony to the decision of the jury in MacDonald's case:

¹⁰ In the district court's 1985 order denying MacDonald's habeas motions, the trial judge enumerated what he considered to be the most significant evidence against MacDonald at trial. The court listed the following as significant: 1) the murder weapons, 2) the pajama top and pajama top experiment, 3) the pajama top pocket, 4) MacDonald's eyeglasses, 5) the bloody footprint, 6) the latex gloves, 7) the blood splatterings and the Government's reconstruction of the crime scene, 8) the absence of physical evidence consistent with MacDonald's account. *See MacDonald*, 640 F. Supp. at 310-315. In his Section 2255 Motion, MacDonald has analyzed this evidence in detail and shown that each of these items of evidence is either consistent with the account given by MacDonald of the murders, or has been proven false by newly discovered evidence. (DE-155 at 34-41).

¹¹ At a bench conference late in the trial, the trial judge told the lawyers: "I think this case is going to rise or fall on one thing and one thing only and this is whether or not the jury buys the Defendant's story as to what happened. That is all there is in this case. We have been here five weeks, and that is still all there is in this case." (TT 5256-57).

Had Stoeckley testified as it was reasonable to expect she might have testified [admitting to presence at and participation in the crime], the injury to the government's case would have been incalculably great.

MacDonald, 632 F.2d at 264. The newly discovered evidence in MacDonald's Motion directly relates to this key point identified by this Court in 1980. Had the jury heard this new evidence -- in combination with the mountain of other evidence uncovered since trial showing Stoeckley's admissions to being present to be accurate and establishing the presence of intruders at the murder scene -- no reasonable juror would have convicted MacDonald.

To accept the Government's theory of guilt, one must accept that MacDonald created the story about a woman with a floppy hat being with intruders who killed his family, and that by coincidence such a woman did exist in the community *on that very night*, and that by coincidence that woman would then falsely *confess repeatedly* (both before, during, and after the 1979 trial) to being present during the murders with the murderers in a way that was *entirely consistent* with the story that MacDonald supposedly made up from whole cloth. In addition, one would have to accept that one of the men identified by Stoeckley as one of the killers in her many confessions, Greg Mitchell, would *by coincidence himself falsely confess repeatedly* to taking part in the killings, in a way that is *entirely consistent* with the story supposedly created by MacDonald. What are the chances of this occurring?

In his post-hearing briefs filed in the district court, MacDonald meticulously sets out the new evidence from Stoeckley and others in his Motion showing that Stoeckley lied during her trial testimony and was in fact present with the persons who actually killed the MacDonald family (DE-343 at 15-38); (DE-351 at 29), including:

- Britt's account of Stoeckley's admission to him and to AUSA Blackburn, and AUSA Blackburn's threat to Stoeckley in response;
- Leonard's account of Stoeckley's admissions to him during his representation of her during MacDonald's trial;
- Stoeckley's mother's account of Stoeckley's admissions to her in 1982, at a time that Stoeckley knew she was dying, as corroborated by the testimony of Eugene Stoeckley;
- Sarah McCann's account of Stoeckley's 1982 confession to her;
- the testimony and affidavit of Rouder, testifying that she had interaction with Stoeckley the weekend after Stoeckley's interview with AUSA Blackburn and subsequent appearance in court, and that Stoeckley told her that she (Stoeckley) had been present in MacDonald's home during the murders and could name the murderers, but did not testify to those facts in court because she was "afraid ... of those damn prosecutors sitting there," adding that "they'll fry me", thereby corroborating the threat to Stoeckley by AUSA Blackburn.

MacDonald has also set out the additional new (and previous) evidence that corroborates Stoeckley's confessions to Leonard, Britt, Blackburn, and her mother, including:

- an affidavit from Jimmy Frier, which confirmed that a phone call was placed to the MacDonald home during the murders which was answered by a woman -- and corroborated precisely the admission of Stoeckley to Jerry Leonard, wherein Stoeckley told Leonard that while she was in the MacDonald home she answered the ringing phone but quickly hung up when told to do so by one of the men she was with (DEHX 5021);
- affidavits from three individuals testifying that Greg Mitchell (a boyfriend of Helena Stoeckley continually linked to the murders) confessed involvement to them in the murders of MacDonald's family prior to his own death (DE-115, Ex. 7);
- an affidavit from Lee Tart, a former Deputy United States Marshal who worked with Britt, testifying that Britt told him in 2002 the things that Britt has brought forward in this Motion relating to Stoeckley's confession to AUSA Blackburn and Blackburn's threat in response, and the fact that Britt was troubled greatly by carrying the burden of his knowledge of those matters (DE-115, Ex. 3);
- the voir dire testimony at trial of the seven excluded witnesses who testified to Stoeckley's confessions to them;
- the evidence presented at the Article 32 hearing in military court showing Stoeckley's presence in the area of the crime scene and the lack of physical evidence tying MacDonald to the crimes (DE-343 at 71-80);
- the numerous statements of witnesses submitted with MacDonald's earlier habeas petition and new trial motions linking Stoeckley and Mitchell to the murders;
- the trial testimony of MP Mica, who enroute to the call from the murder scene at 4 a.m. saw a woman in a floppy hat close to the MacDonald home, thinking it strange she was there at that hour (TT 1401-54).

MacDonald has also set out the voluminous evidence showing the presence of intruders in the MacDonald home existing prior to the present motion, (DE-343 at 37-50), including:

- the synthetic blond wig hairs found in a hairbrush next to the phone in the MacDonald home, unmatched to any other item in the home but consistent with Stoeckley's presence that night wearing a blond wig, which were suppressed at trial and were the subject of MacDonald's 1990 motions;
- the black wool fibers found on the mouth and bicep area of Colette MacDonald and on one of the murder weapons, that were unmatched to any fabric in the MacDonald home, and which the Government was aware of prior to trial but failed to disclose, which were the subject of MacDonald's 1990 motions (DEHX 5027);
- the fact that numerous weapons were used in the killings, yet only one of these items could be conclusively identified as coming from the MacDonald home;
- the presence of a bloody syringe half-filled with fluid in a hall closet of the MacDonald home that was lost in the uncontrolled crime scene, which is probative of the presence of drug-seeking intruders;
- the presence of wax drippings of three different types in three different areas of the Macdonald home which did not match any other candles or wax in the home;
- the presence of numerous unidentified fingerprints, palm prints, and footprints in the crime scene that did not match MacDonald, a MacDonald family member, or any other exemplar tested;
- the evidence that was lost or destroyed as a result of the Government's inept handling of the crime scene, including MacDonald's pajama bottoms, the bloody half-filled syringe in the hall closet, and skin recovered from under Colette's fingernail that could have been subjected to DNA testing.

Finally, MacDonald has explained how the newly discovered DNA evidence further proves the presence of intruders in the home who committed the murders. As set out above, an unsourced hair was found in the fingernail scrapings of MacDonald's daughter, in a place where the hair would belong to her attacker. The hair did not belong to MacDonald. Two other unsourced hairs were present in the murder scene.

It is impossible in a filing of this type to catalogue the litany of exculpatory evidence that exists in this unique case in depth. But the sheer volume of this evidence, and the quality of the evidence, as evidenced by MacDonald's filings below, plainly meets the § 2255(h) gatekeeping standard. This is so in light of the evidence as a whole -- which includes a plethora of previously discovered new evidence supporting MacDonald's defense, and a very weak Government case at trial.

On direct appeal, Judge Murnaghan of this Court, in concurring, stated:

I conclude with the observation that this case provokes a strong uneasiness in me. ... [T]he way in which a finding of guilt is reached is, in our enduring system of law, at least as important as the finding of guilt itself. I believe MacDonald would have had a fairer trial if the Stoeckley related testimony had been admitted.

Macdonald, 688 F.2d at 236.

Had all of this newly discovered evidence been available at trial, it would not only have been presented to the jury, but would have caused the trial judge to

also admit the seven Stoeckley witnesses who were excluded. The newly discovered evidence relating to Stoeckley, and the newly discovered physical evidence, would have established beyond all question for the jury that reasonable doubt existed, and in fact that MacDonald was innocent.

C. The District Court's Rejection of the Newly Discovered Evidence is Error.

In finding that the newly discovered evidence did not meet the § 2255(h) standard, MacDonald respectfully submits that the district court overlooked material issues and failed to consider the exculpatory nature of both the new evidence and the evidence as a whole.

1. Jerry Leonard

The district court found Leonard's testimony about Stoeckley's confession to him during his 1979 representation of her to be unreliable. The district court's conclusion is error, for two reasons.

First, the district court erroneously found that Leonard was unreliable because his recitation of certain events during the week that he represented Stoeckley in August 1979 conflicted with other evidence. (DE-354 at 141-43). But this position overlooks the fact that while Leonard candidly admitted that while there were parts of the events (that occurred more than 30 years ago at the time he testified) on which he was unclear, his "memory is clear" as to the important matters set out in his affidavit regarding Stoeckley's confession to him.

(EHT 1231-32). This makes perfect sense -- Stoeckley's confession is something that a lawyer in his shoes would never forget. To accept the district court's rejection of this testimony, one must be willing to accept that Leonard made the confession up out of whole cloth, for no apparent reason (as he has no interest in the litigation), and managed to make up the confession in a way that was consistent with the other Stoeckley evidence. This did not occur.

Second, the district court's conclusion minimizes the corroboration for Stoeckley's confession to Leonard that is shown by the phone call testified to by Jimmy Frier. (DEHX 5021). The district court rejected Frier's evidence as unreliable because of the credibility issues raised by the Government. (DE 354 at 142). Again, however, to accept the district court's reasoning, one would have to accept that Frier made up this account in a way that was consistent with how Leonard chose to supposedly conjure up his account of Stoeckley's confession. Such a conclusion is not rational. Instead, the fact that Frier's declaration corroborates Stoeckley's statement to Leonard is strong proof that (a) Leonard is telling the truth, and (b) Stoeckley was telling Leonard the truth.

Leonard has no motive to make up Stoeckley's confession to him. While he understandably may have confused some details of events occurring thirty years ago, he was clear in stating that he accurately recalled Stoeckley's confession to him. And Stoeckley's confession is just the type of thing that a lawyer would

remember thirty years later. The district court's conclusions regarding Leonard are error.

2. Jimmy Britt

The district court found Britt to be unreliable because his statements were inconsistent and contradicted by other evidence introduced by the Government. (DE-354 at 137-39).

But the district court's conclusion overlooks the fact that as to the key portions of Britt's affidavit, they are strongly corroborated by other facts. First, the Government offered much evidence to attempt to show that Britt did not pick up Stoeckley in South Carolina, and only had custody of Stoeckley in Raleigh while transporting her to court and at the courthouse. Whatever the result of the evidentiary dispute on that point,¹² what is undeniable is that Stoeckley was in Britt's custody for significant periods of time. This fact is evidenced by the photograph introduced into evidence showing Stoeckley in Britt's custody. (DEHX 5060). It is undeniable that Britt was with Stoeckley to hear her

¹² Britt stated that he went to South Carolina to pick up Stoeckley. His version of events is strongly corroborated by the testimony of Mary Britt, who recalled that during the 1979 trial Britt told her that he was going to SC to pick up a witness, who turned out to be Helena Stoeckley. If Britt made up this trip in his 2005 affidavit, he would have had to divined the plan in 1979 so he could disclose it twenty-six years later in 2005. He had no reason to tell Mary Britt of his trip to SC in 1979 -- unless it were true.

confession to him during the trial, whether it was on a trip from SC to NC or it was in Raleigh.

Second, if not more important, Britt averred to his presence when Stoeckley met with AUSA Blackburn at the courthouse, during which Blackburn threatened Stoeckley with prosecution if she testified in court to her statement to Blackburn that she was present at the murders. As noted above, it is undeniable that Stoeckley was in Britt's custody at the courthouse on that date, as evidenced by the photograph and corroborated by Dennis Meehan's testimony. (EHT 527; DEHX 5060). The Government's evidence to the contrary came from two persons: Blackburn and Jack Crawley.

Blackburn is markedly lacking in any credibility. He has been convicted of felony criminal offenses, and disbarred, as a result of his forging judge's names to fake pleadings and to stealing money from his law firm. He has continued to engage in fraudulent conduct since his disbarment, taking a \$50,000 advance for book he never wrote. His testimony also rang of self-promotion, in marked contrast to that of Mary Britt, Eugene Stoeckley, and Jerry Leonard.

Crawley's memory of the events was understandably limited. Though he testified to a meeting with Stoeckley where he, Blackburn and other prosecutors were present, he could not rule out that Britt was present also. And, most

importantly, he does not know if Blackburn ever met Stoeckley alone with Britt, away from the other prosecutors.

Britt's testimony about the threat, on the other hand, is strongly corroborated -- the testimony and affidavit of Wendy Rouder show that the threat occurred. On the weekend after Stoeckley's interaction with Blackburn and her testimony at trial, Stoeckley admitted to Rouder that she was present during the murders with the murderers. When Rouder confronted her about why should would testify contrary at trial, Stoeckley told Rouder it was because of "those damn prosecutors" who would "fry me." When Rouder later in 2005 learned of Britt's affidavit about Blackburn's threat to Stoeckley, it was a "eureka moment" to Rouder because it explained why Stoeckley made those comments to Rouder in August 1979. It was a "eureka moment" because it made perfect sense.

Rouder's evidence is strong corroboration of the threat from Blackburn, and strong proof that the threat did in fact occur. There is no way to explain Rouder's testimony other than to conclude that Stoeckley was telling her the truth, and that Stoeckley was threatened by "those damn prosecutors." Rouder has no motive to testify falsely, and even produced a letter from the trial judge attesting to her good work and qualifications. (DEHX 5115). As compared to Blackburn, her

credibility is far superior and her qualifications impeccable.¹³ The district court's order rejecting Britt's testimony fails to take Rouder's testimony into account in any way.

In short, the district court's order rejecting Britt's evidence fails to account in any way for the strong corroboration that exists in the record for Britt's recitation of Blackburn's threat to Stoeckley, and Stoeckley's subsequent refusal to tell the truth. The evidence proves that the threat from Blackburn to Stoeckley did take place, and that Britt is telling the truth.

3. Helena Stoeckley

The district court also rejected the evidence from Stoeckley's mother (and Leonard and Britt as well) because it found that Stoeckley herself was so unreliable that her confessions could not be considered credible. (DE-354 at 144).

The district court's approach puts MacDonald in the proverbial *Catch 22*. Having claimed from the outset that his family was attacked by intruders later shown to be drug addicts, the multiple confessions of one of these intruders has never been considered on its merits for the principal reason that she was drug-

¹³ Britt's evidence regarding the threat is further corroborated by three other items: (1) the affidavit of Helena Stoeckley's mother and the testimony of Eugene Stoeckley, showing that Stoeckley told her mother she could not tell the truth because she was "afraid of the prosecutor" (DEHX 5051) and "was threatened with prosecution for murder" (EHT 331); (2) Britt's passing a polygraph on the issue from a respected polygraph analyst (DEHX 5057); and (3) the testimony of Mary Britt regarding Britt's reaction to seeing the inaccurate portrayal of the interview of Stoeckley by the prosecutor in the movie version of Fatal Vision. (EHT 226-28).

addled. If the tables had been turned, and if Helena Stoeckley had been indicted and tried for this crime, it is unlikely that any court would have excluded her many confessions because she was drug-addled or unreliable, or simply because she often repudiated her admissions of guilt. Many defendants only confess once, and repudiate their confessions thereafter -- the confessions are nonetheless admissible, and it is for the jury to consider the question of reliability. So it should be in this case as to Stoeckley.

Stoeckley's confession to her mother, as testified to by her younger brother Eugene, has strong indicia of trustworthiness. It was made at a time when Stoeckley knew she was dying and wanted to set the record straight. Likewise, Stoeckley's confession to Rouder during the 1979 trial carries a strong aura of credibility, given that its specifics are identical to her other confessions and the circumstances in which it was made.¹⁴

In addition, with respect to Stoeckley's confession to Leonard, the district court's conclusion fails to consider in any way the context of where and how Stoeckley made her confession to Leonard -- within the confines of the attorney-client privilege. Leonard testified, as set out in his affidavit, that Stoeckley confessed her presence during the murders to him while he was representing her

¹⁴ The district court's reliability determination is also undercut by the fact that prior to 1979 Stoeckley was a police informant who was regularly relied upon by the police and found to be reliable. (TT 5739).

and giving her legal advice. The Government will undoubtedly argue that clients often lie to their lawyers. But how often do clients lie to the lawyers in a way that inculpates, rather than exculpates, themselves? The fact that Stoeckley confessed to Leonard in an effort to obtain legal advice from Leonard gives that confession great reliability, because she wanted Leonard's help. The district court's order fails to consider this point in any way.

4. The DNA Evidence

As outlined above, the new DNA evidence is strong proof of intruders in the home. The 91A hair found in Kristen's fingernail scrapings is the hair of someone foreign to home, found in a place where it would be lodged when Kristen was defending herself from her attacker. Given the weak nature of the Government's case against MacDonald, the exculpatory nature of this evidence is overwhelming. The other two unsourced hairs, 75A and 58A, likewise strongly support MacDonald's version of events, by establishing the presence of strangers to the home in the murder scene.

The Government's retort to this evidence below was to argue that the court cannot be sure of the origin of the 91A hair because of alleged contamination of the exhibits *by the Government itself*. Notably, the Government never once raised the issue of contamination during the nine years the DNA testing was pending -- only after the results were exculpatory did the Government claim that it somehow

mishandled the evidence. The district court did not adopt the Government's arguments in this regard, and neither should this Court.

5. The § 2255(h) Standard is Met

In sum, the newly discovered evidence plainly meets the standard in the § 2255(h)(1) procedural gatekeeping bar. Section 2255(h)'s "no reasonable factfinder" standard is not impossible to meet, and the type of evidence offered by MacDonald here is of the type that traditionally has been found to meet this standard. *See, e.g. United States v. Williams*, 790 F.3d 1059, 1081-82 (10th Cir. 2015) (finding § 2255(h)(1) standard met where evidence showed defendant's firearm conviction resulted from false evidence caused by police coercion); *Hayes v. Battaglia*, 403 F.3d 935, 938 (7th Cir. 2005) (pre-AEDPA no reasonable juror standard met with "documentary, biological (DNA), or other powerful evidence" of innocence); *Watkins v. Miller*, 92 F.Supp.2d 824, 836-40 (S.D.Ind. 2000) (holding that DNA evidence showing crime likely committed by person other than defendant sufficient proof of actual innocence under pre-AEDPA standard to permit consideration of procedurally defaulted *Brady* claims). The district court erred in denying MacDonald's motion on this basis.

II. The District Court Erred in Denying the Motion on the Merits.

Section 2255 provides that a federal prisoner may move to vacate his conviction where it was obtained "in violation of the Constitution or laws of the

United States.” In his Motion, MacDonald asserts two claims for relief: (1) the “Britt” claim based on Stoeckley’s confession and the threat to Stoeckley by the prosecutor, and (2) the DNA claim. MacDonald submits that the district court erred in denying his Section 2255 Motion on the merits, because the evidence establishes a right to relief on both claims.

A. The Britt Claims

In his Motion, MacDonald sets out how the evidence relating to AUSA Blackburn’s interview with and threat to Stoeckley (as witnessed by Britt and corroborated by Rouder and other evidence) (a) shows that AUSA Blackburn concealed exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny; (b) shows that AUSA Blackburn’s threatened Stoeckley, causing her to change her testimony, in violation of MacDonald’s constitutional rights, see *Webb v. Texas*, 409 U.S. 95 (1972); *United States v. Golding*, 168 F.3d 700 (4th Cir. 1999); and (c) shows that AUSA Blackburn misled the district court in his representations as to what he was told by Stoeckley, in violation of MacDonald’s constitutional rights, see *Alcorta v. Texas*, 355 U.S. 28 (1957); *Napue v. Illinois*, 360 U.S. 264 (1959). (DE-115 at 30-31).

The factual events set out in MacDonald’s motion constitute violations of these constitutional standards. As set out above, the evidence submitted by MacDonald in support of his claim establishes these constitutional violations. The

evidence establishes that Stoeckley was threatened by Blackburn, and refused to admit her presence at the MacDonald murder scene on the witness stand as a result. This resulted in a violation of MacDonald's constitutional rights, and he should be entitled to Section 2255 relief.

B. The DNA Evidence Claim

The United States Supreme Court has assumed, without deciding, that a freestanding claim of actual innocence is cognizable under federal law. *Herrera v. Collins*, 506 U.S. 390, 417 (1993); *House v. Bell*, 547 U.S. 518, 554-55 (2006).¹⁵ Though the Supreme Court has never articulated the standard for such a claim, other circuits have held the standard for such a claim to be that "a habeas petitioner asserting a freestanding innocence claim must go beyond demonstrating doubt about his guilt, and must affirmatively prove that he is probably innocent." *Carriger v. Stewart*, 132 F.3d 463, 474 (9th Cir. 1997) (en banc).

The new DNA evidence in this case does just that -- it "affirmatively prove[s] that [MacDonald] is probably innocent." The linchpin to the Government's argument at trial, and its arguments against admission of the Stoeckley testimony and MacDonald's motions through the years, has been the

¹⁵ While the majority opinion in *Herrera* assumed without deciding that a freestanding claim of actual innocence was recognized by federal law, a majority of the members of the Court would have explicitly so held. Compare 506 U.S. at 417 (majority opinion) with *id.* at 419 (O'Connor, J., joined by Kennedy, J., concurring) and *id.* at 430-37 (Blackmun, J., joined by JJ. Stevens and Souter, dissenting).

lack of any physical evidence to corroborate the presence of intruders in the MacDonald home on the night of the murders. The new DNA findings now provide this evidence, in the strongest terms -- the presence of an unmatched human hair under the fingernail of Kristen MacDonald, in a location that shows that during Kristen's attempts to defend herself, a hair from her attacker was lodged under her fingernail, and that hair is not the hair of MacDonald.

MacDonald recognizes the extremely high standard for proof of a freestanding claim of innocence. But the DNA evidence in this case completely undercuts the Government's central theme at trial -- that the physical evidence in the MacDonald home was not consistent with, and in fact contradicted, the account of intruders given by MacDonald, and therefore the murders must have been committed by MacDonald.¹⁶ In considering the exculpatory effect of this evidence, the strength or weakness of the Government's case at trial must be considered. *House*, 547 U.S. at 539 (analysis of actual innocence claim "requires a holistic judgment about 'all the evidence' and its likely effect on reasonable jurors applying the reasonable-doubt standard"). As outlined above, the Government

¹⁶ In its closing argument at trial, the Government stated: "The Government's case, stripped to the essentials, consists of the crime, the physical evidence, the defendant's story voluntarily told, the conflict between that story and the physical evidence, from which we submit that it was a fabrication of the evidence, and from that we infer and ask you to find his guilt." (TT 7059).

case at trial was weak, and the DNA evidence directly undercut the Government's chief argument.

Had this DNA evidence been available at trial, MacDonald would have been in a position to point out that there exists DNA evidence under the fingernail of his daughter, in a place where it is logical that the DNA of his daughter's attacker would be, and that DNA did not match him, but rather some unknown person. In short, because of *where* this unsourced DNA was located, this DNA evidence would have provided the exact corroboration demanded by the Government at trial as necessary to prove MacDonald's innocence to the jury.

The district court's order, in casting the new DNA evidence as cumulative of other evidence of unsourced items found in MacDonald's home, fails to account for the location where the 91A hair was found. The fact that this evidence was found in the place it was provides powerful corroboration to MacDonald's version of events. Given the otherwise weak Government case against him, the DNA evidence in this case should result in Section 2255 relief.

III. The District Court Erred in Denying the Rule 59 Motion.

For the reasons set out in his pleadings below, MacDonald respectfully submits that the district court erred in denying his Rule 59 Motion. (DE-379).

CONCLUSION

For the reasons stated herein, Appellant Jeffrey R. MacDonald respectfully requests that the district court's order denying his motion under 28 U.S.C. § 2255 to vacate his convictions and sentences be reversed, and that the case be remanded for entry of an order granting his motion and vacating his convictions.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 34(a), MacDonald respectfully requests oral argument in this appeal, as he submits that the Court's decisional process will be aided by oral argument given the factual and legal issues involved in this matter.

This the 12th day of November, 2015.

/s/ Joseph E. Zeszotarski, Jr.
Joseph E. Zeszotarski, Jr.
N.C. State Bar No. 21310
Gammon, Howard & Zeszotarski, PLLC
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Counsel for Appellant Jeffrey MacDonald

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

This brief contains no more than 13,814 words, excluding the parts of this brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

This brief has been prepared in a proportional spaced typeface using Microsoft Word in 14 point Times New Roman.

/s/ Joseph E. Zeszotarski, Jr.
Counsel for Appellant

DATED: November 12, 2015.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing BRIEF through the electronic service function of the Court's electronic filing website, as follows:

Jennifer P. May-Parker
John S. Bruce
Assistant United States Attorney
310 New Bern Avenue
Raleigh, NC 27601

This the 12th day of November, 2015.

/s/ Joseph E. Zeszotarski, Jr.
Counsel for Appellant

ADDENDUM TO INFORMAL BRIEF

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
POST OFFICE DRAWER 27585
RALEIGH, NORTH CAROLINA 27611

FRANKLIN T. DUPREE, JR.
JUDGE

September 26, 1979

TELEPHONE: (919) 755-4200

Ms. Wendy Phyllis Rouder
333 Presidio Avenue No. 4
San Francisco, California 94115

RE: Clerkship

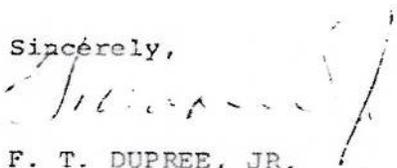
Dear Ms. Rouder:

As I told you during the course of the MacDonald trial, I was very much impressed with the quality of the work which you did in that case, and for this reason when I found that you were interested in a law clerkship I encouraged you to make an application with us. At that time I confidently expected that the jury would return a not guilty verdict in the case, but since the case will now be appealed and you will doubtless keep working on it, it will not be possible for me to appoint you to a clerkship position.

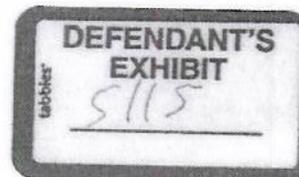
Even so, I want you to know that I was most impressed with your qualifications and that I wish you the best of success in your further endeavors.

With kindest regards,

Sincerely,


F. T. DUPREE, JR.

FTDjr/na



Reviewed
FILED IN OPEN COURT
ON 9/20/12 SE
Julie A. Richards, Clerk
US District Court
Eastern District of NC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 75-CR-26-3-F
No. 5:06-CV-23-F

UNITED STATES OF AMERICA,)
)
v.)
)
JEFFREY R. MacDONALD,)
Movant)

AFFIDAVIT OF
JERRY W. LEONARD
(submitted under seal)

JERRY W. LEONARD, after being duly sworn, deposes and says that, if ordered to testify at the hearing of *United States of America v. Jeffrey R. MacDonald*, his testimony regarding his communications with Helena Stoeckley would be as follows:

1. I am an attorney licensed to practice law in the State of North Carolina, and have been licensed to practice in North Carolina since 1971.
2. In August, 1979, I was appointed to represent Helena Stoeckley in the United States District Court for the Eastern District of North Carolina sitting in Raleigh. Ms. Stoeckley was a witness in the matter of *United States of America v. Jeffrey R. MacDonald*. At the time of my appointment, she had already testified before the jury, but had not been released from the original subpoena because there was a possibility that she would be re-called as a witness. I was told by the Court to make sure she was available until she was released from the subpoena. An attorney conference room on the seventh floor of the courthouse was made available for our use during Court hours.
3. According to my best recollection, I was appointed on Sunday, August 19th, 1979, and my representation of Ms. Stoeckley lasted until she was released from the subpoena about a week later. During that period of time, I was alone with her the better part of each day.
4. During the period of time that I represented Ms. Stoeckley, to my knowledge she had no contact whatsoever with representatives of either the prosecution or the defense.

Initials (JWL): 

5. When I first met Ms. Stoeckley, she appeared very distraught and very apprehensive of her boyfriend. She had a cast on her forearm/wrist and she had a black eye. When I first met her I do not think that she had slept in at least 24 hours.
6. I spent several hours in conversation with her on the first day (Sunday, August 19th). I was trying to introduce myself and get to know her as a person, and to understand what I was dealing with. Basically, the Court had placed her in my custody. I had to arrange her lodging, and I needed to be sure she would not leave Raleigh and that I could get her to each Court session. I did not talk to her in depth about her legal situation until the morning of Monday, August 20th, which was our first day together at the federal courthouse in Raleigh.
7. On that Monday morning, I explained to her my role as her attorney and made sure she realized that either side could ask her to testify again on a moment's notice. I made sure that Ms. Stoeckley clearly understood that what she told me was just between me and her, and that she should not talk about the case to anyone except me. I told her that I wanted to help her and would help her, but that I needed to know the truth, no matter what it was, in order to help her.
8. At this early stage, we discussed the federal penalty for murder. We talked about the death penalty not being in effect at the time and that the maximum penalty for these murders was three life sentences, but that there was a possibility for reduced charges even if she was part of a group that committed the murders, if she told an accurate account of the crime and identified the other people who were involved. We talked about the statute of limitations and I remember telling her I thought it was up in the air because the United States Supreme Court had not decided the issue since an earlier decision had declared the death penalty unconstitutional as implemented.
9. Ms. Stoeckley initially told me she did not remember anything about the night of the MacDonald murders because she was very high on drugs. She could remember the day before and the morning after the murders, but she claimed she had a totally blank memory about the period of time within which the murders occurred. We talked about how unlikely it seemed that she could associate that temporary loss of memory with the date of the

Initials (JWL):



Affidavit of Jerry W. Leonard, Page 2 of 4

crimes. She told me that almost everyone had heard almost immediately about the murders, and that she was interviewed by investigators not long after the crimes.

10. At no time did Ms. Stoeckley represent to me that specific threats had been communicated to her by either the prosecution team or the defense team.
11. That was the end of my inquiry into her involvement, as far as I was concerned. I did not push her and I dropped the subject, believing she was firm in her assertion that she just could not remember.
12. Sometime on Monday afternoon, Ms. Stoeckley asked me what I would do if she actually had been "there". I recall telling her that I would still help her, but that she had to tell me the truth. She then told me she had been scared to tell me the truth, but that the truth was "not as bad as everybody thought". Shortly thereafter she began telling me that she was, in fact, at the MacDonald residence at the time of the murders. She said she did not actually hurt anyone, nor did she anticipate that the MacDonalds would be hurt.
13. She stated that she belonged to a cult. This cult had a core group of followers and a larger group of people that came to some of the cult's larger meetings. She said the core group did rituals and believed in witches, and that she was part of the core group. I remember Ms. Stoeckley saying Mrs. MacDonald was pregnant, and she said something to the effect that the cult associated newborn babies with the devil.
14. According to what Ms. Stoeckley told me, the idea to go to the MacDonald residence came up one night when she was doing drugs with some of her friends. These friends were part of this cult's core group. At least one man in the group had an issue against Dr. MacDonald because the man felt MacDonald discriminated against hard drug users in his work at a drug treatment program—something to the effect that heroin users would be recommended for court marshal or discharge and would not receive treatment, while others got more favorable treatment. Ms. Stoeckley said this man talked them into going to Dr. MacDonald's house to confront MacDonald about this unfair treatment and, therefore, they went to his house on the night of the murders. Ms. Stoeckley said the end result was that things got out of hand and the people she was with committed the murders.

Initials (JWL):

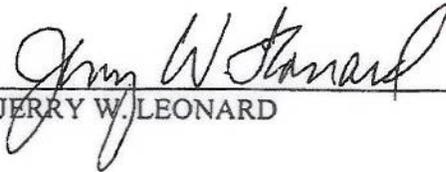


Affidavit of Jerry W. Leonard, Page 3 of 4

- 15. Ms. Stoeckley also said that, during the violence, the MacDonalds' home phone rang and she answered the phone. She hung up quickly after one of her friends yelled at her to hang up the phone. She also said she noticed a toy rocking horse at the MacDonald home, and that the horse was broken. Ms. Stoeckley said one of the springs was not attached to the horse and she took that fact as a sign that Dr. MacDonald did not care for his children.
- 16. Our plan thereafter was for Ms. Stoeckley to refuse to answer any questions if re-called as a witness. We had the script written down for her to read from the stand in order to properly invoke her Fifth Amendment rights.
- 17. Ms. Stoeckley was not re-called as a witness. I did not hear from her again after the trial.

FURTHER AFFIANT SAYETH NOT.

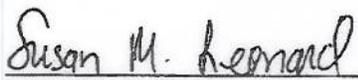
SWORN TO this 20th day of September, 2012, by:



 JERRY W. LEONARD

STATE of NORTH CAROLINA
 COUNTY of NEW HANOVER

SWORN TO and SUBSCRIBED before me by Jerry W. Leonard, affiant, this the 20th day of September, 2012.



 NOTARY PUBLIC

Seal:



My Commission Expires: 3-25-2016

Initials (JWL): 

AFFIDAVIT

I, Helena Stoeckley, of 2346 Barrington Circle, Fayetteville, 28303, being of sound mind, solemnly swear and aver that the following statement is the full truth as I know it:

- 1) I am the mother of Helena Stoeckley (Davis), who is now deceased.
- 2) I was very close to my daughter and held her confidences.
- 3) After the murders of Jeffrey MacDonald's wife and children on Ft. Bragg, NC, on two separate occasions, my daughter confided in me that she was present in the MacDonald house during the murders on February, 17, 1970.
- 4) The first occasion was after the trial and prior to her moving to South Carolina. The second occasion was shortly before her death in 1983. My daughter did not appear to be under the influence of any type of illicit drugs or alcohol at the time she made these two separate admissions to me.
- 5) On the second occasion when she confided in me, my daughter knew she was dying. She wanted to set the record straight with her mother about the MacDonald murders, and that she wished she had not been present in the house and knew that Dr. MacDonald was innocent.
- 6) Helena told me that she and Greg Mitchell, her boyfriend at the time, and two other men who was friendly with went to the MacDonald apartment during the early morning hours of February 17, 1970 to "intimidate" Dr. MacDonald because she and her friends believed he was being too hard on drug users in the Fayetteville community.
- 7) She stated that she and the others did not go there to harm anyone. Helena was high on drugs at the time, as were the men, but she told me she absolutely knew what was happening: That she saw a hobby horse in a child's bedroom and that she saw one of the men stab Dr. MacDonald.
- 8) She then told me that Greg Mitchell and one of the other men went "out of their minds" and when she became aware that Mitchell and the other man were killing the family, she and the other male fled.
- 9) My daughter tried to tell the truth- that she was in Dr. MacDonald's home and that Greg Mitchell and another man were responsible for the deaths of the MacDonald family, not Dr. MacDonald, but the FBI and other law enforcement officials told her to keep quiet.
- 10) My husband, Clarence Stoeckley and I were contacted several times after the murders. The FBI told us that they wanted Helena to stop contacting them.



11) On the second occasion during which she confided in me, she told me she could no longer live with the guilt of knowing she had been in the house but lied about it at the trial. She told me she was afraid to tell the truth because she was afraid of the prosecutor.

12) I am currently 86 years old. After the death of my husband in 2002, my youngest son Eugene, began asking me questions about Helena and if it was true that she was involved in the MacDonald murders. My son wanted to know the truth-he was only 10 years old at the time of the murders and this was not a subject my husband and I discussed with our children- but approximately 2 years ago, I told Eugene what Helena had told me- what I am swearing to now.

13) As her mother, I felt Helena was telling me the full truth about being in the MacDonald house on the night of the murders. She stated to me that she wanted "set things straight" before she died.

14) I've decided to give my statement now because of my advanced age and because I don't believe he should be in prison.

15) I have never met Jeffrey MacDonald, or his current attorney Tim Junkin. Until today, I had never met or spoken with Kathryn MacDonald or attorney Hart Miles. I met Kathryn MacDonald at the request of my son, Eugene, who had contacted her recently because he also wanted to do the right thing and corroborate that I had told him exactly what I am saying in this sworn statement.

Untitled

Helena & Gene B. Stoeckley

SIGNED

_____ Helena Stoeckley

DATE:

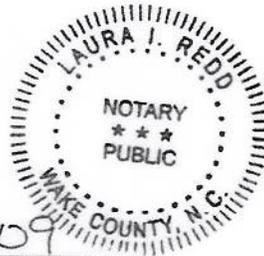
3-31-07

[Signature]
Witness Grady Peterson

[Signature]
Witness Gene B. Stoeckley

Sworn to and subscribed this the 31st day of March, 2007.

Laura D. Redd
Notary Public



My Commission Expires:

10/05/09

AFFIDAVIT OF WENDY P. ROUDER, ESQ.



I, Wendy P. Roudier, of 16 Bronte Street, San Francisco, California do hereby aver under the penalty of perjury that:

1. I am an attorney licensed to practice law in the states of California and New York and in the Ninth Circuit federal courts. I was admitted to the California State Bar in 1979 and to the New York State Bar in 1980.

2. Since 1984, my practice has been exclusively civil. From 1984 to 2000, I worked as a deputy city attorney for the City of Oakland (California) where I headed the labor and employment law unit of the office. Since 2000, I have been a labor arbitrator and neutral workplace investigator. I am on the ADR panel of neutrals for the United States District Court for the Northern District of California.

3. Upon graduating from law school in 1979, I was offered a position as a clerk to attorney Bernard Segal, chief defense counsel for Jeffrey MacDonald. My primary responsibility was law and motion work in regard to the case *United States vs. Jeffrey R. MacDonald*.

4. I was involved in the subsequent filing of the first trial appeal brief in the above-referenced case. Following that filing, I had no professional involvement in the MacDonald case.

5. In August, 2005, I was contacted by Jeffrey MacDonald's wife, Kathryn MacDonald. She told me she was working on her husband's behalf, in a paralegal capacity. Kathryn MacDonald asked me if I could recall any further details about my interactions with witness Helena Stoeckley, during her time in Raleigh, in August of 1979. I related to her the information I recite below.



6. I was present, assisting Bernard Segal, and other members of the defense, during Jeffrey MacDonald's trial in the summer of 1979. It was at that time that I first met the key witness in the case, Helena Stoeckley.

6. On a weekend morning (I believe the weekend of August 18, 1979) I was alone in our counsel office, when Mr. Segal asked me to investigate a complaint allegedly made by the management of the motel where Helena Stoeckley had been registered to stay during her time in Raleigh. The complaint by motel management was that Ms. Stoeckley was being assaulted by someone the motel manager did not identify, and that Ms. Stoeckley was causing trouble for the motel.

7. Upon arrival at the motel, called the Journey's End, I found Ms. Stoeckley in a room with a person I understood to be her boyfriend. I recall his first name was "Ernie" and I believe his last name was Davis. I inquired of Ms. Stoeckley as to her well-being, and informed her of the motel manager's complaint. She indicated she wanted Mr. Davis gone from her presence, and eventually he did leave. At that time I was alone with Ms. Stoeckley in the motel room.

8. I have testified, previously, in *voir dire* as to comments Ms. Stoeckley made to me after Ernie Davis's departure from the room, about her involvement in the MacDonald family murders- that she had seen a hobby horse in the MacDonald home, that she was there the night of the murders, and that she could name the people who killed Dr. MacDonald's family.

9. Kathryn MacDonald informed me that a new witness had come forward- a United States Marshal- to whom Helena Stoeckley had made remarkably similar statements. She told me this same United States Marshal had sworn that, also in his presence, one of the prosecutors, James Blackburn, had threatened to indict Ms. Stoeckley for murder if she were to make the same admissions regarding her involvement in the MacDonald murders in the courtroom.

10. My first statement to Mrs. MacDonald was "*Now it all makes sense.*" She asked me what I meant, and I said that after Helena Stoeckley had made her statements to me –totally unsolicited – I had asked her why she was making admissions to me in private when she had made public denials at the courthouse, and why she did not testify in court as to what she was telling me. She had then responded: "I can't. I'm afraid." I asked her what she was afraid of. I *fully expected* her to say that she was afraid of the people with whom she was involved the night of the MacDonald family murders, or the person or persons who the motel manager had reported as having assaulted her. Thus, I was very surprised when Ms. Stoeckley responded that she could not testify as to what she was sharing with me because of "*those damn prosecutors sitting there.*" And she added words to the effect of "*They'll fry me*".

11. Helena Stoeckley may have said "*burn me*" or "*hang me*" instead of "*fry me*". My specific recall, after 26 years, is that the words she used expressed, in the vernacular, her fear of the prosecution imposing adverse consequences on her, were she to testify truthfully.

12. When Kathryn MacDonald told me of the United States Marshal's statements, Helena Stoeckley's unexpected response to my questions in August of 1979 then made sense to me.

13. I also recalled that, upon my arrival to Ms. Stoeckley's room, the phone rang and the hotel operator had asked for me specifically. The call was from Judge Franklin Dupree. He addressed me by name, and asked me why I was there with Helena Stoeckley, and warned me not to ask her any questions. For years afterward, I had wondered how Judge Dupree came to know that I had arrived on a weekend to see about Ms. Stoeckley's well-being, and why he was concerned about what she might be saying or being asked. Now, in August of 2005, hearing of Mr. Britt's statement, this bizarre occurrence also made sense to me.

13. My memory of Ms. Stoeckley's statement about the prosecutors is distinct and sharp now, some 26 years after the statement was made, because I was surprised to hear her express fear of the prosecution, given that I was aware she had made criminally inculpatory statements over a decade prior to the trial about her involvement in the MacDonald family murders.

14. Prior to August of 2005, I did not know of former U.S. Marshal James Britt's sworn statement that then U.S. Attorney James Blackburn – just a day or two before my conversation with Ms. Stoeckley at the Journey's End Motel - had threatened Stoeckley with severe adverse consequences. I had never spoken to Kathryn MacDonald prior to August of 2005.

15. Further, I did not even realize that Mr. Blackburn had met with Ms. Stoeckley, as I had thought he would have had to Mirandize her, and that if he did so, she would refuse to speak with him, or if she pleaded the Fifth Amendment in court, this alone would raise reasonable doubt regarding her involvement in the MacDonald murders.

16. After sifting through further recollections of my time with Helena Stoeckley, I recalled a United States Marshal coming to move Ms. Stoeckley from the Journey's End motel to another motel, because of the trouble she and Mr. Davis had caused. I did not know then (or now) how the court knew of the trouble. I recall also going to the second motel, and that Ms. Stoeckley eventually needed assistance because her nose was broken or injured during the assault she had endured.

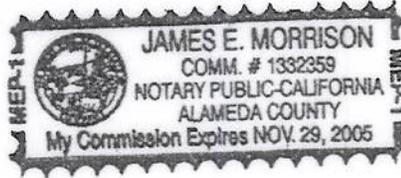
17. The fact that Helena Stoeckley's admissions to me were discounted after *voir dire* has always troubled me, and I felt compelled to bring my further recollections to the court's attention, given the testimony of Mr. James Britt.

Wendy Prouder Wendy P. Rouder, Esq.

Signed and sworn to this 6th day of SEPT. 2005.

James E. Morrison
Notary Public

My commission expires 11-29-05



NORTH CAROLINA

WAKE COUNTY



AFFIDAVIT OF JIMMY B. BRITT

I, Jimmy B. Britt, of 616 Wimberly Road, Apex, North Carolina, affirm that the following statements are true and accurate to the best of my recollection:

1. I began my career in law enforcement in February of 1960 with the Smithfield Police Department, and remained with them for four years.

2. In 1964 I was appointed by the County Commissioners and the Johnston County ABC Board as one of the first ABC officers for Johnston County. I remained with the Johnston County ABC Board for fourteen months.

3. After leaving service with the County, I then worked as an officer for the State ALE Office for approximately two-and-a-half years.

4. In February, 1968, I began full time service as a Deputy United States Marshal for the United States Marshal's Service. I remained with the Marshal's Service in the Eastern District of North Carolina for 18 years, performing the full scope of duties attached to the Marshal position. I was selected to go to the Federal Law Enforcement Training Center where I was an instructor for two years. I was reassigned to Raleigh, North Carolina to serve as Supervisor of Operations. For 18 of the 22 years of my tenure, I worked in several Federal District Courts throughout the United States, including North Carolina. I also had three years of military service. I performed 25 years of federal government service (including military service) in good standing, and retired November 30, 1990.

5. After retiring from the U.S. Marshal's service, I worked at the Johnston County Sheriff's office as the Jail Administrator. I worked there for six years and retired completely in September of 1996. In total, I have served nearly 40 years in law enforcement.

6. I was one of the United States Marshal's assigned to the proceedings of the trial of Jeffrey MacDonald in 1979.

7. In the summer of 2004, I took a trip with my friends, Lee Tart and Cecil Goins. Mr. Tart is a retired inspector with the United States Marshal's Service (30 years of service) and Mr. Goins is a retired Deputy United States Marshal who is now the Sergeant-at-Arms at the North Carolina Senate. During this trip, I shared a moral burden with Mr. Goins, one that I had shared previously with Mr. Tart. On the trip, I talked to both men about my being privy to some events that happened at the MacDonald trial. I also told them of the many years I had been carrying this moral burden, and how deeply it still troubled me.



8. Sharing my information and its effect on me with Mr. Goins and Mr. Tart did not ease my mind for long.

9. In January of 2005, I first contacted Mr. Wade Smith, Esq., of my own accord, and told him I would like to meet with him regarding the Jeffrey MacDonald trial.

10. I did not come forward previously with the information I shared with Mr. Smith, and which I now share with the court, out of respect for the late Judge Franklin Dupree, who presided over the trial, and others who were with the courts at the time of the MacDonald trial. Working on the side of law enforcement in the courthouse was my career. I did not want to betray, or appear to be betraying, the people I worked with and respected. I considered myself a loyal officer of the court, and I still do, but ultimately I decided that I had a duty to come forward.

11. What I shared with Mr. Smith is that during the Jeffrey MacDonald trial, in my capacity as a United States Marshal, assigned to the District Court where MacDonald was tried, I was assigned to travel to Greenville, South Carolina to assume custody of a witness by the name of Helena Stoeckley. I picked Ms. Stoeckley up at the County Jail in Greenville, South Carolina and drove her back to Raleigh.

12. In the course of my law enforcement career I have learned to identify persons who appear to be under the influence of alcohol or drugs. At no time, when Ms. Stoeckley was in my presence, did she appear to be under the influence of alcohol or drugs.

13. Ms. Jerry Holden, an administrative person in the United States Marshal's Office in Raleigh, accompanied me on the trip back to Raleigh with the witness. Ms. Holden is now deceased.

14. It was clear that Ms. Stoeckley knew she was being brought to Raleigh in connection with the MacDonald trial.

15. During the course of the travel from Greenville, South Carolina to Raleigh, without any prompting from me whatsoever, Ms. Stoeckley brought up the matter of the trial of MacDonald. She told me, in the presence of Jerry Holden, about a hobby horse in the MacDonald home, and that she, in fact, along with others, was in Jeffrey MacDonald's home on the night of the MacDonald murders.

16. I knew at the time that what Ms. Stoeckley had said was very important, and it was something I was not about to forget. I remember her words clearly, and they are among the most important words I've ever heard in my life in connection with any case or any of my official work.

17. I was the United States Marshal assigned to bring Helena Stoeckley to the Courthouse at 310 New Bern Avenue, Raleigh, North Carolina, the day after she made the statements to me in the car.

18. At the Courthouse, I first took Ms. Stoeckley to the office that was used by Jeffrey MacDonald's attorneys on the seventh floor of the Federal Building. I left her there with Mr. Smith and Mr. Bernard Segal. When the lawyers were finished, I escorted Ms. Stoeckley to the eighth floor to the U.S. Attorney's office.

19. I knew that Mr. James Blackburn, was one of the government attorneys trying Jeffrey MacDonald. I had seen Mr. Blackburn many times before. I also was aware of, and saw, Mr. Brian Murtagh and Mr. George Anderson during the course of the trial.

20. When I delivered Helena Stoeckley to the U.S. Attorney's office, Mr. Blackburn asked me to remain in the room. This was not an unusual occurrence – I had been asked to sit in the room by government attorneys many times in my career.

21. As I recall, Mr. Blackburn sat behind a desk that was set at an angle in the northeast corner of the office. There were several chairs positioned in front of the desk. Helena Stoeckley sat in the center chair in front of the desk and I sat over to the side next to the window.

22. After Ms. Stoeckley was settled in the room, Mr. Blackburn began to interview her. Ms. Stoeckley told Mr. Blackburn the same things she had stated to me on the trip from Greenville to Raleigh. She specifically mentioned the hobbyhorse and various other things, and specifically told Mr. Blackburn that she, along with others, had been inside Jeffrey MacDonald's home on the night of the murders. She also said that she had gone to the MacDonald house to acquire drugs.

23. When these statements were made, I was absolutely aware of the importance of Ms. Stoeckley's words to Mr. Blackburn. There is no doubt in my mind today, I am still absolutely certain, that Helena Stoeckley told James Blackburn that she was in the MacDonald house on the night of the MacDonald murders, with other people.

24. After Helena Stoeckley had given the history of her visit to Jeffrey MacDonald's home, Mr. Blackburn stated: "If you testify before the jury as to what you have told me or said to me in this office, I will indict you for murder."

25. The importance of Mr. Blackburn's words was not lost on me at the time, and never has been. I have no doubt that this is what Mr. Blackburn said to Helena Stoeckley in my presence.

26. I am not certain as to whether other attorneys besides Mr. Blackburn were in the room during the Stoeckley interview. It is possible George Anderson, the United States Attorney at the time, and/or Brian Murtagh, the other government prosecutor, or others associated with the prosecution were there, either when I entered the room with Ms. Stoeckley, or after I entered with her. They may have come in and left at some point, taken a break, or gone out of the room. I have a recollection of Ms. Stoeckley asking for a sandwich during the interview, and someone other than myself going to see about it. But

my clear recollection is that only Mr. Blackburn, Ms. Stoeckley and I were in the room at the time Mr. Blackburn said these words to Ms. Stoeckley.

27. Upon conclusion of the interview, I took Helena Stoeckley from the eighth floor by stairway down to the seventh floor, and took her into the Courtroom.

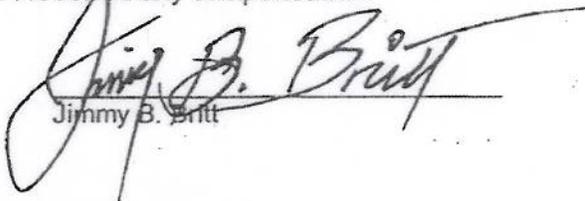
28. These events have remained with me. The interview with Mr. Blackburn and other conduct by representatives of the government which I felt was unethical all have moved me to take this action.

29. I do not have a personal or social relationship with Mr. Wade Smith, Mr. Tim Junkin, Mr. Bernard Segal, Mr. James Blackburn, Mr. Brian Murtagh, Mr. George Anderson, the late Judge Dupree, or any other officials or attorneys who were/are directly involved in the MacDonald case. After my initial meeting with Mr. Smith, I met again with him and Mr. Junkin, and was asked about pertinent parts of the MacDonald trial testimony, in which Mr. Blackburn stated in court that Helena Stoeckley had told him she had not been in the MacDonald house. I told Mr. Smith and Mr. Junkin that such testimony by Ms. Stoeckley before Judge Dupree was contrary to what she said to Mr. Blackburn in my presence.

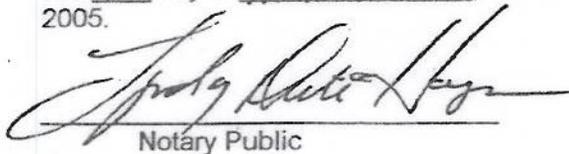
30. Subsequently, Mr. Smith suggested that I submit to a polygraph examination regarding the events and conversations I witnessed, as outlined in this sworn affidavit, and I agreed. The polygraph, which I passed.

31. I am currently 67 years of age and felt compelled to clear my conscience and come forward with what I witnessed, as I decided I could not shoulder the burden any longer.

32. I came forward to Mr. Wade M. Smith of my own free will and accord. I have not been promised any compensation nor have I received any compensation.


Jimmy B. Britt

Sworn and subscribed to before me
this 3rd day of November,
2005.


Notary Public

My Commission Expires: 9-4-2006

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