

No. 25-7055

In the Supreme Court of the United States

OTIS TYRONE MCKANE,

Petitioner

v.

STATE OF TEXAS,

Respondent

On Petition for Writ of Certiorari
To the Court of Criminal Appeals of Texas

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

First Point of Error: Whether McKane's confession to Detective Duke was voluntary.

Second Point of Error: Whether McKane waived his rights prior to giving his confession to Detective Duke.

Third Point of Error: Whether McKane's admission to Officer Morris should have been suppressed.

Fourth Point of Error: Whether McKane's admissions to Officer Enfinger should have been suppressed.

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In the Supreme Court of the United States

No. 25-7055

OTIS TYRONE MCKANE,
Petitioner

v.

STATE OF TEXAS,
Respondent

On Petition for Writ of Certiorari
To the Fourth Court of Appeals of Texas

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Criminal Appeals of Texas is reported at 726 S.W.3d 413.

JURISDICTION

The Texas Court of Criminal Appeals affirmed Petitioner's conviction and sentence on October 30, 2025. Petitioner filed his petition and motion for leave to proceed *in forma pauperis* with this Court on January 10, 2026, within 90 days of the CCA's decision. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1257(a) and 2101(d) and Supreme Court Rule 13.1.

STATEMENT

Petitioner raises two points of error regarding a confession he made to a detective shortly after he was arrested for the murder of a San Antonio police officer a few days prior. He also raises two points of error regarding spontaneous admissions that he made to a SWAT officer and a jailer when he was booked for capital murder. The Court of Criminal Appeals disposed of these claims as they all turned on well-settled law. Petitioner has not given this Court any reason to reconsider any federal law on which these points of error are based.

SUMMARY OF THE TRIAL RECORD

McKane was charged with capital murder for shooting Detective Benjamin Marconi in the head while he was working an overtime shift patrolling traffic in downtown San Antonio (1 C.R. at 12). There is no dispute that a capital murder of a police officer took place because Detective Marconi was shot in broad daylight while in full uniform inside his patrol vehicle while he was conducting a traffic stop. And, there is no doubt that the individual who killed Marconi acted with intent and full knowledge that he was a peace officer. McKane's trial revealed the following:

The execution of Marconi was captured by both the interior video from his patrol car as well as a surveillance camera fixed on the side of the police headquarters (State's Ex's 2-3; 19-25; 28). These video's show an individual approach Marconi's police vehicle from behind while Marconi was sitting in the driver's seat writing a ticket for another motorist. The individual pointed a pistol to the back of Marconi's head and fired two shots.

Multiple eyewitnesses identified McKane as either a person at police headquarters that morning or as the actual shooter. Kevin Wilkson identified McKane as the person who was recorded entering the lobby of the police headquarters on the morning of the shooting to make a complaint about the custody of his child (39 R.R. at 98–99). Bus driver Juan Enciso identified McKane in a photo spread two days after the shooting (41 R.R. at 30–36) and in court before the jury (41 R.R. at 40). Alexandria Patterson had an up-close view of the shooting and told police shortly after that she could identify the shooter if asked (41 R.R. at 171–72). In fact, she did identify McKane in court as the shooter (41 R.R. at 174–75). Mike Flores also identified McKane in a photo spread as well as in court (41 R.R. at 227–29).

McKane was captured on video walking into the police station and his car was captured approaching and leaving the police station (State's Ex's 2 & 3). McKane's car was identified by three employees who worked at the tire-rental shop where he regularly made payments for his car rims (41 R.R. at 178–96; 44 R.R. at 12–13, 28–31, 57–61, 63–64).

After he fled from the shooting, McKane's car was found abandoned on the West Side of San Antonio and door camera of a nearby house captured an individual whose appearance was consistent with McKane walking away from the car (43 R.R. at 202, 208–10; State's Ex's 136, 137, 138). The car was left in a part of town near the address reflected on McKane's rim receipts (41 R.R. at 181). The traffic arms collected from the police headquarters were matched by transfer/trace analysis to

McKane's vehicle from when he sped away pumping against the arms as his car drove through the parking lot of police headquarters (43 R.R. at 35–38, 140; 44 R.R. at 162–65; 46 R.R. at 29–45).

Due to the nature and circumstances of his crime, SAPD took extra precautions when executing McKane's arrest warrant the day after the killing. SAPD SWAT used a diversionary device that made a flash-bang to distract McKane prior to the arrest (7 R.R. at 10–12). The grenade causes brief disorientation, giving police a tactical advantage when they take a dangerous person into custody (7 R.R. at 157).

McKane was brought to SAPD homicide approximately an hour after his arrest (7 R.R. at 146). He waited in the interrogation room approximately one hour before Detective Duke entered (7 R.R. at 149). Detective Duke provided McKane with his glasses and a bottle of water with a straw (7 R.R. at 150). The detective entered the interrogation room without his firearm, partially because he wanted to ensure that McKane was as relaxed as possible (7 R.R. at 152).

Initially, Duke spent some time building rapport with McKane, speaking to him calmly about his experience during the arrest (State's Ex. 1 at approximately 18:04:00 to 18:08:00). McKane specifically complained about the amount of force used during his arrest—particularly the use of a flash grenade and that he was not read his rights at the time of arrest (7 R.R. at 156). Afterwards, Duke clearly read the required warnings to McKane (State's Ex. 1 at approximately 18:09:00). McKane acknowledged that he understood his rights (7 R.R. at 153–55, 159–60).

A few minutes later, Deputy Chief McKay entered the room (State's Ex. 1 at approximately 18:17:00). McKane proceeded to explain to the deputy chief what had happened to him during the arrest. Deputy Chief McKay told McKane that his complaint would be considered by SAPD (7 R.R. at 157–58). After speaking with Deputy Chief McKay, McKane once again acknowledged that he understood his rights (State's Pretrial Ex. 1 at approximately 18:21:00).

At this point, Duke proceeded to converse at length with McKane about his family history. Detective Duke focused on the relationship between McKane, his son, and his ex-wife. McKane was questioned in a calm, conversational manner (7 R.R. at 160). Detective Duke believed that McKane understood his questions (7 R.R. at 160). Detective Duke used noncoercive interrogation techniques (7 R.R. at 162). At no time did McKane invoke his right to an attorney, invoke his right to remain silent, or attempt to terminate the interview (7 R.R. at 162). Detective Duke acknowledged that not everything he told McKane was true (7 R.R. at 181–82). After several minutes of back and forth, McKane finally confessed to the shooting. (State's Pretrial Ex. 1)

McKane was subsequently taken to the San Antonio Detention Center to be booked for capital murder. Officer Morris was tasked with booking McKane into the San Antonio Detention Center to be magistrates (7 R.R. at 117–19). To complete the booking process, Morris had to ask all detainees four questions regarding their mental health—any diagnosis, medications, past suicidal thoughts, or current

suicidal thoughts (7 R.R. at 120). McKane did not respond to Morris when he asked the four questions pertaining to mental health (7 R.R. at 123).

During the booking process, McKane spontaneously uttered, “it felt good to shoot him” (7 R.R. at 125). This was not in response to any question asked by Morris (7 R.R. at 125). Morris only asked McKane the four mental-health questions, which did not inquire about the underlying crime, and no other officer standing nearby asked McKane a question (7 R.R. at 125). Morris did not recall if he asked the four mental-health questions before or after McKane made the spontaneous utterance about shooting Marconi (7 R.R. at 132).

The trial court denied McKane’s motion to suppress and entered findings of fact and conclusions of law (1 C.R. at 233).

ARGUMENT

Reason for Denying Certiorari

This Court does not accept matters for the purpose of correcting the errors of lower courts. *Halbert v. Michigan*, 545 U.S. 605, 611 (2005). In this case, Petitioner raises matters relating to his confession and spontaneous admissions that are well-settled and not subject to any jurisdictional splits of authority. Thus, this Court should be disinclined to grant certiorari in this case. Supreme Court Rule 10.

Furthermore, appellate courts should be deferential when reviewing a trial court’s findings of fact. *Ornelas v. United States*, 517 U.S. 690, 699 (1996). McKane’s claims largely turn on the trial court’s extensive findings of fact (1 C.R. at

233–42), and McKane has not shown this Court any reason to question those findings.

Regarding Petitioner’s first and second points of error, this Court has held that police are not required to obtain an express waiver of a suspect’s *Miranda* rights prior to taking a statement. *Berghuis v. Thompson*, 560 U.S. 370, 387 (2010). And a statement is not considered involuntary unless there is “a substantial element of coercive police conduct.” *Colorado v. Connelly*, 479 U.S. 157, 164 (1986). This Court has also recognized that police may use deceit as a legitimate investigative tool. *Lewis v. United States*, 385 U.S. 206, 208–09 (1966); *see also Sorrells v. United States*, 287 U.S. 435, 441 (1932) (“Artifice and stratagem may be employed to catch those engaged in criminal enterprises.”). And deceit, by itself, is usually insufficient to render an otherwise voluntary decision involuntary. *Frazier v. Cupp*, 394 U.S. 731, 739 (1969).

In this case, the force used in the arrest of McKane was due to the nature of McKane’s crime—shooting a uniformed officer in broad daylight. Once McKane was in custody, no further force was used. Additionally, McKane was not interrogated at the scene of his arrest by the SWAT officers. Instead, McKane was interrogated at the police headquarters at least an hour later and only after being warned of, and acknowledging, his rights. The tone of the interrogation was calm and conversational. To the extent that Detective Duke made any misrepresentations,

none were of a nature that they would override McKane's capacity to make his own free and voluntary decision to waive his rights and give a statement.

Regarding Petitioner's third and fourth points, this Court has observed that "the special procedural safeguards outlined in *Miranda* are required not where a suspect is simply taken into custody, but rather where a suspect in custody is subjected to interrogation." *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980). In *Innis*, this Court also quoted *Miranda* and reiterated the commonly understood principle that "[v]olunteered statements of any kind are not barred by the Fifth Amendment." *Id.* (quoting *Miranda v. Arizona*, 384 U.S. 436, 478 (1966)).

The trial court found that McKane's statements were not made in response to questions (1 C.R. at 245, finding 17). McKane has given this Court no reason to disregard this finding. Because his statements were not the result of an interrogation and were spontaneously uttered during his booking, this Court has no reason to review the lower court's holdings because they do not implicate McKane's federal rights.

CONCLUSION

Petitioner raises claims that are based on well-settled principles of law and he does not provide any reason for this Court to revisit any of its prior decisions concerning police interrogations, the voluntariness of confessions, or *Miranda*. Because the Court of Criminal Appeals opinion has already soundly decided these matters, this Court should deny the petition for certiorari.

Respectfully submitted,

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