

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

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

UNITED STATES OF AMERICA                     )  
  )  
  )     GOVERNMENT'S REPLY TO  
  )     MOVANT'S RESPONSE TO  
  )     GOVERNMENT'S MOTION FOR  
JEFFREY R. MacDONALD,                     )     SUPPLEMENTAL BRIEFING  
  )  
  )     )

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby submits this “Reply to Movant’s Response to Government’s Motion for Supplemental Briefing” (DE-372) and, in support, shows unto the Court the following:

1. The Government hereby incorporates by reference the recent procedural history in this case, detailed in “Government’s Motion for Supplemental Briefing on Movant’s Rule 59(e) Motion” (DE-365) at ¶¶ 1-4.

2. In his “Reply to Government’s Response to Motion to Alter or Amend Judgment,” filed September 25, 2014, the Movant requested that the Court:

1. Alter and amend its judgment as set forth herein;
2. Withhold ruling on the motion to alter and amend and enter an order allowing the parties sixty (60) days in which to file a supplemental memorandum addressing impact of the newly revealed information on the evidence as a whole; and
3. For such other relief as the Court deems him justly entitled.

DE-364 at 11.

3. On September 26, 2014, the Government filed a Motion for Supplemental Briefing (DE-365), indicating its understanding of Movant’s desire for additional briefing in support of his Reply, set forth in his Reply (DE-364 at 2, n.1; 11), and proposing a different schedule for the supplemental briefing than the one requested by the Movant in his Reply (DE-364 at 11).

4. On October 17, 2014, Movant filed a Response to Government's Motion for Supplemental Briefing (DE-372) in which he indicated that, "[i]f this Court desires supplemental briefing...Dr. MacDonald will provide [it] if directed." DE-372 at 2.

5. If Movant still desires to supplement his Reply (DE-364) with additional briefing based on information<sup>1</sup> Movant's counsel had not seen prior to September 23, two days before the due date of his Reply, the Government does not object. However, the Movant is the moving party and the party with the burden of proof, both as to his § 2255 motions themselves and as to his motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e). Thus, it is necessary for the Government to know what new arguments or claims that Movant is making before responding to them.

6. Given that Movant's Reply (DE-364) was filed on September 25, 2014, almost half of the sixty (60) days requested has now passed. Therefore, the Government submits that if the Movant is given an additional period of approximately thirty (30) days for supplemental briefing, he will have had the sixty days he asked for in his Reply (DE-364 at 11). If Movant no longer desires to supplement his Reply with a memorandum, then he should so notify the Court. Subsequent to Movant's filing of a memorandum supplementing his Reply, or his notification to the Court that he does not intend to file one, the Government then requests thirty (30) days to file a sur-reply to Movant's Reply (DE-364).

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<sup>1</sup> As noted in the descriptions of the Exhibits attached to the Government's Notice of Filing, the contents of the lab reports and testimony enclosed with the letter from DOJ do not constitute "new evidence." See DE-363 at 1-2. The only things "new" to the case are the assertions contained in the FBI's "Microscopic Hair Comparison Analysis: Result of Review," dated August 15, 2014. DE-363-3. Nevertheless, the fact this FBI analysis only became available to the Movant two days before the due date of his Reply constitutes a valid basis for the Movant's request to supplement his Reply, filed September 25, 2014, if he still wishes to do so.

Respectfully submitted, this the 21st day of October, 2014.

Thomas G. Walker  
United States Attorney

BY: /s/ John Stuart Bruce  
JOHN STUART BRUCE  
First Assistant U.S. Attorney  
310 New Bern Avenue, Suite 800  
Raleigh, North Carolina 27601  
Ph. (919)856-4530; Fax:(919)856-4487  
E-mail: john.bruce@usdoj.gov  
North Carolina Bar No. 8200

BY: /s/ Brian M. Murtagh  
BRIAN M. MURTAGH  
Special Assistant U.S. Attorney  
310 New Bern Avenue, Suite 800  
Raleigh, North Carolina 27601  
Ph. (919)856-4530; Fax:(919) 856-4487  
E-mail: brian.murtagh2@usdoj.gov  
D.C. Bar No. 108480

BY: /s/ Leslie K. Cooley  
LESLIE K. COOLEY  
Assistant U.S. Attorney  
310 New Bern Avenue, Suite 800  
Raleigh, North Carolina 27601  
Ph. (919) 856-4530; Fax:(919)856-4487  
E-mail: leslie.cooley@usdoj.gov  
North Carolina Bar No. 33871

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:

M. Gordon Widenhouse, Jr. Attorney at Law 312 W. Franklin Street Chapel Hill, N.C. 27516 Phone: (919) 967-4900 FAX: 919-967-4953 Email: mgwidenhouse&rwf-law.com N.C. Bar No. 10107	Keith Williams Attorney at Law 321 South Evans Street, Ste. 103 Greenville, N.C. 27835 Phone: (252) 931-9362 FAX: 252-830-5155 Email: keith@williamslawonline.com N.C. Bar No. 19333
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This, the 21st day of October, 2014.

BY: /s/ John Stuart Bruce  
JOHN STUART BRUCE  
First Assistant U.S. Attorney  
310 New Bern Avenue, Suite 800  
Raleigh, North Carolina 27601  
Ph. (919) 856-4530;  
Fax: (919) 856-4487  
E-mail: john.bruce@usdoj.gov  
North Carolina Bar No. 8200

BY: /s/ Brian M. Murtagh  
BRIAN M. MURTAGH  
Special Assistant U.S. Attorney  
310 New Bern Avenue, Suite 800  
Raleigh, North Carolina 27601  
Ph. (919) 856-4530;  
Fax: (919) 856-4487  
E-mail: brian.murtagh2@usdoj.gov  
D.C. Bar No. 108480

BY: /s/ Leslie K. Cooley  
LESLIE K. COOLEY  
Assistant U.S. Attorney  
310 New Bern Avenue, Suite 800  
Raleigh, North Carolina 27601  
Ph. (919) 856-4530;  
Fax: (919) 856-4487  
E-mail: leslie.cooley@usdoj.gov  
North Carolina Bar No. 33871