

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 75-CR-26-3
No. 5:06-CV-24-F

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

GOVERNMENT'S MOTION FOR
PUBLICATION AND MODIFICATION
OF ORDER

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby respectfully moves the Court to publish its Order entered November 4, 2008, in the above-captioned case, and to make minor modifications to the text of said order before publication and, in support of said motion, shows unto the Court the following:

INTRODUCTION

The Government believes that the Court's Order issued on November 4, 2008, contains an important exposition of the law relating to successive habeas corpus petitions, and should be submitted for publication in the Federal Supplement. Prior to its submission, the Government respectfully requests that the Court exercise its discretion to make minor modifications to the order.

The Government's most important request deals with the recitation of facts regarding former Deputy United States Marshal (DUSM) Jim Britt's alleged transportation of material witness Helena Stoeckley during the 1979 trial. The Government has also

included some more minor suggested modifications for the Court's consideration.

TRANSPORTATION OF HELENA STOECKLEY

The Government understands that the averments in Jim Britt's affidavit of November 3, 2005, are taken as true for purposes of the Court's disposition of MacDonald's Fourth Motion (see Order at 46), and the Government has no wish to urge the Court to do otherwise. However, earlier in the Order, the Court sets forth a concise rendition of the relevant facts (see Order at 7-15), much of which is taken from the thorough account in United States v. MacDonald, 640 F.Supp. 286 (E.D.N.C. 1985). This factual summary contains the following paragraph:

MacDonald's lawyers sought and obtained a material witness bench warrant for Helena Stoeckley's arrest and transport from Greenville, South Carolina, to Raleigh, North Carolina, where the trial was ongoing. Stoeckley's arrest and transport by car to Raleigh was executed by former Deputy United States Marshals ("DUSM") Jerry Holden and Jim Britt, both of whom are now deceased.

As demonstrated below, the Government has gathered incontrovertible proof that Jim Britt was not involved in the transportation of Stoeckley from South Carolina to Raleigh in 1979. The Government does not want readers of this section of the Court's order to erroneously conclude, nor MacDonald to be able to assert in some future appeal, that Britt's claims with regard to escorting

Stoeckley are adjudicated facts¹. Accordingly, the Government requests that this paragraph of the Court's order be modified to read:

MacDonald's lawyers sought and obtained a material witness bench warrant for Helena Stoeckley's arrest and transport from South Carolina² to Raleigh, North Carolina, where the trial was ongoing. The Britt affidavit claims that Stoeckley's transport³ by car to Raleigh was executed by former Deputy United States Marshal ("DUSM") Jim Britt and USMS employee⁴ Jerry Holden, both of whom are now deceased.

In paragraph 11 of his affidavit, Britt claimed:

What I shared with Mr. Smith is that during the Jeffrey MacDonald Trial, in my capacity as a United States Marshal, assigned to the District Court where MacDonald was tried, I was assigned to travel to Greenville, South Carolina, to assume custody of a witness by the name of Helena Stoeckley. I picked Ms. Stoeckley up at the County Jail in Greenville, South Carolina and drove her back to Raleigh.

Britt Aff. ¶ 11.

Stoeckley was arrested on August 14, 1979, by FBI Agents Frank

¹The Britt affidavit does not fall within any of the exceptions to the hearsay rule found in Federal Rule of Evidence 804, which provides for the admissibility of statements under narrowly defined circumstances not applicable here from witnesses who have become unavailable as a result of their death. Consequently, Britt's affidavit, not having been tested by cross examination, would not be admissible in any future proceedings to prove the truth of the matters asserted therein. Consequently, the Government, by this motion, preserves any objection to its admission in any future proceedings that MacDonald may file.

² As demonstrated below, Stoeckley was actually transported from Pickens, SC, to Raleigh.

³ As demonstrated below, Stoeckley was actually arrested by the FBI and held for the Marshal Service to transport and Britt did not claim to have made the arrest.

⁴ As demonstrated below and acknowledged in Britt's affidavit, Geraldine ("Jerry") Holden was an administrative employee of the USMS, not a Deputy Marshal.

J. Mills and Thomas John Donohue at her trailer located off Highway 24, Oakway Community, Oconee County, South Carolina. Stoeckley was interviewed by SA Frank Mills en route to the detention facility, and the results of the interview were furnished to the AUSA. See Exhibits 2 and 3. At 6:32 p.m. on August 14, 1979, SA Thomas J. Donohue committed Helena Stoeckley to the custody of the Pickens County Jail, located at 216 LEC Road, Pickens, South Carolina. See Exhibit 4. Stoeckley was fingerprinted (Exhibit 5) and entered in the Jail Book (Exhibit 6) as prisoner No. 1061, a material witness committed by the FBI on 8-14-79. The fingerprint card (Exhibit 5) does not contain a left thumb print, but does have a notation that the left "thumb in a cast."

In accordance with FBI procedures, the U.S. Magistrate and U.S. Marshal, in Greenville, South Carolina were immediately notified that Stoeckley was in the Pickens County Jail. (See Exhibit 7).

On August 15, 1979, the following day, at approximately 9:30 a.m, during a bench conference Judge Dupree advised Bernard Segal that Stoeckley was in custody. Segal inquired whether she was in custody in Raleigh or Greenville. At which point the judge's law clerk, who had been on the phone with the U.S. Magistrate, interjects: "She is in Greenville." Judge Dupree (interposing) states "Greenville, South Carolina." The law clerk adds: "and they are ready to transport her here." At this point AUSA Blackburn

stated: "Pickens County Jail is what I have been told." Segal requested that Stoeckley be transported to Raleigh and that he be given a chance to interview her. Judge Dupree stated: "That is all we need to know. [Speaking to the Law Clerk] Just tell the magistrate that there is no bond and just bring her here and make her available to the defense counsel." Tr. 5258-5259.

In paragraph 13 of his affidavit Britt claims, "Ms. Jerry Holden, an administrative person in the United States Marshal's Office in Raleigh, accompanied me on the trip back to Raleigh with the witness. Ms. Holden is now deceased." Britt thus claimed that Ms. Holden accompanied Stoeckley when Britt transported Stoeckley by car from Greenville, South Carolina, to Raleigh, North Carolina, the day before she was brought to the U.S. Courthouse. See also ¶17 of Britt Affidavit.

Britt further claims in paragraph 15, that:

During the course of the travel from Greenville, South Carolina to Raleigh, without any prompting from me whatsoever, Ms. Stoeckley brought up the matter of the trial of MacDonald. She told me, in the presence of Jerry Holden, about a hobby horse in the MacDonald home, and that she, in fact, along with others, was in Jeffrey MacDonald's home on the night of the murders.

Britt Aff. ¶15. Implicit in Britt's affidavit is the proposition that were Ms. Holden alive, she would be able to corroborate Britt's claim that Stoeckley confessed in the car, but for the fact that "Ms. Holden is now deceased." About that fact there can be no dispute: Geraldine ("Jerry") Holden died on March 21, 2005, three

months after Britt purportedly first contacted MacDonald's attorney Wade Smith, Esq., in January, 2005, and over seven months before Jimmy B. Britt executed his affidavit for MacDonald's current attorneys on November 3, 2005. (See Obituary of Geraldine Butts Holden, *Raleigh News and Observer* attached as Exhibit 8; see also Britt. Aff. ¶9.

Britt states in paragraph 17 of his affidavit that: "I was the United States Marshal assigned to bring Helena Stoeckley to the Courthouse at 310 New Bern Avenue, Raleigh, North Carolina, the day after she made the statements to me in the car." Britt makes no mention of Ms. Holden having played any role on this day, which was August 16, 1979.

MacDonald asserts that:

Additional corroboration for Jim's claim that he was the deputy marshal assigned to accompany Helena Stoeckley can be found in the video footage contained in the documentary *False Witness*, which has actual news footage of Stoeckley appearing at the Raleigh courthouse during the trial, and shows that she is accompanied by a much younger Jim Britt. The video, *False Witness*, is submitted herewith in Appendix 2, Tab 13.⁵

The *False Witness* video does in fact show Britt and Jerry Holden escorting Stoeckley into the U.S. Courthouse in Raleigh on the morning of *August 16, 1979*, the date of her interview by the defense and prosecution. Tr. 5496-5499. See also Exhibit 9

⁵See DE -126, filed March 23, 2006, at p. 12, n.3 (*Petitioner's Statement of Itemized Material Evidence -With Citations To The Record Or To Authenticated Proofs-In Support Of His Motion Under 28 U.S.C. Section 2255 To Vacate His Sentence*).

Raleigh News and Observer, Friday, August 17, 1979 article, page 39, "MacDonald Defense to Call Woman to Testify Today" with photo captioned "Deputy Marshal Jim Britt escorts Helena Stoeckley ... her finance, Ernest Davis, is in the background". The photo depicts Stoeckley with her left arm in cast, followed by Britt wearing what appears to be the same attire as depicted in the video. The article goes on to state that: "Miss Stoeckley, who spent Wednesday night [August 15, 1979] in the Wake County Jail and was returned there Thursday [August 16, 1979], was accompanied during the defense interviews by her finance, Ernest Davis. Id. Consequently, the video provides no evidence, and certainly no corroboration, for Britt's assertion that Stoeckley confessed in the car during the trip from "Greenville, South Carolina" to Raleigh, North Carolina, on August 15, 1979.

Even if both Britt and Ms. Holden were still alive and able to testify, they could never furnish any corroboration of any alleged Stoeckley confession in the car during the long ride from South Carolina to Raleigh, because neither Britt nor Holden transported Stoeckley from South Carolina to Raleigh, North Carolina, on August 15, 1979. In fact, Stoeckley was transported in two stages by two other Deputy U.S. Marshals, each accompanied by a female guard or matron, neither of them being Ms. Holden, who met in the vicinity of Charlotte and exchanged custody of Stoeckley.

As demonstrated above, Helena Stoeckley was not arrested or

detained in Greenville, South Carolina. She was arrested in Oconee County, South Carolina, on August 14, 1979, by the FBI and lodged in the nearest facility contracted to house federal prisoners, which was the Pickens County Jail in the town of Pickens, in Pickens County, South Carolina. Although Pickens County is contiguous to Greenville County, the town of Pickens where the County Jail is situated and the City of Greenville, where the Greenville County Jail is located, are approximately a 30-minute drive apart. Kenn. Aff. at 11, attached hereto as Exhibit 12.

On the morning of August 15, 1979, after Judge Dupree ordered Stoeckley brought to Raleigh from South Carolina, it fell to the U.S. Marshal Service to make the arrangements for her transportation. Arrangements were made between the U.S. Marshal for the Eastern District of North Carolina in Raleigh, and the U.S. Marshal for the District of South Carolina in Columbia to have Stoeckley transported by a DUSM from South Carolina to the vicinity of Charlotte, North Carolina, where a DUSM from Raleigh would meet them, take custody of Stoeckley and transport her to Raleigh. Retired DUSM Vernoy Kennedy recalled in a sworn statement given on August 23, 2006, that during 1979, while he was aware of the trial of Jeffrey MacDonald in North Carolina, he received an assignment from his supervisor that a female prisoner needed to be transported to the trial. Exhibit 12 at 5. Mr. Kennedy stated that at the time of the trial he was the only African-American Deputy U.S.

Marshal stationed in Greenville, South Carolina. Id. Because it was a female prisoner, Mr. Kennedy was required by USMS procedure to have a "female guard" accompany him. "We always used a female guard with a female prisoner." Id. at 7-8. Accompanied by the female guard (name not recalled), DUSM Vernoy Kennedy traveled from Greenville to the Pickens County detention facility on August 15, 1979. The drive took about 30 minutes. Id. at 8-11. Once at the Pickens County facility, DUSM Vernoy Kennedy signed the required USMS "Release" Form No. 103 in order to take custody of a federal prisoner. Mr. Kennedy has identified his signature on a photocopy of the "Release" form dated 8-15-79, reflecting that at 2:30 p.m. he took custody of "Helena Stockley" (sic) at Pickens County because a "Judge Ordered" and for the purpose of "Transfer to Raleigh NC". See Exhibit 13. Mr. Kennedy recalled that in 1979 the Greenville County Jail was not approved for federal prisoners, and that the facility where federal prisoner were housed in the Greenville area depended on which county had a valid contract, and at the time it was Pickens County. Id. at 11.

Once Stoeckley was in DUSM Kennedy's custody he transported her by car to a meeting point near the intersection of I-85 and I-77 in the vicinity of Charlotte, North Carolina. This meeting place had been previously arranged between the Marshal Service in Raleigh and Columbia. Id. at 9, 12. Mr. Kennedy described what happened when he arrived at the prearranged spot: "Well, when we

met at the prearranged spot, I delivered the prisoner to the marshals there; he gave me a receipt for the prisoner, and I returned to Greenville." Id. at 12. When asked on August 23, 2006, if he could identify the marshal from the Eastern District of North Carolina who took custody of Stoeckley on August 15, 1979, Mr. Kennedy responded: "I can't be certain, because I have met with or worked with several different officers of the North Carolina district, and I can't say exactly who it was at that time." Id. at 12-13. When asked whether during his transportation of Stoeckley she said anything about the case in which she was going to be a witness, Mr. Kennedy answered "no". Id. at 13. Mr. Kennedy then went on to explain:

And it was a strict regulation of the Marshal Service not to discuss their case with the marshals or anyone else in the marshal's presence.

In other words, if we had a guard who was not employed by the Marshal Service, it was the marshal's duty to instruct that person not to discuss their case with the inmate . . . and as far as I'm concerned it was a regulation.

Id.

Investigation by FBI Special Agent James J. Cherokee determined that the DUSM who took custody of Stoeckley from then DUSM Vernoy Kennedy on August 15, 1979, was DUSM Dennis C. Meehan, and his then wife Janice Meehan, who acted as the female guard or matron. As reflected in the affidavit of SA Cherokee, now retired DUSM Dennis C. Meehan was interviewed on March 10, 2006, and provided the

following information:

During the course of the Jeffrey MacDonald trial, Meehan provided courtroom security on a rotating basis. Meehan was made aware of allegations made by former Deputy U. S. Marshal Jimmy Britt when he received a copy of the newspaper articles from retired Deputy Marshal Bill Dickinson.

Meehan stated Britt's allegations were incorrect, as Jimmy Britt did not transport Helena Stoeckley from South Carolina. Meehan, accompanied by his wife, met Deputy Marshals from South Carolina near Charlotte, North Carolina, and took custody of Helena Stoeckley. Meehan recalled that he traveled to pick up Stoeckley using the witness security vehicle maintained by the Marshals Service in Raleigh, North Carolina. Thereafter, Meehan and his wife brought Stoeckley to the Wake County Jail, where she was incarcerated. Meehan recalled when they arrived at the Wake County Jail, Stoeckley's husband or boyfriend was waiting for her. Meehan noted that reporters were present at the Wake County Jail, and that he appeared on what he thought to be the Channel 5 news that particular evening.

Meehan did not specifically recall the identities of the individuals he met from South Carolina, but recalled that one was a black male Deputy Marshal, and the other was a white female.

Meehan also remembered that Stoeckley had some sort of "busted arm," and that she had a cast or sling on this arm. During the course of the transport, Meehan's wife, Janice Meehan, engaged Stoeckley in small talk. At no time did Stoeckley make any admissions with respect to the Jeffrey MacDonald case. Meehan did not recall Stoeckley ever stating that she was in the MacDonald household on the night of the murders. In general, Meehan characterized Stoeckley's ramblings as "confused."

Meehan recalled that Geraldine Holden assisted in the transport and escort of Helena Stoeckley the following day. Holden may have been designated to assist Britt with this transport.

Meehan does not recall Holden ever saying anything about Stoeckley making admissions while in her presence. Had Stoeckley made such admissions, Holden certainly would

have informed Hugh Salter or possibly Eddie Sigmon. Likewise, Meehan does not recall Britt ever making any statements with respect to admissions made by Stoeckley. Meehan opined this was such a high profile case, that had any type of admissions been made the matter would have been immediately brought to the attention of the appropriate level officials within the Marshals Service.

Meehan indicated that his ex-wife, Janice Meehan, should be in a position to confirm the transport of Helena Stoeckley. Meehan noted that he and his ex-wife are not on good terms and do not engage in conversation. He maintains her contact information for emergency purposes.

Exhibit 1 at 2,3. On the same day, and following the interview of Dennis Meehan, Janice Meehan was interviewed by Special Agents James Cherokee and C. Andrew Thomure. After being informed of the allegations by retired DUSM Britt, of which she had no prior knowledge, Janice Meehan immediately stated:

Meehan was informed of the allegations made by retired Deputy U. S. Marshal Jimmy Britt as she had no prior knowledge of the matter. Meehan immediately stated that information was incorrect, as she and her husband, Dennis Meehan, picked up Helena Stoeckley. Meehan did not remember specifically where they picked up Stoeckley, but advised that she was transported back to Raleigh, North Carolina, for the trial. Upon their return to Raleigh, Stoeckley was housed at the Wake County Jail. Meehan noted that a camera crew was present, and footage of the Meehans and Stoeckley appeared on what she believed to be Channel 11 that evening.

Meehan noted Stoeckley engaged in small talk during the transport, and vaguely recalled some reference to the MacDonald trial. She noted her ex-husband, Dennis Meehan, should be able to provide additional details with respect to the transport. Meehan vaguely recalled meeting other Marshals to transfer custody of Stoeckley.

Meehan noted that Stoeckley's boyfriend was at the Wake County Jail when they arrived.

Exhibit 1 at 3.

The evidence detailed above demonstrate that the claim in Jim Britt's affidavit that Helena Stoeckley confessed to him while he was transporting her from Greenville, SC, to Raleigh, NC, August, 1979, is not true. Therefore, to avoid the any misunderstanding that Britt's averments about this trip are adjudicated or conceded facts,⁶ the Government respectfully requests that the Court make minor modifications to the first full paragraph of page 9 of the Order, as set forth above.

OTHER REQUESTED MODIFICATIONS

1. At page 2, line 2 of the Order, "Rule 32" should read "Article 32." See 32 UCMJ, 10 U.S.C. § 832.

2. At page 2, line 10 of the Order, "Brian Murtaugh" should read "Brian Murtagh."

3. At page 26, line 17 of the Order, "DUSM Holden" should read "Ms. Holden."

4. For the reasons stated in the previous section, at page 26, Line 7 of the Order, "Britt's 2005 affidavit reveals . . ." should read "Britt's 2005 affidavit asserts . . ."

5. At page 35, lines 18-20, the Order includes this language: "MacDonald contends Britt's affidavit constitutes irrefutable evidence that on August 16, 1979, Stoeckley confessed to DUSM

⁶ If the Court had found it necessary to convene an evidentiary hearing on this matter, the Government would have presented the evidence detailed in this motion, as well as other evidence casting grave doubt on the accuracy of other assertions in the Britt affidavit. Because the other evidence is not necessary for the disposition of this motion, it is not detailed herein.

Britt, next to the defense team, and finally to Blackburn” (Emphasis added.) However, Jim Britt never claimed to have witnessed the defense team’s interview of Stoeckley. See Britt Aff., ¶ 18.

6. At page 41, line 21, and continuing to page 42, line 1 of the Order, the phrase “to say before she was interviewed by the Government prior” is repeated twice.

CONCLUSION

The Government respectfully requests the Court to exercise its discretion to make the foregoing modifications to its Order of November 4, 2008, and then to submit it for publication in the Federal Supplement.

Respectfully submitted, this 24th day of November, 2008.

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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 24th day of November, 2008.

By: /s/ John Stuart Bruce
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