

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 75-CR-26-3
No. 5:06-CV-24-F

UNITED STATES OF AMERICA)	
)	
)	Motion for Leave to File
)	Appendix to Response
v.)	Conventionally
)	
JEFFREY R. MACDONALD,)	
)	
Defendant)	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby respectfully moves for leave to file conventionally an appendix with its response to the defendant's 28 U.S.C. § 2255 motion, without filing said appendix in electronic form and without deleting the names of two of the victims of the 1970 murder who were then minor children and, in support of said motion, shows unto the Court the following:

1. On January 17, 2006, Jeffrey R. MacDonald (hereinafter "defendant") filed a Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C. § 2255. The motion was approximately 15 pages long, and was accompanied by a 45-page memorandum with numerous exhibits. It was not filed electronically.

2. On January 27, 2006, this Court, pursuant to Rule 4(b), Rules Governing § 2255 Proceedings, ordered the Government to

file its "answer, motion, or other response on or before March 30, 2006." Leave was granted for the response to total 50 pages.

3. The Government is preparing said response for filing, and plans to file the response electronically in compliance with recently enacted policies of the Court. It is necessary, however, to file with response a large number of exhibits, in the form of a multi-volume appendix. The first four volumes of the appendix are identical to the appendix filed with the Government's Response to the defendant's Motion Under 28 U.S.C. Section 2244 For Order Authorizing District Court to Consider Successive Application For Relief Under 28 U.S.C. Section 2255, No. 05-548 filed in the Fourth Circuit Court of Appeals.¹ The first volume contains all of the judicial decisions and orders in *United States v. MacDonald* in chronological order. Volumes Two through Four contain the relevant trial transcripts covering the period of Helena Stoeckley's arrest, interview by counsel, testimony before the jury, as well as the voir dire and testimony before the jury of the Stoeckley witnesses. A fifth volume contains additional material to which reference is also made in the response. A sixth volume would contain copies of photographic, documentary exhibits, and copies of summary charts--reduced in size from 40 x 70 inches--from the trial.

4. The material in this appendix is drawn from the 31-year

¹This was done to accommodate the Clerk's Office because the trial transcript was not physically in Richmond, and copies would not have been available before the Court recessed on December 22, 2005.

record in this case. With the exception of the report of the DNA testing filed March 10, 2006, none of the hundreds of docket entries are currently in electronic form. The assembling and filing of it is intended to aid the Court and the parties. When the response refers to portions of the record in the various courts through which this case has traveled, instead of searching through that record, the reader can simply refer to the appendix.

5. The 6-volume appendix will be approximately 1500 pages long. The material is being scanned so that it is the electronic format of PDF documents. However, if this appendix is filed electronically with the court, it could take from 12-15 hours to electronically "upload" it to the Clerk's Office, provided there are no glitches. As we understand it, the Clerk's Office would not be able to process other filings simultaneously.

6. The Government is proposing an alternative to this cumbersome procedure. The proposal is that the Government file the Response itself electronically, but that the 1500-page Appendix be filed with the Court on a indexed compact disc ("CD") containing the documents in PDF form together with bound volumes of paper copies of the same documents. These two forms will be more useful to the Court and the parties, and this will eliminate the need to take many hours to upload the appendix electronically. It will also eliminate the need for the Clerk to make additional copies for the Court of docketed items which are cited by the government.

7. According to the EDNC's Electronic Case Filing Administrative Policies and Procedures Manual (ECF Manual), revised February 1, 2006:

An attorney may for good cause apply to the assigned judge for permission to file documents conventionally in a given case.

ECF Manual at 2.

8. In an Amended Standing Order filed May 3, 2004 (copy attached), the Chief Judge ordered, *inter alia*, that the names of minor children be redacted from publicly filed documents and replaced with initials. The two MacDonald girls were age two and five, respectively, when they were murdered along with their mother, Colette MacDonald. The record of this case is replete with references to the deceased children's first names. It is impracticable to redact all of the references to their names in the Response and the Appendix.² In addition, both of the minor victims have the same initials ("KM") and much of the testimony in the record, which is essential to an understanding of the evidence, is by reference to the name of a victim, the victim's room, or the victim's blood type. The case was tried using the names of the minor victims. The Government submits that the provisions of the standing order do not apply here because the MacDonald girls are not presently minor children in that they have been deceased for 36 years. Moreover, the purposes for

² It should be noted that the defendant's Memorandum and Exhibits contain references to the first names of the MacDonald children.

which this provision was promulgated simply are not applicable to this case. This provision is aimed at protecting the privacy of living minor children but the first names of the MacDonald girls have been highly publicized for decades.

9. Accordingly, the Government respectfully requests that the Court enter an order (1) allowing the Appendix to the Government's response to be filed conventionally, that is, in bound paper volumes, along with a CD consisting of PDF copies of the documents in the Appendix, and (2) allowing the parties in the case to refer to the first names of the murdered MacDonald girls in all filings in this matter.

10. The undersigned counsel has contacted Mr. Hart Miles, local counsel for the defendant, who has consented to the relief requested in this motion.

Respectfully submitted, this 22nd day of March, 2006.

FRANK D. WHITNEY
United States Attorney

/s/John Stuart Bruce
BY: JOHN STUART BRUCE
Executive Assistant United States Attorney
Criminal Division

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing document upon the defendant in this action either electronically or by placing a copy of same in the United States mail, postage prepaid, and addressed to counsel for defendant as follows:

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This, the 22nd day of March, 2006.

/s/John Stuart Bruce
JOHN STUART BRUCE
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 75-CR-26-3
No. 5:06-CV-24-F

UNITED STATES OF AMERICA)

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Proposed Order

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v.)

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JEFFREY R. MACDONALD,)

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Defendant)

Upon motion of the Government and for good cause shown, this Court hereby grants leave for the Government to file the Appendix to its Response to the Movant's Motion to Vacate, Set Aside, or Correct Sentence (filed January 17, 2006) conventionally, that is, in bound volumes of paper copies, along with a compact disc containing PDF copies of the documents in the Appendix. The Government shall provide a copy in each format to the attorneys for the Movant.

It is further ordered that all parties may refer to the first names of the murdered MacDonald children in all filings in this matter.

SO ORDERED, this ____ day of March, 2006.

James C. Fox
Senior United States District Judge