

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

William R. Carney — PETITIONER
(Your Name)

vs.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

11th Court of Appeals, Eastland Texas

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

PETITION FOR WRIT OF CERTIORARI

William R. Carney #2028740

(Your Name)

Telford Unit, 3899 State Hwy 98

(Address)

New Boston, TX 75570

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Did the trial court violate Carney's Due Process rights by not sticking to the plain and clear language of the statute allowing in otherwise improper hearsay testimony?

~

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:

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.....	7

INDEX TO APPENDICES

APPENDIX A Memorandum Opinion from the Eleventh Court of Appeals

APPENDIX B Denial from the Texas Court of Criminal Appeals

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Sanchez v. State, 354 S.W.3d 476, 487 (Tex.Crim.App. 2011)	5
--	---

STATUTES AND RULES

Texas Code Criminal Procedure art. 38.072	5
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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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 Court of Criminal Appeals, Texas 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 1/24/18.
A copy of that decision appears at Appendix B.

☐ 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

Fourteenth Amendment, United States Constitution

Tex. Code Crim.Proc. art. 38.072

STATEMENT OF THE CASE

This case arises out of the trial court allowing in hearsay testimony that did not qualify under the State statute.

REASONS FOR GRANTING THE PETITION

The trial court violated Carney's Due Process rights by allowing in improper hearsay statements that did not fit into the "exceptionally narrow" scope of Texas Code Crim. Proc. art. 38.072, § 2(a)(1)(A).

A. Article 38.072 provides a narrow hearsay exception.

Article 38.072 governs the admissibility of outcry testimony. Section 2 of that statute defines the limited scope of this statutory exception to the hearsay rule. Section 2(a) provides in relevant part:

This article applies only to statements that:

(1) describe:

(A) the alleged offense.

In simple terms 38.072 provides an exception to hearsay that applies only to "statements that describe the alleged offense."

The Texas Court of Criminal Appeals has even stated that admissibility for a hearsay statement under article 38.072 "is exceptionally narrow." *Sanchez v. State*, 354 S.W.3d 476, 487 (Tex. Crim. App. 2011).

B. The trial court allowed more than permitted by article 38.072.

The trial court allowed the complainant's grandmother to testify about hearsay statements that went beyond the narrow scope of 38.072, including:

- A.T. did not want her grandmother to tell her mother "because I won't ever be able to come and stay with you ever again, and mama won't let me";
- A.T. asked her grandmother if she believed her;
- "tears were running down [A.T.'s] face";
- she did not tell anyone sooner because she was scared.

(2 RR 188-89)

There are several reasons that this additional testimony should not have been allowed by the trial court. As with all hearsay statements — and the primary reason they are not normally allowed — they can be easily falsified and manipulated by a biased party.

Also clinical psychological research has proven that the emotional mood and circumstances surrounding outcrys is not a safe and accurate way to judge the truth of the matter. See Kuehnle, K. & Connell, M. (2009), *The Evaluation of Child Sexual Abuse Alligations: A Comprehensive Guide to Assessment and Testimony*. New Jersey: John Wiley & Sons Inc.

This type of testimony only confusses the jury, and when it is used by the State in the manner it was here, it significantly harms the integrity of the judicial system.

And that is why the trial court violated Carney's Due Process rights, when it allowed this hearsay testimony that did not fit the hearsay exception lined out in 38.072 § 2.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Wm R Carney

Date: 4-18-18