

19-8627  
No. \_\_\_\_\_

ORIGINAL  
ORIGINIAL

IN THE  
SUPREME COURT OF THE UNITED STATES

ISAAC ANDREW CARDENAS — PETITIONER  
(Your Name)

STATE OF TEXAS — RESPONDENT(S)

vs.

FILED  
MAY 18 2020  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS COURT OF CRIMINAL APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Isaac Andrew Cardenas #2230470  
(Your Name)

12071 F.M. 3522  
(Address)

Abilene, Texas 79601  
(City, State, Zip Code)

N/A  
(Phone Number)

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## QUESTION(S) PRESENTED

WHETHER THE STATE COURT VIOLATED THE FEDERAL DUE PROCESS CLAUSE WHEN IT VENTURED INTO THE REALM OF MERE SPECULATION WHEN DECIDING AN INSUFFICIENCY OF THE EVIDENCE CLAIM.

This is an opportunity for the Court to clarify the difference between "inference" and "speculation" by addressing the following questions:

- A. When there were three people in the immediate vicinity of crime, is it an "inference" or "speculation" to consider Cardenas' mere presence as circumstantial evidence of guilt?
- B. Is it Cardenas' burden to provide law enforcement with a theory as to how N.L's injuries were sustained; and does Cardenas' implausible explanation as to that theory probative of guilt?
- C. When Cardenas expressed remorse for having the victim's mother over without his grandmother's permission, is this evidence of "consciousness of guilt" of N.L's assault?
- D. Is it an "inference" or "speculation" to conclude Cardenas' "consciousness of guilt" for failing to call 911 when this omission equally weighs upon the victim's mother?
- E. When "sand like particles" were found on Cardenas' sweat pants, and the lower court admits that "the physical evidence equally supports as inference that Cardenas did not get sand on his pants until he carried N.L. in the house" is it reasonable to conclude that this sufficient evidence to support a finding of guilt?

## **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:

## **RELATED CASES**

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February 26th, 2020

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## **TABLE OF AUTHORITIES CITED**

### **CASES**

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### **STATUTES AND RULES**

### **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 \_\_\_\_\_ 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 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 Texas Court of Criminal Appeals court appears at Appendix B 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 February 26th, 2020. A copy of that decision appears at Appendix   A  .

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**

The Fourteenth Amendment guarantee of Due Process and Equal Protection

## **STATEMENT OF THE CASE**

A jury found Petitioner guilty of two counts of Super Aggravated Sexual Assault. At punishment, the jury sentenced Petitioner to LIFE on each count without parole, to run concurrently.

Petitioner appealed. On direct appeal petitioner argued a claim of insufficient evidence on the basis that the evidence was legally insufficient to support the jury's finding that Petitioner committed the offense of Super Aggravated Sexual Assault. The Court of Appeals overruled the claim, as well as Petitioners other claim of error. The unpublished opinion in the Court of Appeals was issued on October 30th, 2019. Petitioner did not file a Petition for Rehearing. The Court granted Petitioner's request for an extension of time in which to file a Petition For Discretionary Review until January 31st, 2020. The Petition For Discretionary Review was refused February 26th, 2020.

Petitioner now seeks review by this Honorable Court.

## REASONS FOR GRANTING THE PETITION

The Texas Court of Criminal Appeals have decided an important question of federal law that has not been, but should be, settled by this Court [Rule 10(c)]. As the Texas Court of Criminal Appeals has admitted "it can be difficult to differentiate between inference and speculation" Hooper v. State, 214 S.W.3d 9 (Tex. Crim. App. 2007). For this reason this Court should take up this case to clarify the difference.

In the case at hand, the lower court admits that "the evidence supporting the verdict is thin" but that "there are enough incriminating circumstances that cumulatively support an inference that Cardenas was N.L's assailant" (See APPENDIX B, page 10). In this case there is absolutely NO direct evidence.

The lower court cites four different things as circumstantial evidence of Cardenas' guilt:

1. Opportunity to commit the crime;
2. Inconsistent statement and implausible explanation (Cardenas theorized that N.L. may have been attacked by dog);
3. Statements indicating a "Consciousness of Guilt"; and,
4. That there were sand-like particles on his sweatpants.

### OPPORTUNITY TO COMMIT THE CRIME

On the night of N.L's assault there were THREE people on the property - Cardenas; N.L's mother, Crystal; and Cardenas' grandmother. All three had equal opportunity to commit the crime. There is also the possibility that someone else entered the property during the night, assaulted N.L. and left before Cardenas found her. Cardenas' grandmother had previously complained that some of her belongings on the property were being stolen by drifters.

The lower court reasoned that Cardenas could have assaulted N.L. any time between the time he and Crystal fell asleep (midnight - 1am) and the time he found N.L. Cardenas didn't know the exact time he woke up and found her (2am; 4am; 6am). But the truth of the matter is NO ONE knows what time N.L. was assaulted and Crystal could have equally done so while Cardenas

slept - or, the Grandmother or a drifter could have done it while both Cardenas and Crystal slept. They all had that window of opportunity - Not cardenas alone. There is nothing but speculation to suggest Cardenas has a greater opportunity to commit the crime than anyone else there that night.

#### INCONSISTENT STATEMENTS AND IMPLAUSIBLE EXPLANATIONS

When asked what he thought happened to N.L., Cardenas theorized that she may have been attacked by dogs. However, the State thoroughly debunked the dog attack theory. The lower court claims that this "implausible explanation" of how N.L. was hurt is probative of guilt.

But in all reality, even to this very day, ONE ONE knows how N.L. was injured that night - Not the police; Not the DA; NOT ANYONE!

It is not Cardenas' responsibility to come up with a theory about how the event happened - and then when he can't come up with a scientifically plausible theory, then somehow that becomes evidence of guilt. This line of thought shifts the State's burden to cardenas. However it is the State's burden to prove what happened to N.L. that night - Not Cardenas.

Cardenas's first so-called "inconsistent statement" stems from Cardenas not knowing exactly what time he woke up and discovered N.L. But these statements were not inconsistent because of deception, but purely human error - He just didn't know what time it was.

The second statement was that he initially stated "we" bathed N.L. and then stated Crystal bathed her while Cardenas stepped out of the room to "give them some privacy". This isn't an "inconsistent statement" to imply guilt. It is semantics. It is clear from Cardenas' testimony that he isn't highly articulate and used very poor grammar. It is barely a sign of guilt.

#### "CONSCIOUSNESS OF GUILT"

In his recorded statement, cardenas stated: "I honestly wish I could get in trouble right now, I feel like it's my respon... I told them to come over, I didn't tell my grandma..."

The lower court used this statement to establish a "consciousness of guilt" but all it was is pure remorse for having Crystal and N.L. come over without his grandma's permission.

It is a more reasonable inference to conclude that Cardenas felt responsible because if he hadn't asked Crystal to come over to have sex, then N.L. wouldn't have been there in order to get hurt. Its speculation to conclude that cardenas feels responsible for harming N.L. - to conclude such is a mischaracterization.

Secondly, cardenas explains that he didn't call 911 himself because he felt it was Crystal's responsibility, not his. It wasn't his child, he had only met N.L. once before and N.L's mother obviously knew best. However Crystal didn't call 911 either, so failing to call 911 weighs equally against Crystal (if not more being the child's mother).

One significantly overlooked fact in this case which trumps this circumstantial evidence of "consciousness of guilt" is the fact Cardenas VOLUNTARILY submitted to a SANE Exam. Ultimately Crystal's DNA was found on the swab of Cardenas' penis, and N.L's DNA was EXCLUDED from the sample (APPENDIX B, page 7). This proves that Cardenas did NOT sexually assault N.L. with his penis. Therefore, the question must be considered: - if Cardenas has "consciousness of guilt", why would he voluntarily submit to a SANE Exam?

#### SAND-LIKE PARTICLES

During the SANE Exam (which Cardenas VOLUNTARILY submitted) he had "sandlike particles" on his sweatpants. The lower court reasoned that because N.L. had "sandy soil" on her body, the SANE Exam results support an inference that cardenas had physical contact with N.L. in the yard BEFORE he carried her back into the house (but no blood or other DNA???).

The lower court admits that "the physical evidence equally supports an inference that cardenas did not get sand on his pants until he carried N.L. into the house".

Cardenas however argues that the physical evidence does not equally support both scenarios. There was no recovery of N.L's DNA on cardenas or his clothing from the SANE Exam, but Crystals DNA was because they had had sex before they fell asleep that night. If Cardenas was truly N.L's assailant there would be blood or hair on him - maybe even his semen on N.L. But there was absolutely nothing. The inference should point in the other direction direct, and becomes pure speculation. The DNA evidence that should exist had cardenas assaulted N.L. in the yard before he carried her back into the

house does not exist. Therefore it is based on speculation as it guesses about the possible meaning of facts and the facts actually presented do not give rise to that inference.

The lower court is correct in one thing - "the evidence supporting the verdict is thin". But was there sufficient evidence to find Cardenas guilty beyond a reasonable doubt, or was Cardenas convicted and sentenced to LIFE without parole by mere speculation?

This Honorable Court should take up these questions to clarify the legal difference between "inference" and "speculation" when conducting a sufficiency of the evidence analysis. Thank you.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Isaac Cardenas

Date: 18<sup>th</sup> May 2020