

No. _____

In the Supreme Court of the United States

CHRISTOPHER ODEKU,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

On Petition for a Writ of Certiorari to the
Court of Appeals for the First District of Texas

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Are a complainant's statements to a sexual assault nurse examiner (SANE) testimonial for purposes of the Sixth Amendment's Confrontation Clause?

RELATED PROCEEDINGS

208th District Court, Harris County, Texas:

State v. Odeku, cause # 1485915, March 31, 2023
(entering judgment of conviction after jury trial)

Court of Appeals for the First District of Texas:

State v. Odeku, case # 01-23-00263-CR, April 17,
2025

(affirming trial court judgment)

Texas Court of Criminal Appeals:

State v. Odeku, case # PD-0312-25, July 2, 2025
(refusing discretionary review)

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OPINIONS AND ORDERS BELOW

The opinion of the Court of Appeals for the First District of Texas (App. 2a–23a) is reported at ___ S.W.3d ___, 2025 WL 1129131. The decision of the Texas Court of Criminal Appeals refusing discretionary review (App. 1a) is unreported. The 208th District Court’s oral ruling overruling petitioner’s Confrontation Clause objection (App. 32–33a) is unreported.

JURISDICTION

The Court of Appeals for the First District of Texas issued a final judgment affirming petitioner’s conviction on April 17, 2025. (App. 24a.) The Texas Court of Criminal Appeals refused discretionary review on July 2, 2025. (App. 1a.) This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Confrontation Clause of the Sixth Amendment requires that “In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.”

The Fourteenth Amendment provides, in relevant part, that no State shall “deprive any person of life, liberty, or property, without due process of law.”

INTRODUCTION

This case presents an important and recurring question over which state courts are deeply split: are a complainant’s statements to a sexual assault nurse examiner (SANE) testimonial for purposes of the Confrontation Clause?

Some courts have held that statements made to a SANE are testimonial, reasoning that the “primary purpose” of a SANE exam is to collect evidence for a future prosecution. *See, e.g., Hartsfield v. Commonwealth*, 277 S.W.3d 239, 244–45 (Ky. 2009).

Other courts, including the Texas Court of Appeals below, have held that such statements are nontestimonial because the primary purpose of a SANE exam is to provide medical treatment. *See, e.g., App. 16a–17a; Thompson v. State*, 438 P.3d 373, 378 (Okla. Crim. App. 2019).

Still other courts have held that statements made to a SANE are testimonial or nontestimonial depending on the topic discussed during the exam. *See, e.g., State v. Tsoie*, 516 P.3d 1116, 1145–46 (N.M. 2022).

As a result, in some states, defendants can be convicted of sexual assault based on a SANE’s written report and testimony without any opportunity to cross-examine their accusers—while in other states the Confrontation Clause bars such evidence unless the accuser testifies.

Because the Confrontation Clause’s guarantee should not depend on geography, this Court should grant certiorari to resolve the split.

STATEMENT OF THE CASE

Petitioner Christopher Odeku was charged with sexually assaulting a college student he met through a dating website. (App. 3a–4a.)

At Petitioner’s jury trial, the complainant testified, and Petitioner’s counsel cross-examined her.¹ (App. 26a–28a.)

Petitioner’s defense was that he had consensual sex with the complainant, and he testified to that effect. (App. 9a, 19a, 48a–49a.)

To show Petitioner’s intent and rebut his defense, the State attempted to prove that he sexually assaulted another woman, Mary Smith,² over two years later. (App. 8a–12a.)

Smith could not testify because she had died of a drug overdose before trial. (App. 10a, 30a.)

To prove the sexual assault without Smith’s testimony, the State introduced into evidence a SANE report prepared by SANE Lori Long. (App. 10a, 51a–60a.) That report contained a detailed narrative from Smith describing her alleged sexual assault. (App. 10a–12a, 53a–54a.) Nurse Long also read Smith’s narrative to the jury. (App. 10a, 37a–39a.)

¹ In its opinion, the Texas Court of Appeals referred to the complainant only as “the complainant.” (App. 4a–23a.) Accordingly, Petitioner has redacted the complainant’s name in transcript excerpts in the appendix.

² Mary Smith is a pseudonym adopted by the Texas Court of Appeals in its opinion. (App. 9a.)

Before Nurse Long testified, Petitioner raised a Confrontation Clause objection to all evidence of Smith's alleged sexual assault, which the trial court overruled. (App. 29a–30a, 32a–34a.) The trial court then granted Petitioner a running objection. (App. 34a.)

Petitioner testified that his sexual encounter with Smith was also consensual. (App. 45a–48a.)

The jury found Petitioner guilty, assessed his punishment at ten years in prison, and recommended he be placed on community supervision—Texas's equivalent of probation. (App. 3a.) The trial court followed the jury's recommendation, suspended Petitioner's ten-year prison sentence, and placed him on community supervision for ten years. (*Id.*)

On appeal to the Texas Court of Appeals, Petitioner argued that Smith's statements to Nurse Long were testimonial and should have been excluded under the Confrontation Clause because the primary purpose of the SANE exam was to collect evidence for Petitioner's prosecution. (App. 14a–16a.)

In a published opinion, the court of appeals disagreed. (App. 16a–17a.) It held that Smith's statements were nontestimonial because a “person undergoing a SANE exam provides a verbal history to a medical professional for the primary purpose of obtaining medical treatment, whether or not the person intends to report the sexual assault to the

police and even though the exam creates evidence that might be used in a prosecution.”³ (App. 16a.)

In so holding, the court of appeals agreed with every other intermediate Texas appellate court that has considered the issue. (App. 15a–16a.)

Petitioner filed a petition for discretionary review with the Texas Court of Criminal Appeals, which the Court refused. (App. 1a.)

REASONS FOR GRANTING THE PETITION

I. State courts are deeply divided on the question presented

A. This Court’s precedents

In *Crawford v. Washington*, 541 U.S. 36 (2004), this Court held that the Confrontation Clause forbids the introduction of “testimonial” hearsay against a defendant unless the hearsay declarant is unavailable and the defendant had a prior opportunity to cross-examine the declarant. *Id.* at 68.

Two years later, in *Davis v. Washington*, 547 U.S. 813 (2006), this Court articulated what is now known as the “primary-purpose test” for determining whether statements are testimonial. It held that statements are nontestimonial when made during a police interrogation whose “primary purpose” is “to enable police assistance to meet an ongoing emergency” and testimonial when the interrogation’s primary purpose is to “establish or prove past events

³ Because the court of appeals found no Confrontation Clause violation (App. 17a.), it did not address the issue of harm.

potentially relevant to a later criminal prosecution.” *Id.* at 822.

In *Michigan v. Bryant*, 562 U.S. 344 (2011), the Court explained that the primary purpose of an interrogation is determined by “the purpose that reasonable participants would have had, as ascertained from the individuals’ statements and actions and the circumstances in which the encounter occurred.” *Id.* at 360. “To give an extreme example, if the police say to a victim, ‘Tell us who did this to you so that we can arrest and prosecute them,’ and the victim says ‘Rick did it,’” then “the victim necessarily has prosecution in mind when she answers.” *Id.* at 368. The Court clarified that existence or nonexistence of an “ongoing emergency” is “simply one factor” in ascertaining the primary purpose of an interrogation. *Id.* at 366.

In *Ohio v. Clark*, 576 U.S. 237 (2015), the Court held that “statements to persons other than law enforcement officers” can be testimonial and are also analyzed under the primary-purpose test. *Id.* at 245–46.

Finally, in dicta in a footnote in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009), the Court said—but did not hold—that “medical reports created for treatment purposes ... would not be testimonial.” *Id.* at 312 n.2.

This Court has never addressed the question of whether a complainant’s statements to a SANE are testimonial. In the absence of a decision from this Court, state courts have deeply divided over the answer.

B. In eight states, statements to SANEs (and equivalent forensic nurses) are testimonial

Courts in eight states—California⁴, Florida⁵, Kentucky⁶, Maryland⁷, Montana⁸, Nevada⁹, North Carolina¹⁰, and Tennessee¹¹—have held that statements made to SANEs (and equivalent forensic nurses) are testimonial.

These courts generally reason that because SANEs collect physical evidence for the police, inform their patients that they are collecting evidence to turn over to the police, and regularly testify for the prosecution in criminal trials, the primary purpose of their exams is to develop and collect evidence for future prosecution.

The Tennessee Supreme Court’s decision in *State v. Cannon*, 254 S.W.3d 287 (Tenn. 2008), is illustrative of these cases.

The defendant in *Cannon* was charged with sexually assaulting an elderly complainant. *Id.* at 294.

⁴ *People v. Vargas*, 178 Cal. App. 4th 647, 662 (2009) (forensic nurse examiner who performed a sexual assault exam).

⁵ *Hernandez v. State*, 946 So.2d 1270, 1282–83 (Fla. App. 2007) (forensic nurse who performed a sexual assault exam).

⁶ *Hartsfield v. Commonwealth*, 277 S.W.3d 239, 246 (Ky. 2009) (SANE).

⁷ *Green v. State*, 22 A.3d 941, 956 (Md. App. 2011) (sexual assault forensic examiner (SAFE) nurse).

⁸ *State v. Martinez*, 545 P.3d 652, 660–61 (Mont. 2023) (SANE).

⁹ *Medina v. State*, 143 P.3d 471, 476 (Nev. 2006) (SANE).

¹⁰ *State v. Ball*, 897 S.E.2d 20, 27–28 (N.C. App. 2024) (SANE).

¹¹ *State v. Cannon*, 254 S.W.3d 287, 205 (Tenn. 2008) (SANE).

The complainant was transported to the emergency room after the assault and treated for her injuries. *Id.* at 239. After she was treated, a SANE examined her. *Id.* The SANE questioned the complainant and wrote down her account of the assault. *Id.*

The trial took place several years later. *Id.* at 294. By that time, the complainant was unable to testify because, according to the State, she was suffering from dementia and Alzheimer's disease. *Id.* Over the defendant's Confrontation Clause objection, the SANE read the complainant's account of her sexual assault to the jury, and the defendant was convicted. *Id.* at 293, 294.

The Tennessee Supreme Court held that the complainant's statements to the SANE were testimonial because the primary purpose of the exam was "to establish or prove past events potentially relevant to later criminal prosecution." *Id.* at 305. The Court pointed to several facts to support this holding.

First, the SANE had been trained by law enforcement agencies and the district attorney's office on how to collect evidence and interview suspected victims of sexual assault. *Id.*

Second, the SANE described her exam as a forensic examination to collect information about the sexual assault, explained her role in the investigation to the complainant, and did not provide any medical treatment because the complainant had already been treated by emergency room staff. *Id.*

Lastly, the SANE had testified "often" in previous trials "in her capacity as a sexual assault nurse examiner." *Id.*

C. In seven states, statements to SANEs (and equivalent forensic nurses) are nontestimonial

In contrast, courts in seven states—Arizona¹², Indiana¹³, Nebraska¹⁴, Oklahoma¹⁵, Texas¹⁶, Virginia¹⁷, and Wyoming¹⁸—have held that statements made to SANEs (and equivalent forensic nurses) are nontestimonial.

The decision of the Oklahoma Court of Criminal Appeals in *Thompson v. State*, 438 P.3d 373 (Okla. Crim. App. 2019) exemplifies these cases.

The complainant in *Thompson* was admitted to the emergency room for injuries she sustained during an alleged sexual assault. *Id.* at 375. After the complainant was treated in the ER, she underwent a SANE exam the next day. *Id.* The complainant described her sexual assault to the SANE and identified the defendant as the person who had assaulted her. *Id.*

¹² *State v. Hill*, 336 P.3d 1283, 1289–90 (Ariz. App. 2014) (forensic nurse who performed a sexual assault exam).

¹³ *Ward v. State*, 50 N.E.3d 752, 763–64 (Ind. 2016) (forensic nurse who examined a domestic violence complainant).

¹⁴ *State v. Swartz*, 17 N.W.3d 174, 188 (Neb. 2025) (SANE).

¹⁵ *Thompson v. State*, 438 P.3d 373, 378 (Okla. Crim. App. 2019) (SANE).

¹⁶ App. 17a. (SANE).

¹⁷ *Cody v. Commonwealth*, 812 S.E.2d 466, 477–78 (Va. App. 2018) (forensic nurse who examined a domestic violence complainant).

¹⁸ *McLaury v. State*, 305 P.3d 1144, 1149–50 (Wy. 2013) (SANE).

The complainant died of a drug overdose before trial. *Id.* at 376.

At trial, the State attempted to prove the sexual assault by introducing the complainant's statements to the SANE. *Id.* The trial court admitted the statements over the defendant's Confrontation Clause objection, ruling that they were made "for the primary purpose of medical diagnosis and treatment," and the jury found the defendant guilty. *Id.* at 374, 376.

Acknowledging that the issue had "divided" courts across the country, the Oklahoma Court of Criminal Appeals ruled that the complainant's statements to the SANE were nontestimonial because the primary purpose of the SANE exam was "furnishing medical care." *Id.* at 377–78.

The Court relied on several circumstances to support this conclusion.

First, the exam was performed "in the emergency room." *Id.* at 378.

Second, "[l]aw enforcement was not involved in the exam." *Id.*

Third, the SANE described the primary purpose of her asking the complainant to describe her sexual assault was so that she could provide "medical diagnosis and treatment." *Id.*

Fourth, the SANE was a "medical professional." *Id.*

Finally, though the SANE collected physical evidence during the exam that she turned over to law enforcement, the evidence-collection purpose of the exam was "secondary." *Id.*

The Oklahoma Court of Criminal Appeals did not rely on this Court’s dicta in *Melendez-Diaz* that medical reports created for treatment purposes are nontestimonial. Other courts, however—including the Texas court of appeals below—have. *See, e.g.* App. 14a; *State v. Tsoie*, 516 P.3d 1116, 1139 (N.M. 2022).

D. Two states take a topic-based approach to determine whether statements to SANEs are testimonial

Two states—New Mexico¹⁹ and Washington²⁰—examine the topics discussed during a SANE exam to determine whether a complainant’s statements are testimonial. Under this approach, some statements made during a SANE exam are testimonial while others are not.

In *State v. Tsoie*, 516 P.3d 1116 (N.M. 2022), the New Mexico Supreme Court found the following statements that a male complainant made to a SANE testimonial because they were irrelevant to medical treatment: (1) the complainant’s identification of the defendant, (2) his description of the events leading up to the sexual assault, (3) his description of what occurred after the assault, and (4) his description of the non-sexual criminal acts that occurred during the assault, such as the defendant tying him up and stealing his phone. *Id.* at 1145–46.

In contrast, the Court found the following statements the complainant made to the SANE nontestimonial because they were relevant to his

¹⁹ *State v. Tsoie*, 516 P.3d 1116, 1145–46 (N.M. 2022).

²⁰ *State v. Burke*, 478 P.3d 1096, 1112–15 (Wash. 2021).

medical treatment: (1) his medical history, (2) his description of how he was strangled during the assault, (3) his description of where he was punched and tied up, and (4) his description of how the sexual assault physically occurred (i.e., by anal penetration and ejaculation). *Id.* at 1126, 1145–46.

In *Burke v. State*, 478 P.3d 1096 (Wash 2021), the Washington Supreme Court, also adopting a topic-based approach, took a markedly more permissive view and held that virtually all of a complainant’s statements to a SANE were nontestimonial. *Id.* at 1114–15.

It held that only the complainant’s description of her attacker was testimonial because the primary purpose of describing her attacker was prosecution rather than medical treatment. *Id.* at 1115. Conversely, the rest of the complainant’s statements—such as her description of her pain and how and where the sexual assault occurred—were nontestimonial because they were made for the purpose of medical diagnosis and treatment. *Id.* at 1114–15.

Burke and *Tsoie* are problematic because they reached opposite conclusions on essentially the same facts. But their fundamental flaw is that this Court has never endorsed a topic-based approach to determine whether a statement is testimonial. On the contrary, this Court has instructed lower courts to determine the primary purpose of the *entire interrogation*—as justices outside of the majorities in both cases recognized. *See Tsoie*, 516 P.3d at 1155–56 (Vigil, J., dissenting) (“Rather than looking to the

primary purpose of *the encounter*, the majority looks to *each statement* made ... This is incorrect.”) (emphasis in original); *Burke*, 478 P.3d at 1117 (McCloud, J., concurring) (“But controlling United States Supreme Court precedent makes clear that the primary purpose test focuses on the purpose ‘of the *interrogation*’—not on a single question and answer within that interrogation.”) (cleaned up, emphasis in original).

Most splits have two sides; this one has three. This unusually fractured divide warrants this Court’s review.

II. The decision below is wrong

The circumstances of the SANE exam in Petitioner’s case prove that its primary purpose was not to diagnose or treat Smith but to collect evidence for Petitioner’s future prosecution.

First, Nurse Long was no mere nurse—she was effectively a law-enforcement agent in all but name. As part of her SANE training, she learned “how to do evidence collection and package evidence” for the police. (App. 36a.) She collected evidence pursuant to the “Texas Evidence Collection Protocol,” a set of evidence-collection guidelines issued by the Texas Attorney General’s Office.²¹ (App. 40a.) And she had previously testified in approximately *one hundred* trials in her capacity as a SANE. (App. 43a.)

²¹ See Texas Evidence Collection Protocol (2022), <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/crime-victims/TXEP.0202301a.pdf>.

Second, Smith requested the SANE exam in the presence of the police and told the ER physician that she would be filing a police report. (App. 69a, 71a.)

Third, the SANE exam took place over six hours after Smith had been treated in the ER and after Nurse Long determined she was “medically screened and stable.” (App. 34–36a.)

Fourth, the “patient education packet” that Nurse Long gave Smith explained to her that samples would be collected from her body “for evidence” and might be used if she chose to “press charges.” (App. 63a.)

Fifth, the consent form that Smith signed gave permission for Nurse Long to conduct a “medical forensic examination” involving “collection of evidence” and authorized copies of her SANE report to be released to law enforcement. (App. 52a.)

Sixth, the samples that Nurse Long collected from Smith were “sealed with evidence tape,” placed in an “evidence cabinet,” and subsequently turned over to the police for “crime lab” testing. (App. 42a–43a.)

Seventh, the SANE report contained blanks for Nurse Long to write the law enforcement agency’s case number and the name and badge number of the officer who picked up the samples. (App. 53a, 59a.)

Eighth, the State elicited no testimony that Nurse Long treated Smith or diagnosed her with anything, nor did her SANE report reflect any diagnosis or treatment. (App. 51a–59a.)

Finally, most of the questions Nurse Long asked Smith during the SANE exam were relevant only for future prosecution, not medical treatment.

For example, Nurse Long asked Smith whether she had bathed or showered, not because those questions were relevant to medical treatment, but to explain the possible absence of the perpetrator's DNA. (App. 39a–40a, 53a.) Similarly, she asked Smith about her last sexual contact with a man, not for any medical purpose, but to explain the possible presence of DNA from someone other than the perpetrator. (App. 53a.)

The same was true for other questions Nurse Long asked Smith, such as what she had been drinking and where. (App. 44a.) These questions weren't relevant to treating or diagnosing Smith but were relevant to the sexual assault investigation.

Nurse Long may not have directly told Smith, "Tell us who did this to you so that we can arrest and prosecute them," *Michigan v. Bryant*, 562 U.S. 344, 368 (2011), but the law-enforcement-focused, evidence-collection context of the SANE exam was the functional equivalent of asking that very question.

The court below did not seriously address these circumstances but instead uncritically accepted Nurse Long's testimony that the purpose of the SANE exam was to diagnose and treat Smith. (App. 17a.)

III. This case presents a clean vehicle for answering the question presented

Petitioner made a timely and specific Confrontation Clause objection to Nurse Long's testimony and the SANE report. (App. 30a, 33a–34a.) The trial court admitted the evidence over Petitioner's objection, and the court of appeals squarely rejected his Confrontation Clause claim on the merits. (App. 17a, 32a–33a.)

The record is well-developed, and there is no adequate and independent state law ground that prevents this Court's review.

IV. The question presented is important and recurring

As shown above, state courts nationwide are deeply divided on whether a complainant's statements to a SANE are testimonial. This division has only worsened over time. Only this Court's intervention can resolve it.

The question recurs because SANE exams are now a standard feature of sexual assault investigations. When complainants cannot testify at trial—whether because they have died, disappeared, or lost their memory—prosecutors routinely seek to prove sexual assaults through a SANE's surrogate testimony.

CONCLUSION

Under this Court's precedents, it would violate the Confrontation Clause for a prosecutor to prove a sexual assault by having a police officer recount what a deceased complainant told him. But because SANEs are nurses and collect evidence under the guise of a medical exam, some courts allow them to repeat an unavailable complainant's account of an alleged sexual assault.

The result is that defendants in some states can be convicted of sexual assault based on a deceased complainant's statements to a SANE (as Petitioner was) while defendants in other states cannot.

This disparity is fundamentally unfair and untenable. Because the Confrontation Clause's protection should not depend on geography, Petitioner respectfully requests that this Court grant certiorari.

Respectfully submitted,

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