

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:

TIRC No. 2019.641-J

Claim of Terrance Johnson

**(Relates to Cook County Circuit Court
Cases No. 89-CR-10542(01), 10543(01)
*People v. Demetrious Broadwater, Terrance
Johnson and Lester Boston*)**

CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Adm. Code 3500.385(b), the Commission concludes that, by a preponderance of the evidence, there is sufficient evidence of torture to merit judicial review. The Commission refers this claim to the Chief Judge of the Circuit Court of Cook County and requests assignment to a trial judge for consideration. See 775 ILCS 40/50. This decision is based upon the Factual Summary and Conclusions set forth below, and the supporting record and exhibits attached hereto.

Executive Summary & Background

In 1991, Claimant Terrance Johnson was convicted of the 1989 murder and armed robbery of gas station attendant Cleotha Adams.¹ Johnson was convicted along with co-defendants Lester Boston and Demetrious Broadwater.² Johnson was also convicted in 1992 of attempted murder and armed robbery in connection with an incident at another gas station earlier the same evening.³

On or about August 9, 2019, Tremmel Broadwater, the nephew of Demetrious Broadwater, submitted a claim to the Illinois Torture Inquiry and Relief Commission. Mr. Tremmel Broadwater's claim asserted that in 1989, "Chicago Detectives Michael McDermott, Frank Glynn and Barry Costello took him into custody for three days, threatened him with various criminal charges, denied him food and water and contact with any other people until he agreed to make a statement against his uncle and his uncle's co-defendants before the grand

¹ See Cook County Circuit Court Case No. 89-CR-10543.

² *Id.*

³ See Cook County Circuit Court Case No. 89-CR-10542. Mr. Johnson's claim form included both of these case numbers.

jury.”⁴ At the time of the alleged torture in 1989, Mr. Tremmel Broadwater was 17 years old and had completed the tenth grade.⁵

The Commission dismissed Mr. Tremmel Broadwater’s claim, explaining that “because Tremmel Broadwater was neither charged nor convicted of the murder at issue in 89-CR-10542, his claim does not qualify as a ‘claim of torture’ as defined by the TIRC Act. Therefore, the Commission is without jurisdiction to investigate or consider his claim.”⁶ The Commission noted “Tremmel Broadwater’s claim form indicates he himself was not convicted, but Terrance Johnson was convicted and sentenced to 60 years in prison.”⁷

On August 1, 2019, Claimant Johnson sent a letter to the Commission alleging that he was assaulted, smacked, and punched in the stomach and head by Chicago Detective Michael McDermott and his partners Detectives Nitsche, Glynn, and Barry Costello. Mr. Johnson also alleged that the detectives put shoes that were too small on him, causing him severe pain. Mr. Johnson alleged that he asked for a lawyer or to make a phone call and that they refused his request. Mr. Johnson also alleged that the detectives said that if he gave them a signed confession they would take the shoes off, but Mr. Johnson refused to do so. Mr. Johnson alleged that the detectives said they would continue to hurt him until he signed a statement but that he never signed a statement confessing to murder.⁸

On or about August 6, 2019, Commission staff accepted Mr. Johnson’s claim under 2 Ill. Admin 3500.330(4). The Commission staff requested more information of Mr. Johnson in the form of a completed claim form.⁹

On or about August 28, 2019, Claimant Johnson returned the claim of torture form to the Commission, repeating his allegation that Detective Michael McDermott and his partner punched him in the stomach and head, smacked him, made racist comments—including calling Mr. Johnson a racial slur—and forced him to wear shoes that were too small for him, causing him

⁴ Ex. 1, December 18, 2019 Summary Dismissal, In re: Claim of Tremmel Broadwater, TIRC No. 2019.672-B, Illinois Torture Inquiry and Relief Commission at ¶2.

⁵ Ex. 2, Area Investigative File at PDF p. 38 of 41.

⁶ Ex. 1 December 18, 2019 Summary Dismissal, In re: Claim of Tremmel Broadwater, TIRC No. 2019.672-B, Illinois Torture Inquiry and Relief Commission at ¶2.

⁷ *Id.*

⁸ *See* Ex. 3, August 1, 2019 Letter from Terrance Johnson to Commission.

⁹ *See* Ex. 4, August 6, 2019 Letter from Commission to Terrance Johnson.

severe pain. Mr. Johnson also named Detectives Barry Costello, Glynn, and Nitch [*sic*] in his claim form.¹⁰

Mr. Johnson's claim stated that the prosecution claimed he made statements to the police and/or to an Assistant States' Attorney and that the prosecution introduced those statements at trial.¹¹

The Cook County Circuit Court records from Mr. Johnson's files indicate that the prosecution introduced statements Mr. Johnson allegedly made to the police and/or to an Assistant State's Attorney regarding his knowledge of his co-defendants and an alibi for the date of the incident, as well as a general denial of knowledge regarding the incident.¹² The Area Investigative File subpoenaed from the Chicago Police Department did not contain any written statements from Mr. Johnson but did contain notes from the investigating officers stating that Mr. Johnson provided an alibi before the officers told him the date and time of the incident and that Mr. Johnson denied knowledge of or involvement in the incident.¹³

Mr. Johnson's statements were not a large part of the trial. Instead, the trial records indicated that a substantial portion of the trial focused on statements allegedly made not by Mr. Johnson, but by Mr. Tremmel Broadwater, the same statements that formed the basis of Mr. Tremmel Broadwater's claim submitted to the Commission.¹⁴

On July 14, 2021, representatives for the Commission interviewed Mr. Johnson via videoconference regarding his claim. Mr. Johnson's responses during the interview were generally consistent with his allegations of torture in his written claim. Mr. Johnson reiterated his allegations that he was physically and psychologically tortured by the investigating officers, including:

- (i) Detective McDermott hit him in the head multiple times and slapped him;
- (ii) Detective McDermott put hard shoes on him that were several sizes too small;
- (iii) Detectives McDermott and Costello yelled and screamed at him, including cursing at him;

¹⁰ See Ex. 5, August 28, 2019 Terrance Johnson's TIRC Claim Form at 1-2.

¹¹ *Id.* at 2.

¹² Ex. 6, ROP 629-658.

¹³ Ex. 6, ROP 53, 70-71, 590-91; Ex. 7, ROP 789; (PDF p. 55 of 860); Ex. 2, Area Investigative File at PDF pp. 16, 26 of 41.

¹⁴ See, e.g., Ex. 6, ROP 295-356; 370-374; 389-405; 410-50.

- (iv) Detectives McDermott and Costello tied his legs to a chair so that he could not move; and
- (v) Detectives McDermott and Costello kicked the chair to the ground while he was still tied to the chair so Mr. Johnson fell to the ground.

In the interview, Mr. Johnson also alleged for the first time that during the course of the alleged torture, he made a verbal statement regarding the alleged murder in an effort to stop the physical abuse he was experiencing, but that he refused to sign a written statement that McDermott brought to him. The Cook County Circuit Court records from Mr. Johnson's trial do not refer to this alleged verbal statement from Mr. Johnson.

Findings of Fact

I. Crime and Interrogations

On March 22, 1989, Cleotha Adams was shot while working at a Unocal gas station located at 8510 S. Ashland Avenue in Chicago, Illinois. Mr. Adams died from his gunshot wound.

According to police records, Chicago police began investigating the incident, conducting several interviews with scene witnesses. On April 14, 1989, police arrested seventeen-year-old Tremmel Broadwater and took him in for questioning, interviewing him starting at approximately 1:30 PM. Later that day, police records show the police arrested and interviewed Demetrious Broadwater and Lester Boston and continued to interview Tremmel Broadwater multiple times. That evening, police arrested claimant Terrance Johnson and records indicate police interviewed Mr. Johnson three separate times as the night went on, and early into the morning of April 15, 1989. Mr. Johnson, Mr. Boston, and Mr. Broadwater were all subsequently charged with murder and armed robbery.

In his claim and during his interview with the Commission, Mr. Johnson alleged that he was assaulted, smacked, and punched in the stomach and head by Chicago Detective Michael McDermott and his partners Detectives Nitche, Glynn, and Barry Costello. Mr. Johnson also alleged that the detectives put shoes that were too small on him, causing him severe pain, and that the detectives tied him to a chair and kicked the chair to the ground, causing him to fall. Mr. Johnson further alleged that the detectives screamed at him, cursing at him and calling him racial slurs. Mr. Johnson alleged that he asked for a lawyer or to make a phone call and that they refused his request.

Mr. Tremmel Broadwater likewise alleged that Detectives McDermott, Glynn, and Costello took him into custody—as a minor—for three days, threatened him with criminal charges, denied him food, water, and contact with other people until he agreed to make a statement against his uncle (Demetrious Broadwater) and his uncle's co-defendants (Terrance Johnson and Lester Boston) before the grand jury. Police records indicate Mr. Tremmel Broadwater was arrested on April 14, 1989, testified before a grand jury on April 17, 1989, and

did not leave police custody in the interim. During the course of those three days, police obtained a written statement signed by Mr. Tremmel Broadwater stating that he, Mr. Johnson, Mr. Demetrious Broadwater, and Mr. Boston were riding in a car driving down Ashland when Johnson told Mr. Demetrious Broadwater to pull into the Unocal gas station, at which point Mr. Johnson pointed a gun at the attendant, demanded money, and shot the attendant.¹⁵ At the grand jury proceeding, Mr. Tremmel Broadwater testified consistently with this written statement.

However, according to Mr. Tremmel Broadwater's testimony at trial, after the grand jury proceeding and before Mr. Johnson and his co-defendants' trial, Mr. Tremmel Broadwater told Mr. Johnson's defense counsel that his grand jury testimony was the result of police coercion, and he signed a written statement recanting his prior testimony.¹⁶

II. Pre-Trial Motion to Suppress

Before trial began, Mr. Johnson moved to suppress statements he argued were obtained through physical coercion.¹⁷ Neither the motion nor transcript of the hearing on the motion specify what statements he sought to suppress.

Detectives McDermott and Mark Hofer testified during the motion to suppress hearing and all denied that Johnson had been beaten or otherwise coerced into providing statements.¹⁸ McDermott testified that he and Detective Larry Nitche interviewed Mr. Johnson, that they had a "brief" conversation with Johnson.¹⁹ He further testified that they received a "statement" from Johnson that McDermott characterized as "somewhat of a denial, an alibi for that time" and that Johnson denied being present for the incident.²⁰ McDermott also testified that Assistant State's Attorney Wasik met with Johnson, that Wasik "informed [Johnson] of the allegations against

¹⁵ See Ex. 2, Area Investigative File at PDF pp. 38-40 of 41.

¹⁶ See Ex. 6, ROP 345.

¹⁷ See Ex. 10, 89-CR-10451 Court File, PDF p. 24-26 of 50, Motion to Suppress Statements. Mr. Johnson also argued he was not read his Miranda rights. Mr. Johnson's co-defendant Lester Boston made a pre-trial motion at the same time also arguing that the investigating officers did not read him his Miranda rights.

¹⁸ See *id.*; Ex. 6, ROP 41-127. Detective Frank Glynn also testified as to co-defendant Boston's Motion to Suppress and denied that Boston had been coerced into providing statements. *Id.* at ROP 88-112.

¹⁹ See Ex. 6, ROP 49-53.

²⁰ *Id.*

him and the response was a denial.”²¹ Detective Hofer testified that Johnson gave a statement about another incident.²² Johnson did not testify during the hearing on the motion to suppress.²³

The Court denied the motion.²⁴

III. Trial

Mr. Johnson was tried concurrently with co-defendants Broadwater and Boston before Judge Leo Holt. Mr. Johnson elected to be tried by jury, while Broadwater and Boston had a bench trial.

(a) Testimony of Tremmel Broadwater

The prosecution’s opening statement emphasized the significance of Mr. Tremmel Broadwater’s testimony, explaining that Broadwater had provided a written statement to police and testified at a grand jury explaining what happened the night of the murder. The prosecution claimed they “[didn’t] know what he is going to say” but did not explain why or mention that Mr. Tremmel Broadwater had recanted this statement and testimony prior to trial.²⁵ During his opening statement, counsel for Mr. Johnson argued that the prosecution did know what Mr. Tremmel Broadwater was going to say because Broadwater had already told them when he was first arrested: that he was not involved in the murder and was not present when it occurred.²⁶

During trial, the prosecution called Mr. Tremmel Broadwater as a witness. Mr. Tremmel Broadwater denied that he had any knowledge of or involvement in the incident and recanted his written statement and grand jury testimony.²⁷ He testified that when he was first arrested, he told the police he was not present for the armed robbery and murder but that he was coerced into providing that testimony by the police, who threatened that he would be charged with murder if he did not cooperate.²⁸ He testified that when he signed the written statement prepared by the

²¹ *See id.* at ROP 56.

²² *See id.* at R75:17-76:2 (pp. 79-80).

²³ *See id.*

²⁴ Ex. 11, Supplemental Hearing Transcript.

²⁵ Ex. 6, ROP at 213-14.

²⁶ Ex. 6, ROP at 215-16.

²⁷ Ex. 6, ROP 81; 322-26; 390-395.

²⁸ Ex. 6, ROP 93.

police, he was scared and felt threatened by the police.²⁹ He also testified that he was held at Area Two for three days before he was taken to testify at the grand jury proceeding and that he did not see his mother until after he finished his grand jury testimony.³⁰ He further explained that he told the State's Attorneys that he only provided this testimony because he felt threatened, and they said if he changed his statement that the would be charged with murder.³¹

The prosecution impeached Mr. Tremmel Broadwater with his written statement and grand jury testimony, and the Court then admitted those prior statements as substantive evidence.³² The Court noted that "I think there's coercion" with respect to Tremmel Broadwater's statements, and explained:

"[I]t helps to understand what's going on particularly when the police deny that he's in custody, and try to sell the proposition that he's a visitor, and that he's just a guess [*sic*] in their home for three days, which to me is incredulous. When you take the proposition that he's as culpable in this case as are the two defendants who are before the Court, and he's not charged, and he's not charged the police say because of his cooperation, but rather because they didn't have sufficient evidence against him. It's incredulous in my judgment."³³

However, the Court ultimately concluded that the jury ultimately had to decide whether the statement was reliable.³⁴

(b) Testimony of Detective Glynn

Mr. Johnson did not testify at trial, but statements allegedly made by Mr. Johnson were introduced through the testimony of the police. Detective Glynn recalled that Johnson admitted to knowing his codefendants, their nicknames, his own nickname, and to being with codefendants the night of the murder, but that Johnson told police he left the codefendants around 8:30 p.m., went home by himself and stayed there alone the rest of the night, and denied

²⁹ Ex. 6, ROP 400.

³⁰ Ex. 6, ROP 397-399.

³¹ Ex. 6, ROP 401-02.

³² See Ex. 12, *People v. Johnson*, 255 Ill.App.3d 547, 552-53 (Ill. App. Ct. 1st Dist. 1993).

³³ Ex. 7, ROP 945.

³⁴ Ex. 7, ROP 945-46.

participation or knowledge of the murder.³⁵ He also testified that Johnson gave him an alibi for the night of the murder before Glynn told him the date that the murder occurred.³⁶

On cross-examination, Johnson's attorney suggested Johnson knew the date of the murder from television reports about the incident.³⁷

(c) Testimony of Detective Costello

Detective Costello provided testimony regarding the investigating officers' interactions with Tremmel Broadwater.³⁸ Costello testified that he did not make any promises to Tremmel Broadwater or threaten him with charges.³⁹ On cross-examination, Costello claimed that despite being at Area 2 for several days, Broadwater was not in custody.⁴⁰

Costello was not asked any questions on direct examination or cross examination about Mr. Johnson.

(d) Testimony of Detective McDermott

Detective McDermott also provided testimony regarding the investigating officers' interactions with Tremmel Broadwater, as well as their interviews of Demetrious Broadwater.⁴¹ McDermott was not asked any questions on direct examination or cross examination about Mr. Johnson.

(e) Testimony of Assistant State's Attorney Wasik

Assistant State's Attorney Wasik testified and did not mention Johnson's statements on direct examination, but when cross-examined by Johnson's attorney testified that Johnson denied knowledge or participation in the murder.⁴²

(f) Closing Arguments

³⁵ Ex. 6, ROP 639-658.

³⁶ Ex. 6, ROP 641-42.

³⁷ Ex. 6, ROP 641-42.

³⁸ Ex. 6, ROP 758-881.

³⁹ Ex. 6, ROP 763-67.

⁴⁰ Ex. 6, ROP 778.

⁴¹ Ex. 6, ROP 816-61.

⁴² Ex. 7, ROP 987-89.

During closing arguments, prosecutors did not mention or discuss any of Johnson's statements to police or ASA Wasik.

Mr. Johnson and his co-defendants were subsequently convicted.

IV. Post-Conviction

(a) Direct Appeal

Mr. Johnson appealed his conviction, arguing that the Circuit Court's admission of Tremmel Broadwater's grand jury testimony as substantive evidence denied his rights to due process and a fair trial.⁴³ The appellate record obtained from the Circuit Court of Cook County contains a copy of Motion to Suppress Statements, but Johnson's appeal did not raise that motion. The appellate court found no reversible error in the decision to admit Tremmel Broadwater's grand jury testimony as substantive evidence under the hearsay exception for prior testimony.⁴⁴

b) Post-Conviction Petitions

Mr. Johnson filed a petition for a writ of habeas corpus in the District Court for the Northern District of Illinois. Mr. Johnson did not raise his allegations of torture, but instead focused on the admission of statements from Tremmel Broadwater, arguing that the admission of those statements violated his due process rights. The court denied Mr. Johnson's petition because Tremmel Broadwater's statements met the formal requirements of the prior inconsistent statement exception to hearsay under § 115-10.1 and the trial court did not need to make a separate determination as to the reliability of those statements in order to admit them.⁴⁵ The Seventh Circuit affirmed the district court's denial of relief, concluding "[a]lthough the judge expressed grave doubt about the reliability of Tremmel's prior inconsistent statements, he did determine as a matter of law that they could be presented to the juries."⁴⁶

⁴³ See Ex. 12, *People v. Johnson*, 255 Ill.App.3d 547 (Ill. App. Ct. 1st Dist. 1993). Johnson made several other arguments on appeal, including that the prosecutor misstated evidence during closing arguments and made comments to inflame the jury. The Court found no reversible error on these points.

⁴⁴ *Id.*

⁴⁵ Ex. 13, *Johnson v. Washington*, 119 F.3d 513 (7th Cir. 1997).

⁴⁶ *Id.*

V. Investigation

(a) Documents

Prior to interviewing Mr. Johnson, the Commission reviewed the available Cook County Circuit Court records for Mr. Johnson as well as his co-defendants Lester Boston and Demetrious Broadwater.

The Commission also reviewed records from the Chicago Police Department obtained through subpoena, including the Area Investigative File containing investigation and interrogation notes from the investigating officers.

Finally, the Commission reviewed records subpoenaed from the Office of the State's Attorney, which contained photographs, court filings duplicative of the Cook County Circuit Court records, and police records duplicative of the Area Investigative File. The Commission also served subpoenas for records from the Office of the Public Defender⁴⁷ and Cermak Health, but as of the date of this order has yet to receive responses.

(b) Kendall Hill Interview

In May 2022, the Commission contacted Mr. Johnson's defense counsel from his trial, public defender Mr. Kendall Hill. Mr. Hill shared his view that Mr. Johnson should be released immediately and that Mr. Johnson's conviction was obtained through tortured statements made by Mr. Tremmel Broadwater. Mr. Hill did not recall whether any concern regarding statements from Mr. Johnson kept Mr. Johnson from testifying at trial. Mr. Hill did not have records or notes from this matter.⁴⁸

(c) Jurisdictional Issue Raised with Counsel

On April 30, 2021, the Commission sent correspondence to counsel for Mr. Johnson asking for clarification as to any coerced statements made by Mr. Johnson that were used to obtain his conviction.⁴⁹ Counsel for Mr. Johnson responded on May 15, 2021 that "Mr. Johnson was tortured, a statement of Mr. Johnson was presented at trial through the testimony of ASA

⁴⁷ As of March 24, 2022, the Public Defender's Office indicated that they are unable to locate the files for Terrance Johnson.

⁴⁸ Ex. 14, Hill Interview Report. Mr. Johnson was also represented by Vincent Lufrano of the Public Defender's office, but Mr. Lufrano has retired and does not have an active license or current publicly available contact information.

⁴⁹ Ex. 8, 4/30/2021 Letter to Counsel for Mr. Johnson.

Wasik, and the tortured confession of Tremmel Broadwater was used to obtain the conviction. Accordingly, Mr. Johnson respectfully requests that TIRC continue processing his claim.”⁵⁰

(d) Terrence Johnson Interview

On July 14, 2021, representatives for the Commission interviewed Mr. Johnson via videoconference regarding his claim.⁵¹ Mr. Johnson’s responses during the interview were generally consistent with his allegations of torture in his written claim.

Mr. Johnson reiterated his allegations that he was physically and psychologically tortured by the investigating officers, including:

- (i) Detective McDermott hit him in the head multiple times and slapped him;
- (ii) Detective McDermott put hard shoes on him that were several sizes too small;
- (iii) Detectives McDermott and Costello yelled and screamed at him, including cursing at him;
- (iv) Detectives McDermott and Costello tied his legs to a chair so that he could not move; and
- (v) Detectives McDermott and Costello kicked the chair to the ground while he was still tied to the chair so Mr. Johnson fell to the ground.

In the interview, Mr. Johnson alleged for the first time that during the course of the alleged torture, he made a verbal statement regarding the alleged murder in an effort to stop the physical abuse he was experiencing, but that he refused to sign a written statement that McDermott brought to him.

Mr. Johnson did not specifically allege that his statements denying knowledge of or involvement with the incident, or his alibi for the time of the incident, were made as a result of the alleged abuse. He also did not allege that these statements were the reason he chose not to testify at trial.

(e) Pattern and Practice Evidence

(i) Michael McDermott

A number of courts and investigative bodies have previously found that Detective Michael McDermott engaged in abuse of suspects and gave false testimony regarding that abuse.

⁵⁰ Ex. 9, 5/14/2021 Correspondence from Counsel for Mr. Johnson.

⁵¹ Ex. 15, Johnson Interview Video.

(1) Alfonso Pinex

Special Prosecutor Edward J. Egan concluded that there was proof beyond a reasonable doubt that Detective McDermott and Detective Anthony Maslanka committed aggravated battery against Alfonso Pinex by beating him on or about June 28, 1995, at Area 2 to get him to sign a statement admitting to the murder of Eddie McKeever. Pinex accused Detective McDermott of hitting him in the ribs and holding him while Maslanka beat him (including near both his eyes). Among the evidence Egan cited was the finding by the trial judge that Detective McDermott and Maslanka were not credible in their testimony that Pinex had not asked for a lawyer (Pinex, who had an arrest warrant out for him, had already arranged with Area 1 to surrender the following day). Photographs taken of Pinex at Area 2 showed a bloodshot eye and the trial judge suppressed the signed statement on Miranda grounds but did not reach the subject of involuntary confession or beating. Egan noted that a prison doctor on June 30, 1985, documented Pinex's complaints of blurred vision and diagnosed bilateral subconjunctive hemorrhages. Another prison doctor told the special prosecutor these injuries were consistent with blows to the head.

Detective McDermott invoked his Fifth Amendment right against self-incrimination when Egan attempted to question him about Pinex. Egan also concluded there was evidence beyond a reasonable doubt of Detective McDermott's perjury and obstruction of justice for testifying falsely at Pinex's suppression hearing.⁵²

(2) Burge Trial Testimony regarding Shadeed Mu'min

A federal judge ruled that Detective McDermott committed perjury regarding Pinex and that, at a minimum, he gave testimony at Police Commander Jon Burge's criminal prosecution "that was inconsistent with his grand jury testimony."⁵³ The judge was referring to the June 14, 2010 trial testimony of Detective McDermott about Burge's interactions with Shadeed Mu'min. On that date, Detective McDermott testified Burge had pointed a gun in the direction of Mu'min's side of the room, that they had a "scuffle," and that Burge had placed something in front of Mu'min's face.

Prosecutors impeached Detective McDermott with his grand jury testimony in which he stated Burge pointed the gun directly at Mu'min and placed a bag over his head in order to restrict Mu'min's breathing and elicit a confession.⁵⁴

⁵² Ex. 16, *Report of the Special State's Attorney* ("Egan Report"), 275-290.

⁵³ *See U.S. v. Burge*, Memorandum Opinion and Order, 5 (N.D. Ill. Jan. 17, 2014) (J. Lefkow) .

⁵⁴ Matthew Walberg, "Burge witness pulls back from earlier testimony," *Chicago Tribune*, June 14, 2010.

(3) Danny Smith Probable Cause Testimony

On March 23, 1990, a trial judge rejected Detective McDermott's testimony that he and four other officers went to the house of a suspect, Danny Smith, merely to verify Smith's address before seeking a warrant. Instead, the judge found that Detective McDermott had arrested Smith without probable cause on a pretext to put him in a lineup.⁵⁵

(4) Eric Caine Civil Suit Testimony

On March 28, 2011, Detective McDermott invoked his right against self-incrimination when called to testify at a deposition in a civil suit filed by Eric Caine against Jon Burge and other officers.⁵⁶ On July 24, 2013, the Chicago City Council voted to settle the lawsuit for \$10 million.⁵⁷ Mr. Caine, a co-defendant of Aaron Patterson in the 1986 Vincent and Rafaela Sanchez murders, alleged he was punched and threatened to elicit a confession.⁵⁸ Mr. Caine's confession was thrown out in 2011 by Judge William Hooks, and prosecutors declined to re-prosecute. In 2012, a judge granted Mr. Caine's innocence request.⁵⁹

(5) Patterson, Orange, Hobley and Howard Civil Suits

On September 19, 2008, Detective McDermott invoked his Fifth Amendment right against self-incrimination when asked about a number of police investigations during a deposition in civil suits brought against Jon Burge by plaintiffs Aaron Patterson, Leroy Orange, Madison Hobley, Stanley Howard and Darrell Cannon.⁶⁰

(6) Interrogation of Keith Mitchell

In *People v. Mitchell*, the Illinois Appellate Court described Detective McDermott as "an admitted perjurer," and cited the unreliability of his trial testimony that contended a 15-year-old boy initiated a confession when his mother stepped out of the interrogation room. The mother

⁵⁵ *People v. Smith*, 232 Ill. App.3d 121, 125 (1st Dist. March 23, 1990).

⁵⁶ *Caine v. Burge, et al*, Deposition of Michael McDermott, March 28, 2011.

⁵⁷ City of Chicago Settlement Order No. 2013-485.

⁵⁸ Jason Meisner, "Another Burge case, another \$10 million" Chicago Tribune July 19, 2013, available at http://articles.chicagotribune.com/2013-07-19/news/ct-met-burge-million-dollar-settlement-20130719_1_eric-caine-burge-case-police-torture.

⁵⁹ *Id.*

⁶⁰ Deposition of Michael McDermott, Sept. 19, 2008, Case Nos. 03-C-4433, 04-C-168, 03-C-3678, 03-C-8481, 05-C-2192.

had made detectives promise not to question him in her absence.⁶¹ The court found that the special prosecutor’s report on Detective McDermott and Pinex was highly relevant, in that, “the evidence of McDermott’s perjury in similar cases involving alleged confessions significantly shifts the balance of credibility in the contest between McDermott’s testimony and [Mitchell’s and his mother’s].”⁶² The court then remanded the case for a new suppression hearing.

(ii) Frank Glynn

(1) Gregory Nash

During a September 25, 1984 hearing on a motion to suppress brought by Gregory Nash, Nash testified that Frank Glynn threatened him and that while at Area 2, three or four officers, including Detective Glynn, placed a plastic bag over his head and beat him with a wooden stick. Nash’s motion was denied at the time, but Nash’s TIRC claim was referred to the Chief Judge of the Circuit Court of Cook County by the Commission on January 18, 2017.⁶³ After starting his TIRC hearing, Nash ultimately pled guilty in exchange for a shortened sentence.

(2) Andrew Maxwell

In a March 1999 hearing on a motion to suppress brought by Andrew Maxwell, Maxwell alleged he was beaten to the face and body and kicked while being interrogated by officers including Frank Glynn. The Court later found that Maxwell was entitled to an evidentiary hearing on an alleged coerced confession to introduce newly discovered evidence of pattern and practice of torturing suspects at Area 2.⁶⁴

(3) Stanley Howard Civil Suit Testimony

Stanley Howard alleged he was beaten and strangled using a plastic bag by officers including Frank Glynn. Howard was pardoned by Governor George Ryan based on his coerced confession and torture allegations.⁶⁵

During a deposition in the civil suit filed by Howard, Glynn took the 5th Amendment in response to all substantive questions, including questions regarding “bagging and beating” of suspects at Area 2.

⁶¹ *People v. Mitchell*, 2012 IL App (1st) 100907. p. 9 (May 16, 2012).

⁶² *Id.* at ¶62.

⁶³ Ex. 17, TIRC No. 2013.168-N, In re: Claim of Gregory Nash, Case Disposition.

⁶⁴ *See U.S. ex rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078 (N.D. Ill. 1999); *People v. Maxwell*, 148 Ill. 2d 116 (1992).

⁶⁵ *Howard v. City of Chicago, et al.* Case No. 03-c-8481, Dkt. 1 (N.D. Ill.)

(4) Addie Watkins

In 1991 Addie Watkins submitted a formal complaint to the Chicago Police Department alleging that officers including Glynn and Costello, forcibly entered her home and claimed they had a warrant but did not provide a copy of that warrant, then forcibly searched her home without her permission and caused damage to the home. The department concluded the allegations were “not sustained” and “exonerated.”⁶⁶

(iii) **Barry Costello**

(1) Ramsey Lewis

In 2015, Ramsey Lewis alleged that Detective Costello and Detective Peter Dignan physically abused him while he was in custody at Area 2 in March 1985. Lewis alleged that Costello and Dignan tortured him by among other things, slapping and punching him, hitting him in the head with a phone book, and handcuffing him to a wall for hours.⁶⁷

Lewis submitted a claim form seeking relief pursuant to the Chicago Reparations for Burge Torture Victims settlement. The Independent Third Party that evaluated Lewis’s claim found he was not eligible for reparations because Lewis testified at his trial and did not, at that time, allege that his statement had been compelled by the physical abuse.⁶⁸ Lewis also filed a TIRC claim, which was dismissed because Lewis’s conviction had already been vacated on other grounds. TIRC made no determination on his torture claims.

(2) Addie Watkins

As described above, in 1991 Addie Watkins submitted a formal complaint to the Chicago Police Department alleging that officers including Glynn and Costello, forcibly entered her home and claimed they had a warrant but did not provide a copy of that warrant, then forcibly searched her home without her permission and caused damage to the home. The department concluded the allegations were “not sustained” and “exonerated.”

⁶⁶ Ex. 18, Watkins Complaint.

⁶⁷ Ex. 19, Lewis Claim Form.

⁶⁸ Ex. 20, Lewis Decision.

Analysis

I. Jurisdiction

The Commission first examines whether the allegations in this matter bestow jurisdiction on the Commission. The Illinois Torture Inquiry and Relief Act (the “Act”) empowers the Commission to investigate claims of torture, which the Act defines as:

* * * a claim on behalf of a living person convicted on a felony in Illinois asserting that he was *tortured into confessing to the crime* for which the person was convicted and *the tortured confession was used to obtain the conviction* and for which there is some credible evidence related to allegations of torture occurring within a county of more than 3,000,000 inhabitants. 775 ILCS 40/5(1) (Emphasis added).

(a) Allegations of Tortured Confession

The phrase “tortured confession” is not defined in the Act itself, but in the definition section of the administrative rules to the Act. “‘Tortured confession’ includes any incriminating statement, vocalization or gesture alleged by police or prosecutors to have been made by a convicted person that the convicted person alleges were a result of (or, if the convicted person denies making the statements, occurred shortly after) interrogation that the convicted person claims included torture.” 20 Ill. Admin 2000.10.

Thus, the language of the Act and its accompanying Administrative Rule limits this Commission’s jurisdiction to instances in which a defendant claims he was tortured into providing an incriminating statement that was used to obtain his conviction.

Previously, this Commission has recognized that “any incriminating statement” includes statements that fall short of admitting to every element of a crime, but are nonetheless incriminating.

In *In re Claim of Abdul Muhammad*, the Commission found that the introduction into evidence of statements where Muhammad admitted to gang membership, admitted to knowing the police were looking for him and admitted leaving the jurisdiction were all incriminatory statements, particularly where the prosecution argued in closing statements that the flight from the state was evidence of consciousness of guilt exhibited by Muhammad.⁶⁹

Likewise, in *In re Claim of Jaime Hauad*, the commission found incriminating, and the basis for its jurisdiction, the alleged false exculpatory statement of Hauad.⁷⁰ Although not examined at length in that decision, the false exculpatory in Hauad was incriminating, as in

⁶⁹ *In re: Claim of Abdul M. Muhammad*, Illinois Torture Inquiry & Relief Commission, decided July 18, 2018.

⁷⁰ *In re Claim of Jaime Hauad*, Illinois Torture Inquiry & Relief Commission, decided November 15, 2017, 17-18.

Muhammad, in no small part because the state used the disproven false exculpatory as evidence of consciousness of guilt.⁷¹

Here, Johnson’s statements that were admitted into evidence through the testimony of Detective Glynn, among others, included that Johnson gave him an alibi for the night of the murder before Glynn told him the date that the murder occurred⁷² and that Johnson admitted to knowing his codefendants, their nicknames, his own nickname, and to being with codefendants the night of the murder.⁷³ As in *Hauad*, these statements are incriminating and so can constitute a “tortured confession.”⁷⁴

TIRC acknowledges that its definition of “tortured confession” is currently being challenged in the Appellate Court by a Special Prosecutor, who maintains that TIRC’s Administrative Rule defining ‘tortured confession’ exceeds its statutory authority. TIRC has filed an *amicus* brief defending

(b) Tortured Confession Used To Obtain Conviction

The Commission next examines whether these statements were “used to obtain the conviction.” In conducting this analysis, the Commission considers whether (1) a person has been found guilty of a crime, either by verdict or guilty plea; (2) a person has made an incriminating statement; and (3) the tortured confession was a significant element that led to the verdict or plea.

Mr. Johnson was found guilty by jury verdict and, as discussed above, made incriminating statements. With respect to the third and final element—whether the tortured confession was a significant element that led to the verdict—it is not possible to determine whether the jurors in Mr. Johnson’s trial found the incriminating statements at issue convincing and whether those statements were a “significant element” in their analysis when deciding to convict Mr. Johnson. However, the prosecution clearly thought the circumstances of these statements (i.e. Mr. Johnson allegedly providing an alibi for the night of the incident before the investigating officers told him the date and time) were persuasive, or else the state would not have opposed a motion to suppress Mr. Johnson’s statements or made a point to bring out those

⁷¹ *Id.* at 9, paragraphs 28-29.

⁷² Ex. 6, ROP 641-42.

⁷³ Ex. 6, ROP 629-58.

⁷⁴ TIRC acknowledges that its definition of ‘tortured confession’ is currently being challenged by a special prosecutor as exceeding TIRC’s statutory authority. No appellate decision has yet been reached, and TIRC has filed an *amicus* brief defending the legality of its definition. *See People v. Abdul Malik Muhammad*, 1-22-0372. *See also* Ex. 22 - TIRC’s *amicus* brief in the matter, hereby incorporated as part of TIRC’s reasoning as to why Johnson’s alleged statements constitute a ‘tortured confession’ in this instance.

statements when examining Detective Glynn.⁷⁵ The prosecution’s decision not to forego this evidence is logical, because providing an alibi for the date and time of an event in which one supposedly did not participate in (and likely would not otherwise have known of, or at least remembered from news reports down to the hour), is indeed highly incriminating. By a preponderance of the evidence before it, the Commission finds the admission of this statement, as well as the other statements elicited from Glynn at trial, a significant factor in Johnson’s conviction. The Commission therefore concludes that the statements were used to obtain Johnson’s conviction.

II. Analyzing the Claim of Torture

Having established the Commission has jurisdiction to consider Mr. Johnson’s claims, it now turns to an examination of whether there is sufficient evidence of torture to merit judicial review.

(a) Standard of Decision

Section 40(d) of the Illinois Torture Inquiry and Relief Act permits the Commission to conduct inquiries into claims of torture. *See* 775 ILCS 40/40(d).

“‘Claim of torture’ means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is *some credible evidence* related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge.” 775 ILCS 40/5 (emphasis added).

If five or more Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief Judge of Circuit Court of Cook County. If fewer than five Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the Commission shall conclude there is insufficient evidence of torture to merit judicial review.⁷⁶

The Commission was not asked by the General Assembly to conduct full, adversarial, evidentiary hearings concerning the likelihood of torture, or even to make a final finding of fact

⁷⁵ This point is critical to the Commission’s analysis. The Commission has examined the other potential avenues for jurisdiction, including fruit of the poisonous tree (i.e. whether tortured statements from Mr. Johnson led the police to arrest and obtain statements from Mr. Tremmel Broadwater) and whether statements from Mr. Johnson kept him from testifying at his trial, and found neither circumstance applied. *See* Ex. 21, Timeline of Arrests, Interviews, and Statements; Ex. 15, Video Interview at 1:07:00 (Mr. Johnson stating that the decision not to testify was not related to the alleged abuse).

⁷⁶ *See* 775 ILCS 40/45(c). To dismiss a claim, a minimum of four votes to dismiss are required. *See* 2 Ill. Adm. Code 3500.385(e).

that torture likely occurred. Instead, the Commission has interpreted Section 45(c) through its administrative rules as not requiring that it be more likely than not that any particular fact occurred, but rather that there is sufficient evidence of torture to merit judicial review.⁷⁷

(b) Factors Weighing In Favor Of The Claim

The factors weighing in favor of Mr. Johnson’s claim are:

- The general consistency of Mr. Johnson’s claims. Consistent with the facts before the Commission, Mr. Johnson’s attorney raised allegations of coercion and sought to have his statements suppressed before trial.
- The specificity of Mr. Johnson’s claim of torture regarding the investigating officers forcing him to wear shoes that were too small.
- Johnson generally appeared credible during his interview (with one exception noted below). He described his time in custody and his allegations of torture with specifics and appeared not to stretch for memories, but rather admitted when he could not remember particular details about events that took place more than thirty years ago.
- The significant, substantiated, and consistent pattern and practice evidence of abuse allegations against the officers involved, particularly Detective McDermott.
- Tremmel Broadwater’s retraction of his written statement and grand jury testimony.
- The length of Tremmel Broadwater’s detention prior to providing the recanted grand jury testimony (three days).
- Judge Holt’s commentary regarding Tremmel Broadwater’s statements, including that there was coercion and that the police’s claim that they did not charge Mr. Broadwater due to a lack of evidence (and not because he had made these statements) was “incredulous.”
- Tremmel Broadwater’s efforts to submit a claim to the Commission, though the Commission lacked jurisdiction to evaluate his claim.

⁷⁷ See 2 Ill. Adm. Code 3500.385(b)(1). In general, the approach the Commission has taken is akin to the concept of “probable cause.” That is, there must be enough evidence that the claim should get a hearing in court. See FAQ No. 8, <https://www.illinois.gov/tirc/Pages/FAQs.aspx/>. Note that the Commission is free under its rules, where it chooses, to find that any fact occurred, more likely than not. 2 Ill. Adm. Code 3500.385(b)(2). The Illinois Appellate Court has similarly framed the Commission’s duties: “[T]he Commission is asked to determine whether there is enough evidence of torture to merit judicial review, the circuit court is asked to determine whether defendant has been tortured. These are two different issues determined by two different entities. * * * What the Commission did was analogous to finding that a post-conviction petition could advance to the third stage.” *People v. Christian*, 2016 IL App (1st) 140030, ¶ 95, 98.

- The lack of physical evidence connecting Mr. Johnson to the crime, which may have provided more motive on the part of the investigating officers to attempt to induce a confession.⁷⁸

(c) Factors Detracting From The Claim

The factors detracting from Mr. Johnson's claim are:

- Mr. Johnson's credibility is challenged by his allegation, made for the first time during his interview with the Commission, that he made an oral confession to McDermott confessing to the murder and armed robbery. It does not seem likely that the police would not have documented this statement in their notes or testified about it during the motion to suppress hearing or at trial.
- Mr. Johnson's co-defendant Lester Boston did not allege his statements were physically coerced in his pre-trial motion and Mr. Johnson's co-defendant Demetrious Broadwater did not raise any pre-trial issues regarding his statements.
- Mr. Johnson did not raise allegations of torture or the coercive circumstances he alleged led to his statements on appeal or during post-conviction proceedings.

(d) Weighing of the Factors

The factors weigh in favor of referring the claim to the Chief Judge of the Circuit Court of Cook County.

This is a unique claim involving credible claims of torture by at least two different individuals interrogated by the same officers in connection with the same crime. First, there is credible evidence that Mr. Johnson was tortured while in police custody and that this torture led directly to Mr. Johnson providing statements regarding the crime that were used to obtain his conviction. Since the pre-trial motion to suppress his statements, Mr. Johnson has consistently claimed he was subject to physical abuse while in custody. He has reiterated those claims before the Commission and has been consistent in describing the details of the physical abuse he suffered at the hands of the investigating officers. Further, the unusual and highly specific nature of one aspect of the abuse (the officers forcing Mr. Johnson to wear shoes that were too small for him) seems unlikely to have been fabricated.

Second, there is credible evidence that Mr. Tremmel Broadwater was coerced while in police custody and that this treatment led to him providing a written statement and grand jury testimony that was also used to obtain Mr. Johnson's conviction. Though Mr. Broadwater's statement and testimony are not by themselves a basis for the Commission to have jurisdiction

⁷⁸ Ex. 8, ROP at 1273-74.

over Mr. Johnson's claim, as the Commission previously concluded, the coercive circumstances that led to Mr. Broadwater's statement and testimony lend further support to Mr. Johnson's claim that he too was tortured.

There is also a lack of other evidence connecting Mr. Johnson to the armed robbery and murder. The majority of Mr. Johnson's trial focused on Mr. Broadwater's statement and grand jury testimony rather than on other evidence connecting him to the incident. Such lack of evidence may have incentivized detectives to try to obtain a statement from Johnson.

Finally, the significant, lengthy, and substantiated histories of complaints against Detective McDermott, as well as other complaints against Detectives Glynn and Costello, weigh in favor of Mr. Johnson's claim. Many of the complaints against these officers were for behavior very similar to what Mr. Johnson alleges. Such evidence was not part of the suppression hearing and may well have changed the outcome had it been available. Thus, the pattern and practice evidence weighs heavily in favor of finding that sufficient evidence of torture exists that warrants further exploration by a court..

Though there is one issue with respect to Mr. Johnson alleging for the first time during his interview that he did make an oral confession to the crime during the course of the abuse, this does not alter the significant weight of the meaningful evidence of torture here.

Given Mr. Johnson and Mr. Broadwater's repeated, relatively consistent complaints about the abuse and coercion, corroboration of many of the details of their stories, and strong reasons to distrust Detective McDermott and the other officers' accounts, there is sufficient evidence meriting judicial review of this case.

Conclusion

The Commission therefore concludes that there is sufficient evidence of torture to conclude by a preponderance of the evidence that the claim of torture merits judicial review. This determination shall be considered a final decision of an administrative agency for purposes of administrative review under the Administrative Review Law, and instructs its Executive Director to refer the claim to the Chief Judge of Cook County for further review.

Dated: 11/16/2022

Signed: Steven Block

Commissioner Steven Block,
Substitute Chair of Nov. 16 meeting