

Mother seeks answers in police shooting

Five years after incident at Turtle Mountain, woman with no law experience hopes to take case to Supreme Court

BY HANNAH SHIRLEY
Grand Forks Herald

GRAND FORKS — The night police killed Brandon Laducer at a house on North Dakota's Turtle Mountain Reservation, they didn't realize their case of mistaken identity until after they began

processing the scene.

That's according to the North Dakota Bureau of Criminal Investigations' report detailing the aftermath of the police shooting. According to that report, earlier the night of Aug. 23, 2020, officers learned of "a shooting incident" at a bar in

neighboring Bottineau County, in which Laducer was suspected to have threatened patrons and discharged a weapon. With active warrants – for unrelated incidents – for one Brandon Lee Laducer in hand, officers pursued him onto the reservation.

At a homestead belonging to the Laducer family, police learned Laducer was armed, according to the report. When he came outside onto the deck, he fired a handgun, and as many as seven officers responded with fatal gunfire, the report says.

COURT on A10



Contributed / Renee Martin

Renee Martin, left, and her son Brandon Laducer are pictured in this 2016 selfie.

COURT

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Inside the residence, as officers processed the scene, they found Laducer's wallet on the kitchen counter. Inside was his ID bearing his full name and birthday – he wasn't Brandon Lee Laducer, a 37-year-old white man from Dunseith, North Dakota, with a number of warrants out for his arrest, as officers had believed, but Brandon Richard Laducer, a 35-year-old Native man from Belcourt, North Dakota, who had no active warrants.

Renee Martin, Laducer's mother, said she didn't learn this until more than a year and a half later, when she obtained the NDBCI report through a Freedom of Information Act request. She alleges that's also how she learned that the official narrative in the case varied significantly from what officials told her in the aftermath of her son's death.

Martin has been in contact with other families of tribal members caught in fatal encounters with police. What she's learned, she said, is that her experience of being left distraught and with more questions than answers is not unique.

"What's been very difficult for families such as myself, who are going through what I'm going through, is we don't know what happened," Martin said. "... How can we as families or attorneys move forward effectively if we don't even have the right version of how Brandon died that night?"

Despite no legal training – her background is in human resources – she has spent the last four years in court, representing herself, suing the United States and the officers involved in the incident, arguing that by pursuing Laducer onto the reservation without a

warrant, law enforcement violated his Fourth Amendment right to no unlawful search and seizure. After being dismissed last year in district court, her case is now in the 8th Circuit Court of Appeals. She intends to take the case to the U.S. Supreme Court.

Dan Lewerenz, director of the Indian Law Certificate program at the University of North Dakota, says the odds of the Supreme Court taking on her case – like any given case – are incredibly low. However, he noted, there are elements of this case that could very well pique the high court's interest.

Most notably, Lewerenz said, the district court judge who heard Martin's initial claim dismissed the case, essentially, on a technicality – the decision to dismiss had nothing to do with what she was actually arguing.

"Nowhere in the decision does it say that she's wrong," he said. "It doesn't say that her theory is incorrect."

Conflicting narratives

Martin has been trying to learn more about her son's death since it happened.

On Feb. 18, 2021, about six months after Laducer's death, she met with FBI Special Agent Reed Mesman and Assistant U.S. Attorney Eric Lundberg. She claims they told her officers went to the Laducer homestead to perform a wellness check on Annette Laducer, Brandon's aunt and the owner of the residence, who was believed to be having a mental health crisis. Martin claims she wasn't told anything about the alleged altercation in the Bottineau bar, the warrants officers believed they had for Laducer, or that officers were looking for Laducer at all.

After that conversation, she says officers became unreachable. In an attempt to answer the

questions she still had, she filed Freedom of Information Act requests for the NDBCI, FBI and Bureau of Indian Affairs reports into the incident. She received the NDBCI report in April 2022. The FBI and BIA never fulfilled the request. Since the United States also has not entered those reports into evidence in Martin's case, they remain essentially unavailable.

(The Grand Forks Herald similarly requested a copy of the FBI report. The FBI acknowledged the Herald's request in 2021, and confirmed the request was still being processed in 2023, but has provided no updates since.)

In a 2021 interview with the Herald, Martin expressed bewilderment at how much was still unclear surrounding her son's death. Four years later, she has become more cynical.

"How can I go to court when nobody has the official FBI report?" Martin said. "This is why you don't see these cases being prosecuted."

Martin's suit, based on the NDBCI report, was filed in U.S. District Court on Aug. 22, 2022.

Defendants listed in the case are the United States of America, BIA Lt. Kelan Gourneau, BIA officers Michael Slater and Evan Parisien, Rolette Police Chief Joseph Kaufman, Rolette County Sheriff's deputies Trenton Gunville, Mitchell Slater and Andrew Saari Jr., and Rolla Police Officer Jayde Slater, all of whom were present during the shooting. Additional defendants are now-former Rolla Police Chief William Poitra, FBI Special Agent Reed Mesman, Rolette County Sheriff's Deputy Nathan Gustafson and BIA officers Earl Charbonneau and Heather Baker. Annette Laducer is also listed as a defendant. An NDBCI special agent who

investigated the incident was previously listed as a defendant, but was dismissed.

Attorneys representing the defense declined to comment on the case, citing policies to not discuss pending litigation.

Annette Laducer could not be reached.

In her suit, Martin alleges a slate of officer misconduct and violation of their own procedures, but the core of her argument hinges on the tribal warrant for the wrong Brandon Laducer.

Martin alleges that after the incident was reported in the Bottineau County bar, BIA Lt. Gourneau offered to pursue Laducer onto the reservation. Her suit claims Gourneau believed there were active tribal warrants for Laducer's arrest, and that he said he knew where Laducer could be found. However, because Brandon Lee Laducer – a white man – was the subject of the warrants, BIA officers did not have the authority to detain a non-Indigenous person on tribal lands, her suit alleges.

She claims the BIA knew Brandon Lee Laducer did not live at that address, and "used the warrant as a guise to enter the Laducer homestead without cause."

In the suit, Martin requested \$20 million to provide financial and medical relief to Laducer's two children and new grandchild.

"The BIA has some responsibility to these children," Martin said. "They murdered their father, they have not afforded a reason why, they have not even contacted anyone to have a meeting. There's a whole report we've never seen. They ghosted the family. Another dead Indian is a good Indian, keep it moving."

"I can guarantee, some of these other families in our area are going

through the same thing," she said.

The legal battle

Lewerenz believes that no matter what, the 8th Circuit will be an uphill battle.

Martin might counter that the whole case has been an uphill battle. While not the first Indigenous person to attempt to take a similar issue to court, to her knowledge, her case has made it at least as far as any.

"I don't think any other tribal mother has been able to take things this far," she said. "I'm not tooting my own horn, but it just seems so surreal to me, where this is sitting right now, and now it's just waiting."

U.S. Magistrate Judge Alice Senechal dismissed the case on Feb. 28, 2024, after taking issue with elements of Martin's case.

First: the court found that Martin did not exhaust all avenues for administrative relief prior to pursuing legal

action.

Under the Federal Tort Claims Act, citizens may bring legal action against the U.S. government, but only if they exhaust all other options for relief first. In this case, Martin was required to file an administrative tort claim with the U.S. Department of the Interior.

She filed that tort claim three days before filing the civil case. The Department of the Interior rejected her claim on Jan. 6, 2023, because she had not demonstrated her authority to file a wrongful death action on behalf of Laducer – essentially, she failed to provide proof she is his mother.

Second: plaintiffs cannot bring legal action against a collective, meaning Martin would have had to detail the specific actions of each defendant individually to justify including them in the case.

COURT on A11



COURT

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The court found that Martin failed to do so. Martin contends that without the FBI and BIA reports, she has no way of knowing individual officers' exact role in the incident.

"These are technical rulings against her, and not rulings that say her theory is wrong, right?" Lewerenz said. "But in the end, that might not matter, because if she loses for technical reasons, she still loses."

And third: Martin pursued damages as a Bivens claim, meaning a claim that a federal officer violated the Constitution. In this case, she is alleging a violation of Laducer's Fourth Amendment right to no unlawful search and seizure.

The Supreme Court

established a strict test for lower courts to determine whether a claim meets the criteria for Bivens. The high court also has urged lower courts to approach requests to expand the definition of Bivens claims with "extreme caution," according to Lewerenz.

The Supreme Court has never addressed Bivens claims on tribal land, and so the federal district court decided that to grant Martin's request under Bivens would be considered an expansion of the current definition.

(Said Senechal's decision: "This court recognizes the inherent unfairness of permitting excessive force claims that do not arise on tribal land to proceed while not permitting those that arise on tribal land to proceed. But this court is bound by recent Supreme Court precedent that severely

limits recognition of Bivens claims.")

That's the kind of issue that could make the U.S. Supreme Court sit up and take notice of a case, Lewerenz said. While the Supreme Court doesn't see itself as an "error-correcting" court, it does pay special attention to cases with important constitutional questions and implications. Because one of the central arguments of this case has to do with the scope of authority of federal officers on federal lands, and how those officers can be held accountable, the Supreme Court might see that as falling within its interest, Lewerenz said.

"Of course, it's hard to predict," he said, "and a lot of times when those cases come up, they're looking for just the right case, one where there aren't other problems with it," such as the

administrative tort claim issue.

As for Martin, she's looking forward to the end of her stint as an amateur lawyer.

"I don't know what the hell I'm doing," she said. "I don't want to be a lawyer. I don't like it. It's a lot, and there's probably a lot that I missed."

Although she couldn't find an attorney willing to take her case, she says

the upside is that if there is any financial reward, it will all go to her, and through her, to her grandchildren, and to other tribal mothers going through the same thing.

"I went through this experience for a reason," she said.

Martin's case will likely go one of two ways in the 8th Circuit. Either the appeals court will find that her case doesn't

amount to an expansion under Bivens, and it will go back to the district court to work through the facts of the case, or the appeals court will agree with the lower court's decision.

In that case, Martin has no doubt she will appeal to the Supreme Court.

"I'm not going to stop fighting," she said. "I'm never going to stop fighting."

WEDNESDAY ANSWERS

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Yesterday's

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PLUMB

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Answer: The new parents tried everything but couldn't get their crying infant to — SLEEP LIKE A BABY