

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 18-292
	)	
ROBERT BOWERS	)	

**MOTION TO EXHUME THE BODY OF RANDALL GEORGE BOWERS TO
CONFIRM PATERNITY FOR ROBERT BOWERS**

Robert Bowers, through counsel, moves the Court, under the Fifth, Sixth, and Eighth Amendments, and in the interests of justice, to order the exhumation of the body of Randall George Bowers, whom the government purports is not the biological father of defendant Robert Bowers, to obtain a DNA sample for the purpose of confirming Robert Bowers' paternity.

At issue in this case is whether Robert Bowers is a person with schizophrenia. One piece of evidence proving that fact is that Robert Bowers' father has been diagnosed with schizophrenia. *See* Defense Exhibit 417 (military record of Randall Bowers). As even government expert Dr. Park Dietz acknowledged, schizophrenia is "widely believed to run in families. If a single parent has schizophrenia and the other parent does not, then the child is at increased risk compared to a child who had no schizophrenia in either parent." Trial Transcript, July 10, 2023, at 201.

Despite the extensive documentation and historical evidence that Randall Bowers is the biological father of Robert Bowers, in order to undermine the genetic basis for defendant Robert Bowers' serious mental illness, the government has interjected into the

selection phase of this case its speculative theory that Randall Bowers is not the father of Robert Bowers. Repeatedly, through cross-examination of Dr. Porterfield on July 20, 2023, the government attempted to instill doubt concerning paternity by referring to entries in Dr. Porterfield's notes that Mr. Bowers' mentally ill mother made a remark that she was "[n]ot positive Dell was the father" and that a neighbor remarked, with no indication of the source of his information, that "he did not think that Dell was the defendant's father." Trial Transcript, July 20, 2023, at 148, 149. Directly contrary to the innuendo suggested by such questioning, Dr. Porterfield made clear:

I actually queried that a bit. I talked to Ms. Bolt about it. She spoke many hours with me about Randall Bowers as the father. I actually examined things like birth certificates and checked, okay, well, who's recognized here as the father.

I looked at other evidence that I thought was relevant. The Bowers family had taken in Robert as their grandson. Not taken into the home, but they had accepted him. So these years and years of people accepting that Randall was the father were very compelling to me. And so that was what I believed was important to report.

Id. at 149–150.

Still not satisfied, government counsel returned to this theme during recross-examination on July 24, 2023:

Q. So on Thursday, when Ms. Long was questioning you on redirect, you stated that you didn't have any indication that Dell's paternity was, in fact, a question. So I guess you meant, other than the fact that the mother herself said it was a question?

A. Well, what I was responding was that there was a lot of data about Mr. Bowers' childhood, about Randall Bowers being his father. There was official documentation. There was an entire family who -- so Randall Bowers' family, who acknowledged Robert Bowers is their grandson. Randall Bowers, I believe, was there when Barbara Bowers gave birth to Robert.

So I factored a lot of things into -- into that, and I did not believe that a neighbor, who was essentially commenting on her promiscuity, was probably a great source around paternity. And then Ms. Bowers' responses as well did not to me indicate that she genuinely thought that Randall Bowers was not the father.

Trial Transcript, July 24, 2023 at 59–60. Even still, the government was not satisfied. Yet again, to conclude the day, when cross-examining defense investigator Ashley Hatcher-Peralta, after pausing and returning to counsel table for guidance on any additional question to ask, government counsel interjected, seemingly out of nowhere, a question about Robert Bowers' paternity, designed purely to continue to instill doubt in jurors' minds:

MS. VASQUEZ SCHMITT: Just one moment, Your Honor.

THE COURT: Of course.

(Pause.)

Q. All right. Do you know -- do you have any knowledge as to whether Randall Bowers was even the defendant's father?

A. I -- no, I don't.

MS. VASQUEZ SCHMITT: No more questions, Your Honor.

Trial Transcript, July 24, 2023, at 241.

A capital sentencing trial, like any trial, is supposed to be a search for truth. But because a defendant's very life is at stake in such a trial, the Supreme Court has "recognized on more than one occasion that the Constitution places special constraints on the procedures used to convict an accused of a capital offense and sentence him to death. . . . The finality of the death penalty requires a greater degree of reliability when it is imposed." *Murray v. Giarattano*, 492 U.S. 1, 8–9 (1989) (internal quotation omitted). In other words, speculative governmental theories should play no role in the decision of whether Mr. Bowers lives or dies. *See, e.g., United States v. Fell*, 737 Fed.App'x 37, 40

(2d Cir. 2018) (reversing a district court order allowing the use of a co-defendant's hearsay statements at a capital sentencing trial because "[t]he parties do not dispute that evidence must carry sufficient indicia of reliability' for its admission at sentencing to satisfy due process," and that "[t]he record is replete with indications that the [hearsay] statements are unreliable"). That said, the government has succeeded in getting its speculative theory before the sentencing jury and the defense must respond to it.

If this were a non-capital civil case, the question of how to reliably answer a question of paternity would be easily resolved. As was explained in *McDowell v. Shinseki*, 23 Vet.App. 207, 214–15 (2009) (Vet. App. 2010):

[I]llegitimacy connotes a biological relationship, and as early as 1927, the regulation included the provision that proving a relationship to a veteran "shall be shown by the best evidence obtainable." . . . We can think of no better way than a DNA test to establish that a biological connection is present. The results of DNA tests are now widely recognized as a reliable and accurate method for establishing biological paternity. *See Tipps v. Metro. Life Ins. Co.*, 768 F.Supp. 577, 579 (S.D.Tex.1991) ("Scientific paternity testing . . . is now a well established and accepted method of determining whether a specific individual is a child's biological father."); *Estate of Sanders*, 2 Cal.App.4th 462, 3 Cal.Rptr.2d 536, 544 (1992) (noting that "only the proverbial ostrich with its head in the sand would dispute" the remarkable advances in DNA technology in removing the uncertainty of proving paternity). "Congress itself has acknowledged that genetic testing is extremely reliable." *Miller v. Christopher*, 96 F.3d 1467, 1474–75 (D.C.Cir.1996); H. Rep. No. 527, 98th Cong., 1st Sess., at 38 (1983). Reliability has been recognized even in cases where the testing is of the genetic material of a collateral party, such as a decedent's relative. *See Tipps*, 768 F.Supp. at 579–80 (finding that DNA evidence from living relatives could be used in determining whether a biological relationship existed). Moreover, the vast majority of cases we have reviewed indicate that courts are strongly in favor of determining biological paternity by use of DNA tests.

In other words:

The bottom line . . . is that there is a substantial problem of proof of paternity, especially after the alleged father is dead. Today, however, we are entering a new [era]. Science has developed a means to irrefutably prove the identity of an illegitimate child's father. No longer are we dependent upon fallible testimony, nor are we concerned that the decedent cannot be present to defend himself. The accuracy and infallibility of the DNA test are nothing short of remarkable. We live in a modern and scientific society, and the law must keep pace with these developments.

Alexander v. Alexander, 537 N.E.2d 1310, 1314 (Ohio Prob. Ct. 1988); *see id.* (holding that a child born out of wedlock who seeks to inherit from his putative father's estate may prove his paternity by genetic testing, and probate court may permit disinterment of putative father to effect such a test.); *In re Est. of Johnson*, No. ADM 23-05, 2006 WL 3302857, at *4–5 (D.C. Super. Ct. June 21, 2006) (same).

As these cases illustrate, there can be no doubt that the question of paternity raised by the government's cross examination in this case is capable of definitive resolution through DNA testing. *See also* Irena Zupanič Pajnič, et. al, *Comparison of nuclear DNA yield and STR typing success in Second World War petrous bones and metacarpals III*, Forensic Science International: Genetics, Volume 55, November 2021, available at <https://www.sciencedirect.com/science/article/abs/pii/S1872497321001150> (“Genetic typing of skeletal remains has become a common practice for verifying kinship relationships in identification of missing persons, victims of natural disasters, and victims of wartime conflicts.”); Rosemary Turingan Witkowski, et. al., Chapter 15 - *Rapid DNA identification of human skeletal remains*, in Forensic Genetic Approaches for Identification of Human Skeletal Remains: Challenges, Best Practices, and Emerging Technologies 325–349 (2023), available at

<https://www.sciencedirect.com/science/article/abs/pii/B9780128157664000157> (noting that “[c]urrently available systems . . . can generate forensic DNA profiles in less than 2 hours”). *McDowell v. Shinseki*, 23 Vet. App. 207, 214–15 (2009), *aff’d*, 396 F. App’x 691 (Fed. Cir. 2010) (noting “the vast majority of cases we have reviewed indicate that courts are strongly in favor of determining biological paternity by use of DNA tests”).

The evidence establishes that there was serious mental illness on Mr. Bowers’ maternal side of the family. The evidence also establishes that Randall Bowers was diagnosed with schizophrenia. Evidence establishing mental illness on Robert Bowers’ paternal side, particularly from a first degree relative such as his father, strengthens the basis for concluding that Mr. Bowers too suffers from a serious mental illness.

The Department of Justice presumably shares the defense’s concern with seeking the execution of a seriously mentally ill person. That the government is vigorously contesting, albeit on flimsy evidence, that Randall Bowers is the biological father of Robert Bowers indicates that it too believes that paternity matters and is significant.¹

¹ The Department of Justice ought to be interested in evidence that may support a non-death resolution. *See* Statement of Paul K. Charlton, Former U.S. Attorney, Hearing Before the Subcommittee on the Constitution, 110th Congress (June 27, 2007) (“When I was United States Attorney, we asked the Department of Justice for those funds to exhume the body. That request was denied. It is inappropriate to seek the death penalty in a case where you can literally put your arms around evidence that will either support your contention that this is an appropriate death penalty case and allow you in good conscience to go forward with that prosecution and seek the death penalty, or perhaps, and just as importantly, show evidence that is inconsistent with the Government’s theory of the prosecution.”).

Because the evidence rebutting paternity is flimsy and considering that the government is well aware that the Bowers family, both the maternal and paternal sides, considered Randall Bowers the biological father, the defense had little reason to expect the government to take the position that paternity is in doubt, and to do so in such a vigorous manner. The Department of Justice's mission purportedly is not to seek a verdict by any means necessary, but rather to "follow[] the facts and the law wherever they may lead, without prejudice or improper influence." About DOJ, Our Values, U.S. Department of Justice, available at <https://www.justice.gov/about>. Here, the reliable facts establish that Randall Bowers is Mr. Bowers' biological father. Yet, the government repeatedly cross-examined defense experts, and even a lay witness investigator, to suggest otherwise, for the sole purpose of instilling doubt in jurors' minds.²

Considering that evidence Mr. Bowers is a person with schizophrenia is a key part of his defense in mitigation and the public policy of the Department of Justice against executing individuals with serious mental illness, the interests of justice support ordering the exhumation of Randall Bowers' body to confirm paternity for Robert Bowers. *See Sykes v. Com. Travelers Mut. Acc. Ass'n.*, 32 F.R.D. 335, 338 (M.D. Pa. 1963) (ruling that

² Undoubtedly the government will respond that this motion is untimely and, if granted, may necessitate a delay of the trial. It is the government, however, that has belatedly injected the issue of paternity, with little basis, into this case. That additional time will be necessary to obtain evidence of paternity is a consequence of the government's choice to unreasonably instill doubt in jurors' minds concerning Robert Bowers' paternity. *See Ungar v. Sarafite*, 376 U.S. 575, 589 (1964) ("[A] myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality.").

“particularly under the circumstances of this case,” “where the interests of justice appear to require it, exhumation should be ordered,” upon a “showing of good cause”); *In re Disinterment of Body of Jarvis*, 244 Iowa 1025, 1034–35, 58 N.W.2d 24, 29 (Iowa 1953) (noting “court orders for disinterment and an autopsy, even without statutory authorization, have been upheld where they are essential to the demands of justice”).³

Respectfully submitted,

/s/ Judy Clarke

Judy Clarke

Clarke Johnston Thorp & Rice, PC

/s/ Michael N. Burt

Michael N. Burt

Law Offices of Michael Burt, PC

/s/ Michael J. Novara

Michael J. Novara

First Assistant Federal Public Defender

/s/ Elisa A. Long

Elisa A. Long

Supervisory Assistant Federal Public Defender

/s/ Ashwin Cattamanchi

Ashwin Cattamanchi

Assistant Federal Public Defender

³ The defense has learned that Randall Bowers is buried at Saint Stanislaus and Saint Anthony Cemetery Shaler Township, Allegheny County, Pennsylvania. *See* Exhibit A.

EXHIBIT A



Randall George Bowers

BIRTH 26 Dec 1952

New Castle, Lawrence County, Pennsylvania, USA

DEATH 20 Oct 1979 (aged 26)

Uniontown, Pennsylvania, USA

BURIAL Saint Stanislaus and Saint Anthony Cemetery

Shaler Township, Allegheny County, Pennsylvania, USA

PLOT Section G Lot 3

MEMORIAL ID 155020676



Photo added by mel truman

Thomas Churchill (Memorial# 137500685) and Anna Michniewicz Churchill (Memorial# 137500684) were Randall Bowers's maternal grandparents.

Contributor: Robert (48194592)

Created by: mel truman

Added 5 Nov 2015

Find a Grave Memorial ID: **155020676**

Find a Grave, database and images

(<https://www.findagrave.com/memorial/155020676/randall-george-bowers>: accessed 24 July 2023), memorial page for Randall George Bowers (26 Dec 1952–20 Oct 1979), Find a Grave Memorial ID **155020676**, citing Saint Stanislaus and Saint Anthony Cemetery, Shaler Township, Allegheny County, Pennsylvania, USA; Maintained by mel truman (contributor 48799799).



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ORDER

Upon consideration of the Defendant's Motion to Exhume the Body of Randall George Bowers to Confirm Paternity for Robert Bowers, it is ordered that the motion is GRANTED.

Date

Robert J. Colville
United States District Judge