

**SYNOPSIS OF THE CASE**

**2013 MT 130, DA 11-0723: STATE OF MONTANA, Plaintiff and Appellant, v. BARRY ALLAN BEACH, Defendant and Appellee.<sup>1</sup>**

In 1979, Kimberly Nees was bludgeoned to death, and her body was found floating in the Poplar River. In 1983, Barry Beach confessed to law enforcement that he had murdered Nees. A jury trial was conducted in 1984, and Beach was convicted of deliberate homicide. His conviction was affirmed on appeal in 1985. In 1995, he filed a petition for postconviction relief, which was denied by the District Court and likewise denied on appeal. In 1997, Beach filed for relief in federal court, and was denied by the federal district and circuit courts. In 2008, Beach filed another petition for postconviction relief in state court. Although beyond the permissible time for filing a petition, Beach alleged there was new evidence that demonstrated he was innocent of the crime, and thus his claim was not barred by the passage of legal deadlines. The District Court summarily denied Beach's motion. On appeal, we reversed and remanded for the District Court to hold an evidentiary hearing on the newly discovered evidence. In August 2011, the District Court took testimony from witnesses who suggested that a group of teenage girls had killed Nees. Based on this new evidence, the District Court granted Beach a new trial. The State of Montana appealed this decision to the Montana Supreme Court.

In a 4-3 decision, the Montana Supreme Court reversed, holding that the District Court erred by (1) applying the wrong legal standards to Beach's innocence claim, and (2) failing to conduct a proper review of the evidence of the crime. The District Court ruled that Beach had prevailed on a "gateway" innocence claim. A successful "gateway" claim entitles a defendant to pass by the law's usual time deadlines and present his claims of constitutional trial error in a hearing. If a defendant proves at a hearing that his original trial was flawed by error, then he is entitled to a new trial. The District Court improperly granted Beach a new trial without first requiring him to prove that his trial was flawed by constitutional error.

The District Court also erred in its consideration of the evidence. Before overturning a jury's verdict, a court must (1) determine the defendant has provided reliable new evidence in support of his innocence, and (2) compare all reliable new evidence with the old evidence of the crime to determine if the defendant has overcome the original finding of guilt. To find new testimony "reliable," the reviewing court must conclude that it finds the witnesses credible and that the testimony does not contradict objective evidence of the crime. Then, the question is whether a reasonable jury presented with all of the evidence, new and old, would find the petitioner guilty. The District Court failed to follow this procedure, denying the State's requests for assessment

---

<sup>1</sup> This synopsis has been prepared for the convenience of the reader. It constitutes no part of the Opinion of the Court and may not be cited as precedent.

of Beach's new evidence in light of all of the evidence introduced at Beach's 1984 trial. The District Court concluded that the new testimony alone was sufficient to demonstrate Beach was actually innocent.

Applying the correct legal standards, the Montana Supreme Court reviewed all of the evidence, new and old, and concluded, first, that Beach's new evidence was not reliable. At the 1984 trial, the State presented evidence that linked Beach to Nees's murder through: Beach's detailed confession; law enforcement corroboration of details of Beach's confession, including those about the scene of the crime; forensic evidence that corroborated Beach's account of his attack upon Nees, including the nature of Nees's wounds and the type of weapons he used; and other corroborating evidence. Unlike this evidence, Beach's new evidence was contradicted by objective evidence found at the crime scene and the nature of Nees's wounds. For example, Beach's new witnesses offered a theory that a group of teenage girls had attacked Nees, kicking her while she lay on the ground. However, forensic evidence presented at trial showed that all of Nees's major injuries were to her head, neck, and hands, pointing to a single attacker, and showed that her injuries were inflicted by two weapons. The evidence of a single attacker and the nature of Nees's wounds are inconsistent with the theory of a group of girls kicking Nees on the ground. In addition, much of the new testimony was unreliable because the witnesses' stories had changed over time.

The Montana Supreme Court further concluded that, even if Beach's new evidence was deemed reliable, the testimony presented was insufficient to overcome the evidence of Beach's guilt presented at his trial. This decision did not declare that Beach was guilty or innocent of the crime, only that he had failed to satisfy the legal standards required to overturn his conviction and obtain a new trial. The Court dismissed Beach's petition for relief.

The three dissenting justices reasoned that the District Court sits in a better position than the Supreme Court to observe witnesses and determine witness credibility. The dissenting justices concluded that the District Court followed the directions given by this Court on remand, carefully considered the testimony of Beach's witnesses, properly applied the law, and properly considered all of the evidence, old and new. They would have affirmed the District Court's order granting Beach a new trial.