

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

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

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

MOTION FOR LEAVE TO FILE
OVERSIZED REPLY

The defendant, by and through undersigned counsel, hereby moves for leave to exceed the page limit provided in the local rules in its reply to the Government’s Response to Motion for Additional DNA Testing [DE-227] being filed on or before February 17, 2012, and in support of said motion, respectfully shows unto the Court the following:

1. The defendant is replying to the Government’s Response to Motion for a New Trial Pursuant to 18 U.S.C. § 3600 [DE-212] and the Government’s Response to Motion for Additional DNA Testing [DE-227]. The replies are to be filed by February 17, 2012.
2. In order to thoroughly address the issues included in the Government’s oversized response, the defendant’s Reply in Support of Motion for Additional DNA Testing Pursuant to 18 U.S.C. § 3600 will exceed the page limit set by EDNC Local Criminal Rule 47.2(e).
3. Although the government filed its Motion for Leave to File Oversized Responses under EDNC Local Civil Rule 7.2(e) and asserted in a footnote that this proceeding is civil, this is erroneous. The defendant is seeking DNA testing under 18 U.S.C. § 3600. Title 18 of the United States Code is entitled “Crimes and Criminal Procedure.” Therefore, this clearly is a criminal proceeding governed by the Local Criminal Rules, allowing a reply to each response of 30 pages.
4. Accordingly, the defendant requests leave to file a reply to the Government’s Response to Motion for Additional DNA Testing [DE-227] not to exceed 50 pages.

5. Additionally, despite the fact that the Government's Response to Motion for a New Trial Pursuant to 18 U.S.C. § 3600 [DE-212] was 41 pages, the defendant's reply to this response will not exceed 10 pages. Therefore, the defendant's combined replies are expected to total fewer than 60 pages.

6. The undersigned has contacted Mr. John Bruce, First Assistant U.S. Attorney. He has stated that he is not opposed to this motion.

Respectfully submitted, this the 6th day of February, 2012.

/s/ Christine Mumma
Christine Mumma
Attorney for Defendant
Executive Director
The North Carolina Center on Actual Innocence
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N.C. State Bar No. 26103

CERTIFICATE OF SERVICE

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

John Stuart Bruce
First Assistant U.S. Attorney
310 New Bern Avenue, Suite 800
Raleigh, North Carolina 27601
Telephone: (919) 856-4530

This the 6th day of February, 2012.

/s/ Christine Mumma
Christine Mumma
Attorney for Defendant
Executive Director
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ORDER

For good cause shown, this Court hereby grants the Defendant's motion to file an oversized reply to the Government's Response to Motion for Additional DNA Testing [DE-227], not to exceed 50 pages in length.

SO ORDERED, this the ____ day of February, 2012.

JAMES C. FOX
SENIOR UNITED STATES DISTRICT JUDGE