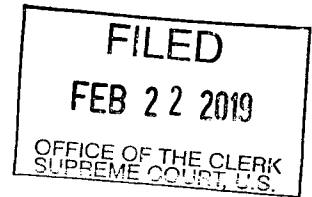


ORIGINAL

No. 18-8987



IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL .W. KARIUKI — PETITIONER
(Your Name)

VS.

COURTS OF APPEALS OF THE STATE OF WA RESPONDENT(S)
(et al.)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURTS OF APPEALS OF THE STATE OF WASHINGTON
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL .W. KARIUKI
(Your Name)

1301 N. Ephrata P.O BOX 769
(Address)

CONNELL, WASHINGTON , 99326
(City, State, Zip Code)

509-543-5800
(Phone Number)

QUESTION(S) PRESENTED

- Is the defendant, Michael Kariuki, entitled to reversal of the Second degree assault conviction with instructions to dismiss ?
- Did the State show Due Process for the Second degree assault conviction without Alleged victim ?

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- COURTS OF APPEALS OF WASHINGTON
- THE SUPREME COURT OF WASHINGTON

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A Decision of State Court of Appeals

APPENDIX B Decision of State Trial Court

APPENDIX C Decision of State Supreme Court Denying Review

APPENDIX D Order of State Supreme Court Denying Rehearing

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
• State of WASHINGTON VS MICHAEL WAINAINA KARIUKI	A
• State of WASHINGTON VS MICHAEL WAINAINA KARIUKI	B
• Apprendi v New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000)	5

STATUTES AND RULES

• DIVISIONE ONE ; NO. 76339-3-1	
• SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY	
• RCW 9A.04.110	6
• ER 803	5

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

• ON May 11, 2015, the defendant, Michael Kariuki and his Step-Father, called Federal Way Police and they were dispatched to Michael Kariuki's apartment regarding an allegation that an assault had occurred. Mr. Kariuki alleged he had been assaulted by his friend, Nikki. He further directed the police to where Nikki lived.

The Officers went to the location and after questioning a young woman she identified herself as "Nikki". While talking to her friend named, Tabitha, Nikki randomly turned and ran back inside her home. Her Relatives, Brittcole, who is her sister, all came from the apartment and began conversing with officers.

A few minutes into the conversation, Tabitha returned to Nikki's home. She quickly ran out the house spontaneously and stated that Nikki had knives and was contemplating suicide out of the blue. Nikki was quickly restrained by officers. Up until this point after she was placed in handcuffs did the focus of the investigation, alleged assault on Michael, change to Nikki allegedly being assaulted. The officers arrested Michael. The investigation also revealed Nikki was 13 years of age and Mr. Kariuki was 20 years of age.

During Trial, Nikki, identified as, S.M.R., did not show up nor testify. After her arrest she spoke to a social worker. Those words she used with the social worker were used despite Hearsay Rules. Over Mr. Kariuki's objection, the social worker claimed the hearsay statement was part of the "examination process" and part of medical diagnosis and treatment.

Mr. Kariuki was charged with two counts of 2nd degree rape of a child, one count of 2nd degree child molestation, one count of 2nd degree assault by strangulation, one count of communicating

With a MINOR for immoral PURPOSES, and ONE COUNT of Sexual exploitation of a MINOR. Following a JURY TRIAL, MR. KARIUKI WAS CONVICTED of one COUNT of 2ND degree RAPE of A child for the video clip on his cellphone, and one COUNT of 2ND degree assault by Strangulation.

The Courts of APPEALS rejected MR. KARIUKI's argument that there WAS INSUFFICIENT evidence that he strangled S.M.A. Decision at 4-5. The SUPREME COURT rejected as well.

REASONS FOR GRANTING THE PETITION

1. There WAS insufficient evidence MR. KARIUKI WAS GUILTY OF SECOND DEGREE assault by strangulation.

The state is required to prove each element of the crime charged beyond a reasonable doubt. U.S. Const. amend XIV; *Apprendi v. New Jersey*, 530 U.S. 466, 471, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)

Strangulation is defined by RCW 9A.04.110 (26) as:

"Compressing a person's neck, thereby obstructing the person's blood flow OR ability to breathe, OR doing so with the intent to obstruct the person's blood flow or ability to breathe."

• Contrary to the Court of Appeals conclusion, the two medical professionals who examined S.M.R., Emergency Room Doctor and ER Nurse did not state that the bruise on S.M.R.'s neck was the result of strangulation.

2. S.M.R.'s hearsay statements to the Hospital Social Worker were inadmissible as a statement of Medical diagnosis or treatment under ER

The Court of Appeals, Trial Court, and Supreme Court solely relied on the testimony of 2 witnesses that are close to S.M.R. whose testimony was shot and not creditable, what so ever. There is no evidence S.M.R. lived with MR. KARIUKI or had any ongoing domestic relationship with him. There is no evidence that DR. Himelich relied on the statement for purposes of medical treatment or diagnosis. The doctor, ER nurse, or ER social worker advised S.M.R. about counseling services.
NEVER

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MICHAEL W. KARIUKI

Date: 02/22/2019