

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Samuel Ricardo Anaya, Jr. — PETITIONER
(Your Name)

vs.

The State of Texas, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Texas Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

2055225
Samuel Ricardo Anaya, Jr. TDCJ-ID #1006099
(Your Name)

Dalhart Unit TDCJ
11950 FM 998

(Address)

Dalhart, Texas 79022

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

In the refusal of Petitioner's Petition for Discretionary Review, did the Texas Court of Criminal Appeals misapply the Supreme Court of the United States' "Terry" standard as to whether a person fleeing from an investigatory stop is evading arrest under Texas Penal Code §38.04?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[x] 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:

Teresa Clingman
District Attorney, Midland County
500 N. Lorraine
Midland, Texas 79701
(432)688 1041
Representing the State of Texas
Respondent,

Samuel Ricardo Anaya, Jr. #2055225
Dalhart Unit TDCJ
11950 FM 998
Dalhart, Texas 79022
Petitioner pro se

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5-7
CONCLUSION.....	7

INDEX TO APPENDICES

APPENDIX A	9
APPENDIX B	10
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Burks v. U.S., 437 U.S. 1(1978).....	7
Greene v. Massey, 437 U.S. 19(1978)	7
Terry v. Ohio, 392 U.S. 1(1968)	5
Jackson v. State, 718 S.W.2d 724(Tex.Cr.App.1986)	5
Smith v. State, 739 S.W.2d 898(Tex.Cr.App.1987)	5

STATUTES AND RULES

Tex. Penal Code §38.04	5
Tex. Penal Code §38.04(c)	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 _____ 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☐ is unpublished.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 12th Court of 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 9/13/17.
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

STATEMENT OF THE CASE

Petitioner, Samuel Ricardo Anaya, Jr., was found "guilty" of Evading Arrest on Foot (Subsequent), as charged in a single count indictment, returned November 13, 2013. (T.7) Petitioner had pled "not guilty." (T-7; R.IV, 122-23). Subsequent to the jury's guilty verdict the court assessed punishment at fifteen(15) years confinement. (T. 50-51; R. VII, 11). Petitioner did not testify at either phase of the trial. Timely Motion for New Trial and appeal was given. (T. 59-60). Petitioner filed Petition for Discretionary Review in the Texas Court of Criminal Appeals. Although the petition was refused on 9/13/17, Petitioner, at no fault of his own, did not receive same until 10/7/17. A Motion for Rehearing was not sought due to the date Petitioner finally received the court's refusal, after being sent to Petitioner's last TDCJ unit by the new clerk of said court. This petition for Writ of Certiorari is timely filed on or before December 11, 2017.

REASONS FOR GRANTING THE PETITION

Petitioner contends that the primary question before this Honorable Court is whether the Texas Court of Criminal Appeals(CCA), erred in refusing Petitioner's Petition for Discretionary Review (PDR) when determining whether Petitioner flees from Sgt. Angell's investigatory stop constitutes evading arrest under Tex.Penal Code §38.04? Petitioner thinks not.

Section 38.04 creates a crime for evading arrest. The six elements are as follows: (1) a person, (2) intentionally flees, (3) from a peace officer, (4) knowing the person is a peace officer, (5) while the peace officer is attempting to arrest the person and, (6) the attempted arrest is lawful. Id.

Petitioner argues that section 38.04 does not create a crime for evading an investigatory stop. Terry v. Ohio, 392 U.S. 1(1968). The gravamen of the offense is evasion of an arrest, not a peace officer. Id.

In affirming the court of appeals decision to overturn Smith's and Jackson's convictions for evading arrest, the CCA held "the language in §38.04 is clear and unambiguous. There is only one reading consistent with the grammatical structure of the statute, which is that a defendant can only be convicted of evading arrest if he is aware that the person from whom he is fleeing from is a peace officer who is attempting to make a lawful arrest." Smith v. State, 739 S.W. 898(Tex.Cr.App.1987); see also Jackson v. State, 718 S.W. 2d 724(Tex.Cr.App.1986). The fifth element, consistent with the clear language of §38.04(c), contemplates a case that is being made in order to arrest a suspect. The sixth element, contemplates that

the arrest is unlawful. Id.

Petitioner contends that nothing in the record suggests that Sgt. Angell was attempting to make an lawful arrest, because nothing in the record suggests that Sgt. Angell was aware Petitioner had an outstanding "blue" warrant for his arrest prior to the encounter at the intersection which lead to Petitioner's arrest in the first place. A defendant's flight from an officer conducting a "Terry" or investigatory stop, is not subject to prosecution for evading arrest because the offense requires that an officer have probable cause to make an arrest for some criminal offense. Smith, supra at 739.

Petitioner argues that it was not until he was hand cuffed and placed into the K-9 unit, did Sgt. Angell first learn of the "blue" warrant placed against Petitioner. And that it was not until Petitioner had arrived at the police station, did Sgt. Angell decide to arrest and charge Petitioner with evading arrest for the "blue" warrant.

Thus, the State not only failed to prove the fifth element but, failed to prove the sixth element as well.

Furthermore, the evidence was also insufficient because Sgt. Angell purportedly taped over the in-dash video recording depicting the entire encounter with Petitioner and the unknown other person who was walking down the street with Petitioner when Sgt. Angell and his partner first encountered Petitioner at the intersection.

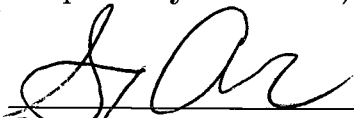
Therefore, Petitioner argues that the judgment of conviction

should be reversed and, since the evidence was insufficient to prove a crime was ever committed. *Burks v. U.S.*, 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed.2d 1(1978); see also *Greene v. Massey*, 437 U.S. 19, 98 S.Ct. 2151, 57 L.Ed.2d 15(1978).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Samuel Ricardo Anaya, Jr. #2055225

Date: December 11, 2017