

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

No. 3:75-CR-26-F

UNITED STATES OF AMERICA)	
)	GOVERNMENT'S RESPONSE
v.)	TO MOVANT'S MOTION TO
)	<u>CONTINUE EVIDENTIARY HEARING</u>
JEFFREY R. MacDONALD,)	
Movant)	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby responds to the motion to continue evidentiary hearing on the Britt claim, filed by movant on March 30, 2012 [DE-251]. In support of said motion, the Government respectfully shows unto the Court the following:

1. The Government has previously stated to the Court that it favors expeditious litigation of the matters remanded to this Court by the United States Court of Appeals for the Fourth Circuit in May 2011. The Movant has consistently sought delay, apparently related to the inability to maintain a stable counsel situation.

2. Government counsel met with Movant's new counsel on March 20, 2012. The Government believes that counsel's request for some additional time to familiarize himself with the case is made in good faith.

3. The Government has previously requested that, if possible, the Court not schedule the evidentiary hearing in this matter during the same time period as the trial of United States v. Edwards, No. 1:11CR161-1 (MDNC), because the two proceedings will

draw on many of the same resources from the USAO-EDNC. See DE-185 at 2.

4. The Edwards trial is scheduled for jury selection on April 17, with the presentation of evidence to begin on April 23. The Government has estimated that its evidence will take about three weeks, and the defense has forecast that its case will last 5-7 days. The MDNC Court has indicated that the trial date is firm.

5. A resetting of the evidentiary hearing on the "Britt claim" may place the hearing in the summer months, but counsel for the parties have resolved to work together to present solutions to the Court if either party has trouble securing the attendance of a necessary witness.

6. Both parties have previously stated that the now-scheduled evidentiary hearing should be limited to the Britt claim. See DE-229 at 2; Tr. of Status Conference at 35-36; DE-180 at 2.¹

7. However, the Government respectfully submits that the parties and the Court would benefit from an oral argument on MacDonald's motion for new DNA testing under the Innocence

¹In its response to MacDonald's 9/20/11 Request for Hearing [DE-175], the Government questioned whether any evidentiary hearing would ever be necessary on MacDonald's motion for new trial based on the 2006 DNA testing results. DE-229 at 3-4. After reviewing MacDonald's reply filed on 2/17/12 [DE-237], the Government does not believe that a evidentiary hearing on this aspect of MacDonald's claim is warranted. MacDonald obtained an extension of time in which to reply to DE-229, which the Court granted, see DE-239, but it appears the time for such filing has expired.

Protection Act. The issues raised in the pleadings [DE-176, DE-227, DE-238] are complex. In light of the affidavits attached to the pleadings, the Government does not anticipate that either side would need to present evidence regarding the proposed new testing. If the Court grants MacDonald's motion to continue the Britt claim evidentiary hearing, perhaps the Court could grant an oral argument on the new DNA testing issue in the 4/30/12 time frame.²

CONCLUSION

Accordingly, the Government respectfully requests that the Court grant MacDonald's motion to continue the Britt claim evidentiary hearing, now scheduled for the week of 4/30/12. The Government requests that a continuance have a duration of about 30 days.

Respectfully submitted, this 30th day of March, 2012.

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² If possible, the undersigned counsel requests that such an argument not be scheduled on May 2 or 3, due to a personal conflict.

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 30th day of March, 2012.

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