

SYNOPSIS OF THE CASE

2019 MT 198: DA 16-0473, STATE OF MONTANA, Plaintiff and Appellee, v. BRIAN DAVID LAIRD, Defendant and Appellant.¹

In July 1999, Brian Laird's wife, Kathryn, drowned in the afterbay area of the Yellowtail Dam. Fifteen years later, in 2014, the State charged Laird with deliberate homicide for Kathryn's death. The case proceeded to a jury trial in 2016, at which the State's case rested predominately on circumstantial evidence. The forensic pathologist who conducted the first autopsy on Kathryn's body died prior to trial. Because the State could not call him to testify, it admitted the forensic pathologist's opinion statements that the bruises on Kathryn's neck were "troubling" through an FBI agent who was present at the autopsy. The State did not present any other expert medical testimony regarding Kathryn's injuries. The jury found Laird guilty.

Laird appealed his conviction to the Montana Supreme Court, arguing three issues on appeal. First, he argued he was unconstitutionally prejudiced by the fifteen-year delay between Kathryn's death and the charge. Second, Laird argued the State did not present sufficient evidence in its case-in-chief to overcome Laird's motion to dismiss the case for insufficient evidence. The Court determined Laird was not prejudiced by the delay and that the State presented sufficient evidence in its case-in-chief from which a rational juror could have concluded Laird caused Kathryn's death beyond a reasonable doubt.

Third, Laird argued that the District Court abused its discretion when it admitted the deceased forensic pathologist's "troubling" statements through the FBI agent who, along with another pathologist, was present during the autopsy. The Montana Supreme Court agreed. It reasoned that the pathologist's troubling statements were hearsay and therefore inadmissible at trial. The Court further reasoned that, even if the statements were spontaneous and admissible under an exception to the hearsay rule, the statements remained inadmissible because they violated Laird's constitutional right to confront the witnesses against him. Because the State utilized the "troubling" statements throughout trial to prove Kathryn's neck bruising was suspicious, but failed to present any expert medical testimony proving as much, admission of the statements constituted reversible error. The Court concluded the State used the "troubling" statements as an out-of-court substitute for the trial testimony of a deceased pathologist. Because Laird had no opportunity to cross-examine or confront the accusation, his constitutional right to confront witnesses against him was violated. Therefore, the Court reversed Laird's conviction and remanded the case back to District Court for further proceedings consistent with its Opinion.

¹ The Court prepared this synopsis for the reader's convenience. It constitutes no part of the Court's Opinion and may not be cited as precedent.

Justice Gustafson, joined by Justice Sandefur, concurred with the Majority's holding that the District Court abused its discretion by admitting the deceased forensic pathologist's "troubling" statements through the FBI agent. Justice Gustafson and Justice Sandefur would have held that Laird was unconstitutionally prejudiced by the fifteen-year preaccusation delay because a key witness who could corroborate Laird's defense had died in the intervening period and the State did not preserve tissue samples from Kathryn's body. Justice Gustafson and Justice Sandefur would have further held that the District Court erred by not granting Laird's motion to dismiss for insufficient evidence because the State did not present expert testimony that Kathryn's death was a result of a homicide, rather than resultant from accident, suicide, or natural causes.

Justice Baker, joined by Justices Rice and Shea, agreed with the Court that Laird was not prejudiced by the delay and that the State presented sufficient evidence to support his conviction. They would have affirmed the conviction, however, concluding that there was no error in the admission of the deceased pathologist's comment during the autopsy. The pathologist's remark that certain bruises in Kathryn's neck muscles were "troubling" was made spontaneously as he observed and pointed out the areas of hemorrhaged blood that concerned him. The pathologist made the comment while he examined the body with the primary purpose to determine the cause of death. He could not reasonably believe such a comment "would be available for use at a later trial." What's more, another pathologist who conducted a second post-mortem examination confirmed during his trial testimony each of the deceased pathologist's findings—asphyxia by drowning, pre-mortem bruising to the left thumb, and multiple scattered bruises with "recent unusual bruises of muscle of neck"—and explained each one. Laird had full opportunity to explore the "troubling" findings, his witness explained them, and he could not show how the evidence deprived him of a fair trial.