

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 08-8525

UNITED STATES OF AMERICA

v.

UNOPPOSED MOTION OF THE UNITED
STATES FOR LEAVE TO FILE
GOVERNMENT'S SUPPLEMENTAL
APPENDIX

JEFFREY R. MACDONALD

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby moves the Court pursuant to Local Rule 30(c) for leave to file a supplemental appendix in conjunction with the Supplemental Brief of the United States and, in support thereof, shows unto the Court the following:

1. Pursuant to prior orders of this Court, this matter was briefed by the parties and orally argued on March 23, 2010.

2. On May 6, 2010, this Court entered an order expanding the Certificate of Appealability in this case and directing the parties to file supplemental briefs. Subsequently, an order was entered setting a briefing schedule requiring the filing of Supplemental Briefs by the Appellant by June 15, 2010, and by the Appellee (the United States) by July 15, 2010.

3. On June 14, 2010, Appellant sought leave from this Court to file a Supplemental Appendix of 229 pages to his Supplemental Opening Brief citing the need to include the record materials on the DNA issues. Appellant had not sought to file a joint

supplemental appendix with input from the Appellee. On June 15, 2010, this Court granted Appellant leave to file his Supplemental Appendix.

4. On June 15, 2010, The Innocence Project, the North Carolina Center On Actual Innocence, the New England Innocence Project, and the National Association of Criminal Defense Lawyers sought leave of this Court to file a brief as *amici curiae* to support the Appellant. As reflected in the Appellee's Response in Opposition to the motion of *amici* filed June 28, 2010, their brief raised a number of issues not raised by Appellant including ones regarding the entire theory of the Government's prosecution and its argument to the jury. On July 7, 2010, this Court granted the motion of *amici* to file the supplemental brief.

5. The record in this case spans more than 40 years and involves a massive record of complex procedural and evidentiary issues. The document trail related to items of evidence, some of which were subjected to DNA testing, is complicated. Responding to the supplemental briefs of Appellant and *amici*, and the Appellant's Supplemental Appendix filed therewith (and also cited by *amici*), requires that the Appellee be able to cite to documents, photographs, and transcripts which either were not included in appendices prepared by Appellant or, where included, contained material omissions and deletions. The documents, which are more fully described in the Table of Contents to the Government's

Supplemental Appendix, consist of the following categories: photographs, extracts of testimony from the trial transcript, the transcript of the Government's Opening and Closing Arguments at trial, CID laboratory notes and reports, pleadings filed by the Appellant and the Government, and orders of the district court.

6. The undersigned Assistant United States Attorney has contacted counsel for the Appellant, and he does not oppose this motion.

WHEREFORE, the United States respectfully requests that the Court grant leave to file the Government's Supplemental Appendix as described above.

Respectfully submitted, this 15th day of July 2010.

GEORGE E. B. HOLDING
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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2010, I electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF user:

Joseph E. Zeszotarski, Jr.
POYNER SPRUILL LLP

/s/ John Stuart Bruce
JOHN STUART BRUCE
First Assistant United States Attorney