

No. 26-_____

SUPREME COURT OF THE UNITED STATES

Elijah Chappell,

Petitioner,

vs.

United States of America,

Respondent

**On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Sixth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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Questions Presented

1. Whether statements that responding officers elicit from bystanders who are never identified, never produced, and never cross-examined, and that are captured on the officers' body-worn cameras, are testimonial under the Confrontation Clause when the recordings are admitted at trial as substantive evidence of the defendant's guilt.
2. Whether a court may deny a hearing under *Franks v. Delaware*, 438 U.S. 154 (1978), and credit the untested remainder of a five-paragraph search-warrant affidavit as a basis for probable cause, without ever determining whether the affiant's challenged statements were false or recklessly made.
3. Whether 18 U.S.C. §922(g)(1), which permanently disarms every person convicted of a felony, is facially unconstitutional under the Second Amendment.

Related Proceedings

United States District Court (E.D. Mich.)

United States v. Elijah Chappell, No. 2:23-cr-20601-SFC-DRG
Judgment entered January 14, 2025

United States Court of Appeals (6th Cir.)

United States v. Elijah Chappell, No. 25-1049
Judgment entered March 12, 2026

Parties to the Proceeding

Per Rule 14.1(b), the parties to the proceeding are:

The United States of America, represented by the U.S. Attorney's Office for the Eastern District of Michigan.

Elijah Chappell, represented by CJA counsel James Amberg.

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I. Petition for Writ of Certiorari

Elijah Chappell petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

II. Opinions Below

The Sixth Circuit’s opinion affirming the district court’s judgment is unpublished and is reproduced at Appendix A. *United States v. Chappell*, No. 25-1049 (6th Cir. Mar. 12, 2026).

III. Jurisdiction

The Sixth Circuit entered judgment on March 12, 2026. See Appendix A. No petition for rehearing was filed. On June 5, 2026, Justice Kavanaugh, Circuit Justice for the Sixth Circuit, extended the time within which to file this petition to and including August 9, 2026. See Sup. Ct. R. 13.5. Because August 9, 2026 is a Sunday, the time to file extends to Monday, August 10, 2026. Sup. Ct. R. 30.1. This petition is timely filed. Sup. Ct. R. 13.1. This Court has jurisdiction under 28 U.S.C. §1254(1).

IV. Constitutional and Statutory Provisions Involved

The Second Amendment to the United States Constitution, U.S. Const. amend. II, provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

The Fourth Amendment, U.S. Const. amend. IV, provides: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The Sixth Amendment, U.S. Const. amend. VI, provides, in pertinent part: “In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.”

18 U.S.C. §922(g)(1) provides, in pertinent part: “It shall be unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition.”

V. Statement of the Case

A. Introduction

Thirteen witnesses testified at Elijah Chappell’s trial. Every one of them was a police officer, a forensic analyst, or an evidence technician. Not one civilian who was on Hartwell Street on the night of May 20, 2023, ever took the stand—not one of the four 911 callers, and not one of the individuals who spoke to the officers who responded.

The jury heard from those people anyway. It heard four 911 calls. And it watched body-worn-camera recordings in which two Detroit officers questioned a group, of whom the government labeled as children in a parking lot, asking: “What happened?”; “Were any shots fired there?”; “Who has a gun?”; and “Is anybody shot?” App. 11a. These mostly unknown people answered. Their answers—that the man’s name was Elijah, that he “went to get the gun and started letting off bullets,” and that he was inside 9401 Hartwell Street—together with the four calls, were the only account of the shooting the jury received from anyone who claimed to have seen it. App. 2a, 11a. The witnesses who took the stand, police officers and evidence technicians, testified that they never saw Mr. Chappell with a gun and never saw anyone fire one. (R 80, Trial Tr. Vol. 2: Pg ID 786, Lns 5-8; R 81: Pg ID 961, Lns 19-23) One of the children gave the officers her full name on camera, and the Government never called her. (R 80: Pg ID 752, Lns 1-4) The officer who questioned her recorded a different name in her report. (R 80: Pg ID 758, Lns 22-25; Pg ID 759, Lns 1-8)

The Sixth Circuit held that none of it was testimonial. It reached that conclusion by applying the “primary purpose” test of *Davis v. Washington*, 547 U.S. 813 (2006), and *Michigan v. Bryant*, 562 U.S. 344 (2011), to a form of evidence that was effectively unknown to American policing when those cases were decided. Two Members of this Court have recently said that the test itself

needs revisiting. *Franklin v. New York*, 604 U.S. ____ (2025) (No. 24-330) (statements of Alito, J., and Gorsuch, J., respecting the denial of certiorari). This case presents the question on a record in which the court below itself identified the challenged evidence and then held all of it admissible.

B. Factual Background

On the evening of May 20, 2023, four callers reported gunfire near 9401 Hartwell Street in Detroit. App. 2a. Officers Haley Hebner and Joel Ochoa were dispatched. Before reaching the address they were flagged down in a nearby parking lot by a group the record describes as four children and an adult female, who were “screaming and waving their hands for the officers to stop.” App. 2a. Both officers were wearing body-worn cameras, and both cameras were recording.

What followed was an interview. The officers asked the people what had happened, whether shots had been fired, who had a gun, and whether anyone had been shot. App. 11a. The group said the shooter’s name was Elijah and that he had gone into the basement of 9401 Hartwell Street. App. 2a. One individual gave Officer Hebner her full name on camera. (R 80: Pg ID 752, Lns 1-4) Officer Hebner nonetheless entered a different name in her report, taken from a law-enforcement database, and acknowledged the error at trial. (R 80: Pg ID 758, Lns 22-25; Pg ID 759, Lns 1-8) No other person was identified. They were allowed to leave, and none of them was ever produced.

Officer Hebner then heard gunfire. Asked at trial whether she knew where the shots came from, she answered: “Just general vicinity.” (R 80: Pg ID 760, Lns 17-18) She estimated “the first two, maybe three houses on the west side of Hartwell.” (*Id.*, Lns 20-21) Officers established a perimeter, declared a barricaded-gunman situation, and after roughly two hours breached the door. App. 3a. A search conducted under a warrant recovered a disassembled rifle, shell casings, and blood matching Mr. Chappell’s DNA. App. 3a-4a.

The affidavit supporting that warrant consisted of five paragraphs. (R 42: Pg ID 156-57) Mr. Chappell challenged five of its statements. The entirety of the affidavit read as follows:

1. The Affiant is a sworn member of the Detroit Police Department with 24 years of service, currently assigned to the Second Precinct Detective Unit. Affiant has been involved in numerous firearm investigations in the City of Detroit. Affiant has probable cause to believe that the above listed items will be found on the above described premises.
2. On May 20, 2023, at approximately 9:26 pm, Officer H. Hebner was flag down by four children and an adult female at W. Chicago and Hartwell. The children stated to Officer Hebner that their father was assaulting their mother. The adult female pointed toward the target location and said that the offender was inside the TARGET LOCATION and was armed with a gun. Officer Hebner then reports that she heard the sound of gunfire coming from within the TARGET LOCATION. Upon attempting to make contact, a B/M 40 open the front door of the residence but refused to show his hands. He then retreated back into the TARGET LOCATION. Officer Hebner reports that during the confusion following the shots being fired the four children and adult female left the location.
3. On May 20, 2023 at approximately 9:40 pm, Sergeant R. Washington responded to the TARGET LOCATION. He spoke with a witness who

identified the person in the residence as his brother, Elijah Chappell B/M[xxx]-81. Affiant conducted a RMS search of Mr. Chappell and discovered four reports of domestic assault where Mr. Chappell was suspected of assaulting Monica Manns who he share four children. During each of these incidents criminal prosecution was not obtained due to Ms. Manns' lack of cooperation.

4. On May 20, 2023, approximately 10:15 pm, a barricaded gunperson was declared. On May 21, 2023, at approximately 12:15am, Mr. Chappell exited the TARGET LOCATION and surrendered.
5. On May 21, 2023, Affiant reviewed Elijah Chappell's criminal history. He was found guilty on June 8, 2010 of felony Assault with a Dangerous Weapon (MCL 750.82) in 3rd Circuit Court. Due to this conviction Affiant is aware Mr. Chappell is disqualified for possessing a firearm. Affiant believes that probable cause exists to believe that firearms and firearm evidence (spent casings) will be found on the premise of the target location.

Three are relevant here: that “[t]he children stated to Officer Hebner that their father was assaulting their mother”; that “Officer Hebner then reports that she heard the sound of gunfire coming from within the TARGET LOCATION”; and that a Sergeant Washington “spoke with a witness who identified the person in the residence as his brother, Elijah Chappell.” At trial Officer Hebner testified that she knew only the “general vicinity” of the shots, which she placed at “the first two, maybe three houses on the west side of Hartwell.” (R 80: Pg ID 760, Lns 17-21) Sergeant Washington was never mentioned at trial. Finally, at no point in the incident was Monica Mans involved and nowhere was there an allegation she was assaulted, thus passages 2 and three were categorically false.

Officer Hebner testified on cross-examination that she did not canvass the neighborhood and knew of no one who did, that the police did not learn who the 911 callers were, and that she had never listened to the calls. (R 80: Pg ID 800, Lns 9-11, 19-25)

C. Procedural History

A grand jury charged Mr. Chappell with possessing a firearm and ammunition after a felony conviction, in violation of 18 U.S.C. §922(g)(1). App. 4a. He moved to suppress the fruits of the search, arguing that the affidavit contained false and reckless misrepresentations, and asked in the alternative for a hearing under *Franks v. Delaware*, 438 U.S. 154 (1978). App. 4a. The district court denied the motion without a hearing. It did not decide whether Mr. Chappell had made a substantial preliminary showing that any statement was false or reckless. It held instead that the affidavit was “more than sufficient” to establish probable cause “even without the statements that Chappell challenged.” App. 4a; (R 51: Pg ID 218-19)

He also moved in limine to exclude the 911 calls and the body-camera footage, arguing that the recorded statements were inadmissible hearsay, unfairly prejudicial, and violative of the Confrontation Clause because the declarants would not testify. App. 4a. The district court denied the motion, holding that the statements fell within Fed. R. Evid. 803(1) and that the 911 callers’ statements

were nontestimonial because the calls sought assistance in an ongoing emergency. App. 4a-5a.

Counsel confirmed the objection on the record when the evidence was offered. At a sidebar before Exhibits 1 through 5 were received, counsel told the court that he had “objected before to this evidence” and asked to be sure “that’s preserved”; the court answered, “Okay. You’re good.” (R 80: Pg ID 734, Lns 3-8) Counsel identified the grounds as “[h]earsay, relevance, foundation,” and explained that the relevance objection rested on the fact that “we don’t know who they are talking about” and “[w]e don’t know who made the statements.” (R 80: Pg ID 735, Lns 15-21; Pg ID 736, Lns 12-13) The district court admitted the evidence over the objection. App. 5a.

Thirteen witnesses testified for the Government. All were law-enforcement officers or technical witnesses: Officers Hebner, Ochoa, LaViolette, Romano, Ireton, Metzke, Symanns, and Pierce; Sergeant Goins; Corporal Bibbs; Detective Lieutenant Bergeron; forensic DNA analyst Amanda Fazi; and evidence technician Carrington Sheridan. (R 80-83.) Not one 911 caller testified. None of the civilians from the parking lot testified. The jury convicted. App. 5a. The district court sentenced Mr. Chappell to 120 months.

D. The Circuit Court Decision

The Sixth Circuit affirmed in an unpublished opinion. App. 1a. As to the warrant, it reached neither falsity nor recklessness. It wrote that it “need not parse each of the statements that Chappell now challenges (nor address the government’s argument that Chappell forfeited reliance on certain statements by failing to cite them below),” because, “reviewing the district court’s probable-cause determination de novo, . . . we agree that the affidavit established probable cause even excluding the challenged statements.” App. 7a.

The panel then identified what it regarded as the affidavit’s remaining support, introducing the list with the words “Those facts include”: that Officer Hebner “was flagged down by children who left the scene after shots were fired”; that Mr. Chappell “opened the front door of the residence but then refused to show his hands to officers, retreated back, and barricaded himself”; that “police records identified the person inside 9401 Hartwell Street as Chappell”; that “a barricaded gunperson was declared”; that he “remained inside . . . for approximately two hours before surrendering”; and that he “had a prior felony conviction.” App. 8a.

Turning to the recordings, the panel first defined the scope of the evidence under review. Observing that Mr. Chappell had attacked the recordings “en masse” rather than statement by statement, the panel adopted the district court’s construction of the motion in limine as reaching the exhibits identified in the Government’s response, “including the four 911 calls and the first ten minutes of

Hebner’s and Ochoa’s body-camera footage in which they interact with the individuals in the parking lot,” and “follow[ed] suit in limiting the scope of [its] review of the evidentiary issues.” App. 9a.

The panel held all of it nontestimonial. As to the 911 calls, it reasoned that each caller ““was speaking about events as they were actually happening”” and faced ““an ongoing emergency.”” App. 10a (quoting *United States v. Arnold*, 486 F.3d 177, 188 (6th Cir. 2007) (en banc)). As to the body-camera footage, it reasoned that the ““exigency of the moment”” had not ended, that the ““arrival of the officers”” did not ““end[] the emergency,”” and that the officers’ questions—“What happened?”; “Were any shots fired there?”; “Who has a gun?”; and “Is anybody shot?”—“demonstrate an intent to ‘clarify[] the extent of the emergency and obtain[] information necessary to resolve it.’” App. 11a (quoting *Arnold*, 486 F.3d at 189-91).

The panel also declined to resolve which standard of review governs. It acknowledged that “[t]his Court has not always been consistent regarding the standard of review applicable to evidentiary rulings that implicate constitutional arguments,” collecting three of its own decisions applying abuse-of-discretion review, de novo review, and both. App. 9a & n.2 (citing *United States v. Schreane*, 331 F.3d 548, 564 (6th Cir. 2003); *United States v. Lloyd*, 10 F.3d 1197, 1216 (6th Cir. 1993); *United States v. Davis*, 577 F.3d 660, 666 (6th Cir. 2009)). It stated that

it “need not resolve any ambiguity in our caselaw here” because the ruling survived “any standard of review.” App. 9a.

As to the Second Amendment, the panel held the facial challenge to 18 U.S.C. §922(g)(1) foreclosed by *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024), “which applied *Bruen* and held that §922(g)(1) is not susceptible to a facial challenge.” App. 15a. It explained that “[a]s a three-judge panel . . . we cannot accept Chappell’s invitation to ‘overturn’ our precedent in *Williams*.” App. 15a. As to the Second Amendment, the panel held the facial challenge to 18 U.S.C. §922(g)(1) foreclosed by *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024), “which applied *Bruen* and held that §922(g)(1) is not susceptible to a facial challenge.” App. 15a (quoting *United States v. Feltus*, 2025 WL 3111303, at *1 (6th Cir. Nov. 6, 2025)). It explained that “[a]s a three-judge panel . . . we cannot accept Chappell’s invitation to ‘overturn’ our precedent in *Williams*.” App. 15a.

VI. Reasons for Granting the Writ

A. Two Members of This Court Have Said the Primary-Purpose Test Requires Reconsideration, and Nothing Below Resolved It.

Recently, in *Franklin v. New York*, 604 U.S. __; 145 S. Ct. 831 (2025)(No. 24-330), this Court denied certiorari over separate statements from two Justices. Justice Gorsuch wrote that the primary-purpose test “appears nowhere in the text of the Sixth Amendment, nor have our decisions sought to justify it by reference to

the Amendment’s original meaning and the historic practices that informed it”; that where the test “comes from is anyone’s guess”; that this Court has offered a number of “‘varied’ and seemingly inconsistent ‘formulations’” of it; and that “all this suggests we may need to rethink our course sometime soon.” *Id.* at 833-835. Justice Alito wrote separately that “in an appropriate case we should reconsider the interpretation of the Confrontation Clause that the Court adopted in *Crawford v. Washington*.” *Id.* at 831-833.

The governing primary-purpose test does not supply an administrable answer, yet, as Justice Gorsuch observed, “a defendant’s conviction or acquittal can hang on that choice.” *Franklin*, 145 S. Ct. at 835 (Gorsuch, J., statement respecting the denial of certiorari). The result is that the Clause’s historical guarantee is displaced by an atextual, judge-made test.

This Court itself left the testimonial question open two terms ago. In *Smith v. Arizona*, 602 U.S. 779 (2024), after holding that an expert’s recitation of an absent analyst’s statements comes in for their truth, the Court declined to decide whether those statements were testimonial, explaining that the issue was “not now fit for our resolution,” and remanded. *Id.* at 800-01. The question has therefore been reserved by this Court once and flagged by two of its Members since, and it remains open.

B. Body-Worn Cameras Present the Question in a Form the Test Was Not Built to Answer, and State Courts of Last Resort Have Divided Over It.

Davis was decided in 2006 and *Bryant* in 2011. Neither involved a police body-worn camera. When they were decided, the technology was new and inconsistently used; today it is close to universal, and it has changed the evidentiary landscape in a way the test does not account for. Under *Davis*, the recording of a 911 call was a byproduct of a call for help. A body-worn camera is the opposite: it is a recording device carried by the State, activated by the State, and pointed at a declarant by an officer who is asking the questions. The resulting recording is preserved as evidence by design.

That difference matters under this Court's own formulation. A statement is testimonial if, "in light of all the circumstances, viewed objectively, the 'primary purpose' of the conversation was to 'create an out-of-court substitute for trial testimony.'" *Ohio v. Clark*, 576 U.S. 237, 245 (2015) (quoting *Bryant*, 562 U.S. at 358). When the State elects to record an interview, the recording is an out-of-court substitute for trial testimony whether or not the officer subjectively wanted one. The "ongoing emergency" inquiry was designed to separate a frightened caller's plea for help from a station-house interrogation. It does not obviously answer what to do with an on-scene interview that the State chose to preserve in a form

admissible at trial and use in lieu of human testimony which, unlike a video, can be confronted.

At least one State Supreme Court has thought otherwise. In *State v. Smith*, 2024-Ohio-5745, 179 Ohio St. 3d 4, 17, cert. denied, 146 S. Ct. 319 (2025), the Ohio Supreme Court held that a domestic-violence complainant’s statements to an officer, captured on the officer’s body camera, “were testimonial in nature and . . . their admission into evidence at Smith’s criminal trial violated Smith’s right to confrontation,” while her statements to emergency medical personnel were not. Three Justices dissented in relevant part, reasoning that the majority had assessed the emergency with hindsight.

The absence of a square conflict among the courts of appeals is not a reason to deny review; it is a symptom. Every court applies the primary-purpose test because this Court supplied it, and no court of appeals can revisit it. Only this Court can. Meanwhile the Ohio Supreme Court, applying the same test to the same kind of evidence, reached the opposite result.

C. The Decision Below Illustrates the Instability the Test Produces.

The panel treated the officers’ questions—“What happened?”; “Were any shots fired there?”; “Who has a gun?”; and “Is anybody shot?”—as demonstrating an intent to “clarify[] the extent of the emergency and obtain[] information necessary to resolve it.” App. 11a. Every one of those questions is also a question a

detective asks to build a case, and two of the four are cast in the past tense. The Ohio Supreme Court held that comparable questioning was investigative. The test as presently formulated permits both answers, which is Justice Gorsuch's point.

The consequence in this case of admitting the unfronted evidence was not marginal. The panel's own recitation of the evidence supporting the verdict opens with what the callers and the alleged children said. App. 14a. The physical proof was less convincing than it sounds, and was highly circumstantial. The recorded statements and the 911 calls were the only direct account of Mr. Chappell being in possession of the firearm the shooting itself, and not one of the people who gave these statements was produced. One of them had given the officers her name. The officer who questioned her had never listened to the 911 calls that were said to corroborate her.

D. This Case Is a Suitable Vehicle for Review

The question is preserved. Mr. Chappell moved in limine on Confrontation Clause grounds before trial, App. 4a, confirmed the objection on the record at sidebar when the exhibits were offered, and obtained the district court's assurance that it was preserved. The Sixth Circuit reached and decided the Confrontation Clause claim on the merits. App. 10a-11a.

E. The Second Question: Whether a *Franks* Claim May Be Resolved on Materiality Alone, Without Any Determination Whether the Affiant Told the Truth.

Applied as both courts below applied it, that rule permits a challenge to an affiant's veracity to be resolved without ever deciding whether the affiant was truthful. Neither court below decided whether any challenged statement was false or recklessly made. See App. 4a, 7a. The record does not explain how the affiant came to the challenged conclusions in this five-paragraph affidavit.

This Court has treated an untruthful affiant as a special case in a related setting. Good faith does not save a warrant where the judge “was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth.” *United States v. Leon*, 468 U.S. 897, 923 (1984). The question here is whether that concern belongs at the front end too, when a court is deciding whether to hold a hearing at all. The rule assumes the leftover is reliable, and it was written for a challenge to a sentence or two. It does not address what happens when the overall falsity of the affidavit casts doubt as to its overall truth.

Mr. Chappell asks whether a court may stop at materiality when the affiant's honesty is the thing in dispute. Because the challenged statements went to the affidavit's core, at some point materiality must yield to veracity: a court cannot credit the remainder without first deciding whether the affiant told the truth. The appropriate remedy is a remand for a *Franks* hearing to determine whether the

challenged statements were false or recklessly made and, if so, whether the warrant can stand.

F. The Third Question: The Facial Validity of the Felon-in-Possession Statute.

Mr. Chappell moved to dismiss the indictment on the ground that §922(g)(1) is facially unconstitutional under *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). App. 4a. The Sixth Circuit held the argument foreclosed by *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024), which held that “[b]ecause . . . most applications of §922(g)(1) are constitutional, the provision is not susceptible to a facial challenge.” *Id.* at 657; see App. 15a. The panel could not revisit *Williams*. App. 15a. Only this Court can.

Petitioner presents the question because it was raised at every stage below and preserved for this Court’s review. His brief asked the Sixth Circuit either to overturn *Williams* or to “allow Mr. Chappell to preserve this issue for redress before the Supreme Court,” Chappell Br. 29-30, and the panel resolved the claim on the sole ground that it lacked authority to do the former. App. 15a.

VII. Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be granted.

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Respectfully submitted,

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