

21-7051
No. _____

ORIGINAL

FILED

JAN 21 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

DEMARCUS ANTWON CHATMON — PETITIONER
(Your Name)

vs.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

9th Court of Appeals — Beaumont, Texas
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Demarcus Antwon Chatmon

(Your Name)

Wainwright Unit

2665 Prison Rd. #1

(Address)

Lovelady, TX 75851

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

The Confrontation Clause grants defendants the right to confront witnesses against them. Here, the trial court overruled objections and allowed accusatory statements found on a police body camera recording to be played instead of requiring the State to present the declarant for confrontation purposes. Since body cameras carry a "primary purpose" of memorializing events for potential litigation, should these recordings enjoy the same hearsay umbrella as 911 calls?

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

State of Texas v. Demarcus Antwon Chatmon, No. 18-30651,
252nd District Court of Jefferson County, Texas.
Judgement entered June 27, 2019.

Chatmon v. State, No. 19-19-00238-CR, Ninth Court of Appeals, Beaumont, Texas.
Judgement entered.

Chatmon v. State, No. PD-0469-21, Court of Criminal Appeals, Austin, Texas.
Discretionary Review refused.

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-5
REASONS FOR GRANTING THE WRIT	6-11
CONCLUSION.....	12

INDEX TO APPENDICES

APPENDIX A Memorandum opinion Ninth Court of Appeals
Beaumont, Texas.

APPENDIX B Trial Court Judgement of Conviction By Jury.

APPENDIX C Court of Criminal Appeals Refusal of
Discretionary Review.

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Crawford v. Washington, 541 U.S. 36 (2004)	8,10
Washington v. Davis, 547 U.S. 813 (2006)	8,10
Hammon v. Indiana, 547 U.S. 813 (2006)	8,10
Michigan v. Bryant, 562 U.S. 344, 179 L.Ed. 93 (2011)....	8,9,10
Ohio v. Clark, 576 U.S. 239 (2015)	8,10

STATUTES AND RULES

Rules of the Supreme Court of the United States Rule 10(c):

"A state court has decided an important question of Federal Law that has not been, but should be settled by this Court, and in doing so has decided the question in such a way that it potentially conflicts with other relevant decisions of this Court.

OTHER

NONE

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 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 10-20-2021. A copy of that decision appears at Appendix C.

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

U.S. Constitutional Amendment VII — in pertinent part.

The Sixth Amendment's Confrontation Clause provides:

In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him.

U.S. Constitutional Amendment XIV — in pertinent part.

Section 1. — No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws..

STATEMENT OF THE CASE

On October 12, 2018 a 911 call was received for assistance in a shooting incident, with injury. Records show an ambulance arrived and staged first.

Five minutes later the first officer, Mr. Alpers, arrived. Alpers testified he identified the location of the injured party and the possible suspect. Alpers also testified he located the weapon.

Alpers then secured the weapon by placing it in a patrol car. When back up arrived a perimeter was made behind the vehicles. Police then made the demand that the suspect turn himself in.

In response, a woman came out of the house leading her very intoxicated son (Chatmon)(It was determined he was under the influence of PCP). Police approached and handcuffed Chatmon, then placed him in a patrol car.

These facts are in the record and pertinent to the matter before this Court. It is from this moment forward where the question presented to the Court becomes the focus.

Officers, including the one wearing a body camera, then entered the house. Why? A suspect was apprehended, and the weapon was secured.

Upon entering the house officers quickly located the injured party and before any emergency medical care was provided, the officer wearing the camera started questioning her about what happened.

STATEMENT OF THE CASE (cont.)

This dialogue, and its use at trial, amounted to a circumvention of the Confrontation Clause with a device that fails the "primary purpose" test.

At trial no forensic evidence was presented to indicate Chatmon was the perpetrator of the shooting. Neither the injured individual, nor any eyewitnesses testified as to Chatmon being the shooter.

Instead, over vehement objections, the State was allowed to play the police body camera recording of the questioning of the injured party.

Statements made on the body camera recording were key to Chatmon's conviction.

On appeal, in the Ninth District Court of Appeals in Beaumont, Texas, the court ruled that the police body camera recording fell within the hearsay exception recognized by this court in Davis for 911 calls because, "Officer Shoemaker asked questions like these public officials ask to bring an ongoing emergency to an end." See pg. 10, lns 16-18 Memorandum Opinion.

A timely P.D.R. was filed with the Texas Court of Criminal Appeals and subsequently refused on 10-20-21.

Such are the facts of the case.

REASONS FOR GRANTING THE PETITION

Although originating in Texas, the question presented to this Court carries nationwide implications. This is because the issue is tied to a device which is widely utilized by police nationwide.

Considering the nation's focus on the police, anything used by them which can adversely affect constitutional rights requires limitations. Guidelines and boundaries of usage would be necessitated in order to protect those rights.

Such is the matter at hand. A State's misuse of a device which has a "primary purpose" of protecting police officers from wrongful accusations and litigation. The device is the body camera.

Since its implementation, the police body camera has protected a multitude of the members of law enforcement by recording events for any potential need to defend their actions in court. In addition, this same device has become a tool used by prosecutors to assist them in obtaining convictions.

This is appropriate until it is abused or misused in such a way as to deny a defendant constitutional rights.

In this instance the defendant (Chatmon) was denied his Sixth Amendment right to Confrontation. In lieu of the testimony of a witness (the injured party), the State played the body camera recording of the witness's statements in response to a police officer's questioning.

REASONS FOR GRANTING THE PETITION (cont.)

Why was this done? Why did the State neglect to use its authority to compel the witness to testify? Why did the trial court neglect to question the State about its failure to procure the witness?

All the state ever said as an explanation of the matter was during its opening statement. During the State's opening statement it said that the witness was not cooperating. The State never elaborated as to what the lack of cooperation entailed.

There was never any mention by the state as being unable to obtain the witness. How was the witness failing to cooperate? Was it by dodging subpoena? Was it by refusing to say what the State wanted? Was it for just refusing to testify?

One fact was certain. The State had no other evidence identifying Chatmon as the shooter. Police failed to perform the most basic forensic tests to try and positively identify Chatmon as the shooter. Why?

Confirmation Bias, a nationwide epidemic. At the scene of a shooting, a black man with a criminal record and under the influence of PCP was seen being led out of the premises by his mother. At no time had anyone identified Chatmon as the shooter. It was an automatic assumption and therefore basic forensic procedure did not need to be done.

Because of the total lack of forensic evidence, the State needed some way to identify Chatmon as the shooter. The officers at the scene could only identify him as a suspect. However, the body camera recording was found to contain the injured party

REASONS FOR GRANTING THE PETITION (cont.)

stating Chatmon's name in response to questioning by a police officer.

Thus, the State asked for the recording to be played in open court. Chatmon's counsel objected, but the Court overruled and permitted it under a state hearsay exception which was not applicable to the circumstances.

On appeal, the Court of Appeals determined that, due to the circumstances of an ongoing emergency, and the type of questions asked by the officer, the hearsay exception found in Washington v. Davis, 547 U.S. 813 (2006) applied to 911 calls also applied to the body camera recording.

Chatmon disagrees and asserts such a finding is clear sophistry. Chatmon explains himself in the following:

Michigan v. Bryant, 179 L.Ed. 93 (2011) most of the foundation which Chatmon will use in support of his positioning. This is especially true as Bryant cites Crawford v. Washington, 541 U.S. 36 (2004); Washington v. Davis, 547 U.S. 813 (2006); and Hammon v. Indiana, 547 U.S. 813 (2006). In addition, Ohio v. Clark, 576 U.S. 239 (2015) will be referenced.

It is understood that statements provided police in the pursuit of addressing an ongoing emergency are non-testimonial, Bryant, 179 L.Ed. at 111.

It is also noted that the emergency may no longer exist causing any questioning by police to be testimonial, Bryant at 112.

REASONS FOR GRANTING THE PETITION (cont.)

Prior to entering the house a suspect was placed in custody and the suspect weapon had already been secured. Other than the medical needs of the gunshot victim, the emergency had ended.

It must be acknowledged here that the circumstances provide objective evidence of the primary purpose of any police interrogation. Bryant @ 109 - 110.

A view of the circumstances objectively indicates no emergency existed at the time of the officer's questioning. Upon apprehension of the suspect (Chatmon) police entered the house where the gunshot victim was located. The officer with the body camera stays with her while other officers go further into the house.

There was no danger in the room where the person needing medical attention was located. Up to that point the area was clear to remove the injured person out of the permisis or to bring EMS personnel to that point.

In fact, instead of addressing the medical emergency, the officer asked her to sit down. Why?

The way out to medical attention was clear and she was already standing. Furthermore, even though Police Officers are trained in basic first aid, none were forthcoming. Instead, the officer started questioning her as to what happened. After, she tells him what had happened and that "that boy" had shot her. He asked her again who. To which she replied Chatmon's name. It was only after she answered, that EMS personnel were allowed to tend her. The officer never provided any first aid.

REASONS FOR GRANTING THE PETITION (cont.)

A point of interest — 911 calls referenced the shooter as having "dreads". Chatmon did not have "dreads". The assumption is that Chatmon knew the individual who did the shooting. However, he was too intoxicated to even understand his circumstances.

Objectively, the circumstances and the officer's actions indicate there was no emergency when the officer started asking his questions. As a veteran on the force he was very aware his body camera was activated. Its primary purpose was being utilized. It was recording statements which had potential to be of value in a criminal prosecution. See Hammon at 820 and 822.

Unlike in Davis, its purpose was not to respond to an ongoing emergency, the cameras purpose was to create a record for trial. This memorializing of events is more in line with Hammon. See Bryant at 107.

The product of the interrogation was embedded in the memory of the body camera. See Bryant at 105 citing Davis at 826.

The primary purpose of a body camera is in fact testimonial to begin with. The entire circumstances line up in this matter to show that the statements obtained fall within the category of being testimonial thus meeting precedent. See Clark at 245.

Crawford strengthened recognized confrontation clause rights. Davis and Hammon, Bryant and Clark add further definition. At minimum, unless the declarant is unavailable, recordings on body cameras should not be allowed in court unless corroborated by testimony of the declarant or in rebuttal of testimony by the declarant.

REASONS FOR GRANTING THE PETITION (cont.)

Body cameras should not carry the same umbrella of an automatic hearsay exception as 911 calls. The State of Texas has aggressively increased its use of such in obtaining convictions.

Chatmon prays this court to address the matter and at the minimum install guidelines and boundaries on body camera usage so as to protect confrontation rights in Texas and the rest of the nation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Demarcus Antwon Chatman

Date: January 14, 2022