**BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION**

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| In re: | ) | TIRC No. 2011.091-J |
| Claim of Jerome Johnson | ) | (relates to Circuit Court Case Nos. 91 CR 22152 and 91 CR 22460) |

2018 MAR 29 P 8
DOROTHY BROWN CLERK OF THE CIRCUIT COURT CRIMINAL DEPARTMENT

**CASE DISPOSITION**

Pursuant to section 40/45(c) of the Illinois Torture and Relief Act ("TIRC Act"), the Commission hereby concludes that there is sufficient evidence of torture to merit judicial review of Jerome Johnson's claims of torture.

## I. EXECUTIVE SUMMARY

Claimant Jerome Johnson ("Johnson") alleges that he was the victim of physical torture by several officers of the Chicago Police Department. Johnson asserts the episodes of torture caused him to give inculpatory statements and falsely confess to crimes that he did not commit.

Johnson was convicted of two murders. In the first conviction, he pled guilty. In support of the guilty plea, the prosecution used a statement that Johnson made after allegedly being tortured. Johnson also implicated himself in a second murder by signing a statement after the alleged torture. Although that latter statement was not directly introduced at the trial for the second murder, the plea and conviction to the first murder charge were indirectly used at the trial for the second murder.[1] Johnson's trial attorney told TIRC that Johnson was prevented from testifying at the second trial because of the statement he made after allegedly being tortured. Ultimately, the jury rendered a verdict of guilty against Johnson in the second case.

In his claim, Johnson alleges that officers cuffed him to a ring on the wall of a dark, hot interview room for a substantial amount of time that began on August 21, 1991 and extended through midnight on August 23, 1991. At approximately 2 a.m. on August 22, 1991, officers allegedly entered the room and began slapping Johnson in his face and kicking him repeatedly in the wrists while he was handcuffed to the wall. Once the beating ended, Johnson was left handcuffed to the wall alone until officers retrieved him from the room hours later to conduct interrogations and get him to sign statements. Johnson claims he was denied access to a telephone, bathroom, food and other basic necessities during the string of interrogations that occurred during the 40+ hour period.

The present claims of torture by Johnson are largely consistent with previous allegations of torture made by Johnson in his motion to reduce bond and his petition to withdraw guilty plea.

[1] The confession to the Miles murder was also read into the record by ASA Brian Grossman at the sentencing hearing in the Miggins case. *See* July 21, 1995 Report of Proceedings at K-60, K67-76.

They coincide with Johnson's testimony at the hearing on his motion to suppress statements as well. His claims also align with claims of torture that were made by his co-defendant George Ellis Anderson, whose torture claim was previously submitted to the Circuit Court by TIRC for review.

## II. FINDINGS OF FACT

### A. The Crimes and Investigation

On the evening of August 21, 1991, Johnson was arrested and ultimately transported to Area 3 of the Chicago Police Department[2] by two detectives. Johnson was taken to an interview room in the station he characterized as hot. He testified he was handcuffed to a ring on the wall at approximately 6:30 p.m.[3]

At the time of Johnson's arrest, Jon Burge was the Commander of the Detective Division at Area 3, and the detectives who interrogated Johnson were working at Area 3 under his supervision.

At 11:00 p.m. on August 21, 1991, Detectives Kill and Halloran interrogated Johnson for about twenty to thirty minutes regarding the shooting of Jeremiah Miggins, Halloran testified.[4] Then, at approximately 1:45 a.m. on August 22, 1991, State's Attorney Brent testified he had a brief discussion with Johnson with respect to the same murder. The State's Attorney did not write out any of Johnson's statement until nearly four hours later, he testified, because he had to interview other suspects.[5]

At approximately 2:00 a.m. on August 22, 1991, Johnson alleges that two officers entered the room and began slapping him in the face and kicking the handcuffs while he was bound to the wall. One officer was about 5'9 with a mustache and glasses, and the other officer was 6'2.[6] They continued beating him for several minutes. The officers demanded that Johnson confess to what happened. When he refused, they left him alone in the dark, hot interview room for several hours without food, water or access to a bathroom.[7]

State's Attorney Brent testified he returned to Johnson at approximately 6:00 a.m. on August 22, 1991 with Officers Boudreau and Detective Kill.[8] During that meeting, Johnson

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[2] *People v. Johnson*, 91-CR-22460 & 91-CR- 22152, Transcript of June 14, 1993 Hearing ("**Exhibit 1**"), at C-12.
[3] *People v. Johnson*, 91-CR-22460 & 91-CR- 22152, Transcript of June 25, 1993 Hearing ("**Exhibit 2**"), at C-32-33.
[4] Exhibit 1, at C-13-14.
[5] Exhibit 1, at C-68-69.
[6] *Id.* at C-9.
[7] *See* **Exhibit 4**, Defendant's Motion to Suppress Statement.
[8] *See* Exhibit 1, at C-69, C-73.

signed a handwritten statement by State's Attorney Brent. Then Johnson was taken back to the interview room.[9]

Detectives James O'Brien testified he and Joseph Stehlik questioned Johnson on August 22, 1991 at 2 p.m. regarding the shooting of Katherine Miles that occurred on June 9, 1991.[10] When they first entered the interview room, Johnson was asleep in a chair with his head lying on the table.[11] After a 30-40 minute conversation, the officers left the interview room.[12]

At approximately 6:00 p.m., Johnson was taken to the summary sergeant's office where Detective Stehlik and State's Attorney Grossman spoke with him for about an hour, Stehlik testified.[13] Grossman left the room to meet with George Anderson for roughly 20 minutes.[14] By 10:40 p.m. on August 22, 1991, Stehlik testified, Grossman began handwriting Johnson's statement regarding the fatal shooting of Katherine Myles.[15] The session did not end until about midnight, approximately an hour and a half later.[16]

With the exception of a can of soda Detective Kill testified he gave Johnson[17], there was no testimony by the state that Johnson had anything to eat or anything else to drink during the entire detention and interrogation period from August 21, 1991 through midnight on August 23, 1991.[18] Although many detectives later testified that they offered use of bathroom facilities and food, none testified they ever took Johnson to a washroom or gave him any food during this period.[19]

Johnson was ultimately indicted for the two homicides in the Circuit Court of Cook County Case Nos. 91 CR 22152 and 91 CR 22460. According to the assistant state's attorney, the first homicide (91 CR 22152) allegedly occurred on June 9, 1991.[20] In retaliation for a previous altercation and fistfight, Johnson and several other individuals allegedly devised a plan to "shoot up" the area of 66th Street and Wolcott Avenue.[21] In carrying out their plan, the men shot four individuals – one of which included the fatal shooting of 14-year-old Kathryn Miles, an innocent bystander.[22] The second case (91 CR 22460) involved a gang-related dispute that led to

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[9] Exhibit 2, at C-37-41, 50.
[10] Exhibit 1 at C-78, C-94.
[11] *Id.* at C-80-81, C-87, C-95.
[12] *Id.*
[13] *Id.* at C-98-99.
[14] *Id.* at C-99.
[15] *Id.* at C-100.
[16] *Id.* at C-109.
[17] *Id.* at C-39; Johnson testified he received one soda from State's Attorney Brent. *Exhibit 2*, at C-42
[18] *See e.g.* Ex. 1. at C-110, C-112-113.
[19] *See e.g., id.*
[20] *People v. Johnson*, Order of the Appellate Court of Illinois, Case No. 1-95-0338, dated April 28, 1997, at 6.
[21] *Id.*
[22] *Id. See also*, Exhibit 21, Statement of Jerome Johnson regarding the fatal shooting of Katherine Miles.

the fatal shooting on August 21, 1991 of 11-year-old Jeremiah Miggins, another innocent bystander who was killed while standing in his neighbor's yard.[23]

### B. Motion to Reduce Bond

In January 1992, Johnson filed a Motion to Reduce Bond in the second case. In support of his motion to reduce the bond, Johnson alleged the "August 21, 1991 statements made implicating the defendant JOHNSON were made under duress and coercion and are false. . ." *See* **Exhibit 3**, Motion to Reduce Bond.

### C. Motion to Suppress

Johnson filed a Motion to Suppress both confessions on March 4, 1992. *See* **Exhibit 4**, Defendant's Motion to Suppress Statement. More specifically, Johnson tried to suppress "any and all oral or written communications, confessions, statements, or admissions, whether inculpatory or exculpatory, made by the defendant prior to, at the time of, or subsequent to his arrest. . ."[24]

In support of the motion, Johnson alleged, *inter alia*, the following:

> 1. That two unknown police officers slapped and kicked the defendant repeatedly while being handcuffed to a wall.
>
> 2. That the statements sought to be suppressed were obtained as a result of physical coercion illegally directed against the defendant and that such statements were, therefore, involuntary in violation of the Fifth and Fourteenth Amendments to the United States Constitution.
>
> 3. That the statements sought to be suppressed were obtained as a result of psychological and mental coercion illegally directed against the defendant and that such statements were therefore, involuntary in violation of the 5th and Fourteenth Amendments to the United States Constitution.
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> 4. Defendant was left in a hot and dark room for 7 to 8 hours without contact with any person while being denied use of phone, toilet, food or water.[25]

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[23] *People v. Johnson*, Order of the Appellate Court of Illinois, Case No. 1-95-3312, dated March 16, 1998, at 2. *See also*, Exhibit 22, Statement of Jerome Johnson regarding the fatal shooting of Jeremiah Miggins.
[24] *See* Exhibit 4, at 1.
[25] *Id.* at 3.

### D. Motion to Suppress Hearing

On June 25, 1993, during the hearing on the Motion to Suppress Statement in both actions, Johnson testified to the treatment he experienced prior to making a confession. He described how officers "handcuffed him to a wall"[26] near the floor in a dark[27] interview room and abandoned him there for several hours.

A They handcuffed me to the wall and left, closed the door and left.
Q They handcuffed you to the wall. What did they handcuff you to?
A The ring on the wall.
Q Which hand did they handcuff?
A My right hand.
Q And then they left?
A Yes.
Q And did you – How high was this ring on the wall?
A Maybe three feet from the floor.[28]

In the middle of the night, at approximately 2:00 a.m., Johnson testified, two tall, white police officers entered the interview room where Johnson was located.[29] Johnson testified that the officers slapped his head and face "twenty or thirty times,"[30] and repeatedly kicked his handcuffs while he was on the floor.[31] He recounted:

Q And you said they started kicking your handcuffs?
A Right.
Q How many times did they kick your cuffs?
A Lots of times.
Q How many is "lots" do you think?
A Maybe ten to fifteen times.
Q And they kicked it hard, didn't they?
A Yes.
Q All right. And your handcuffs were tight, weren't they?
A Right.
Q And after they kicked you ten or fifteen times on your handcuffs you also got slapped around?
A Yes.
Q Where at?
A On my head and face.
Q Was it a closed fist or open?
A Open.
Q How many times did you get slapped?

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[26] Exhibit 2 at C-32.
[27] *Id.* at C-50.
[28] *Id.* at C-32.
[29] *Id.* at C-34-35.
[30] *Id.* at C-53-54.
[31] *Id.* at C-53.

A Maybe about twenty or thirty times.
Q This went on for a while?
A Right.
Q Who was [the] one that was doing it?
A The police.

After Johnson would not confess, the officers allegedly left him in the room, handcuffed to the wall for many more hours.[32] Johnson remained in a hot room without a fan or air conditioner and without access to food or a bathroom for dozens of hours.[33]

Q When was the last time you had eaten Mr. Johnson?
A The morning that I was arrested.
Q So you ate about what time?
A About eight o'clock.
Q You ate about eight o'clock on the 21st and this statement was given at 10:40 P.M. on the 22nd. You hadn't eaten since then? In that entire period you only had one can of pop?
A Right.[34]

After the alleged torture and night of sleeping on the floor while handcuffed to a wall, Johnson was "hot, tired, and hungry," and he agreed to sign a statement written by a State's Attorney the next day so he "could get out of there."[35] The State's Attorney told Johnson "the sooner we get this over the sooner you can leave," Johnson testified.[36]

Detectives John Halloran, Michael Kill, James O'Brien, and Joseph Stehlik and State's Attorneys Joseph Brent and Brian Grossman also testified during the hearing. The detectives had all been assigned to Area 3 Violent Crime on August 21-22, 1991.[37]

Detective Halloran stated that Johnson was never denied access to a phone, toilet, food or water,[38] but he testified as follows:

Q You have left Mr. Johnson in a room for approximately two hours on a day that you agree is 80 degrees, that you state was 80 degrees, and you offered him no water or no food. That's correct; right?
A That's correct, I did not.[39]

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[32] *Id.* at C-36-37.
[33] *Id.* at C-77-82.
[34] *Id.* at C-75.
[35] *Id.* at C-41, C-48.
[36] *Id.* at C-48.
[37] *See e.g.* Exhibit 1 at C-11-12.
[38] *Id.* at C-16-17.
[39] *Id.* at C-24.

Detective Kill and others agreed the room had no air conditioning. Detective Kill claimed that Johnson was offered food and water, but he refused to take anything.[40] He testified that he had a conversation with Johnson and State's Attorney Brent at approximately "1:45 in the morning" on August 22, 1991.[41]

Detectives Halloran, Kill, O'Brien and Stehlik and State's Attorneys Brent and Grossman all stated that they never saw anyone slap or kick Johnson while he was cuffed to a wall.[42] However, all of the detectives admitted that there was a metal ring on the wall in the room that could be used to handcuff a person.[43]

Detective O'Brien testified, saying he interviewed Johnson on August 22, 1991 at 2:00 p.m. with his partner Detective Stehlik.[44] He claimed that the State's Attorney Grossman arrived at 3:00 p.m. to take Johnson's statement. On cross examination, however, Johnson's attorney pointed out that the statement signed by Stehlik and Grossman was dated "August 22, 1991, at 10:40 a.m."[45] When asked about how the statement could read "10:40 a.m." when Detective Stehlik claimed that the interview did not even begin until 2:00 p.m. and State's Attorney Grossman did not arrive until 3:00 p.m., Detective O'Brien stated it was "it's obviously a mistake."[46]

Detective Stehlik's testimony echoed Detective O'Brien's account. Stehlik added that, the statement should have read 10:40 p.m., not 10:40 a.m.[47] Stehlik also shared that, after conversing with Johnson, he and his partner went to get McDonald's for George Anderson, but Johnson "said he wasn't hungry."[48]

Johnson stated that none of the officers that testified during the hearing were the ones who slapped and beat him in the interview room.[49]

At the conclusion of the hearing, the judge determined that "there was no physical coercion," "psychological coercion or mental coercion."[50] In so finding, the court denied the motions to suppress statements in both criminal cases against Johnson.

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[40] *Id.* at C-39, C-46.
[41] *Id.* at C-47-48.
[42] *Id.* at C-14, C-16, C-38-39, C-44, C-66, C-82, C-103-104; *see also* Exhibit 2 at C-12.
[43] *See e.g.*, Exhibit 1 at C-22, C-108.
[44] *Id.* at C-78-79.
[45] *Id.* at C-91.
[46] *Id.*
[47] *Id.* at C-106.
[48] *Id.* at C-97.
[49] Exhibit 2, at C-53.
[50] *Id.* at C-85.

### E. The Guilty Plea and Trial

Johnson pled guilty to the first murder. The prosecution used the confession as the factual basis for the plea.[51]

The second case, for the murder of Jeremiah Miggins (91-CR-22460), went to trial.[52] On the morning of jury selection, June 1, 1995, Johnson's trial attorney, Deborah Gubin ("Gubin"), introduced a motion *in limine* to prohibit introduction of the Miles homicide conviction in the event that Mr. Johnson took the stand.[53] The state successfully opposed the motion and indicated they intended to introduce the conviction to discredit Mr. Johnson if he took the stand.[54] The Miles murder conviction was, of course, based on the allegedly coerced confession to that crime.

The morning of trial, Assistant State's Attorneys Anita Alvarez and John Hynes introduced their own motion *in limine*, seeking to exclude Mr. Johnson's statement to police as self-serving hearsay.[55] Gubin, Johnson's attorney, strenuously objected.

> GUBIN: I believe that the circumstances and the information and the knowledge that Mr. Johnson gave the police while he was in their custody at the time, the day of the incident, is relevant and should be brought out.[56]

The judge granted the state's motion, but Gubin persisted in trying to introduce Johnson's statement. The next morning, after having time to research the state's cases cited in their motion *in limine*, Gubin tried again to introduce the statement.

> GUBIN: I would like this Court to reconsider its ruling on * * * the state's motion in limine * * * .
>
> COURT: You may be heard on it.
>
> GUBIN: * * * [T]he basis for the state's motion is that exculpatory evidence are not admissible. Your Honor, within the statement itself though, a view of it shows there are admissions within that statement of several of the charges that are before the jury, one of which is the aggravated battery, one of which is discharge of a firearm, and also the attempt murder

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[51] *See* **Exhibit 5**, Correspondence of Jerome Johnson to the TIRC, dated September 29, 2011; *see also* **Exhibit 6**, at A-11 (Assistant State's Attorney Angela Petrone stated as her chief factual basis for the plea that the evidence would show that Johnson gave a handwritten statement detailing all of his actions in the crime.).

[52] *See* **Exhibit 7**, G-62, testimony of Anthony Wilson, who testified he agreed to exchange testimony against his co-defendants in exchange for being allowed to plead guilty as a juvenile to the murder of Jeremiah Miggins, rather than being charged as an adult.

[53] *See* **Exhibit 8**, F4-F5.

[54] *Id.* at F7.

[55] *See* Exhibit 7, G5-G6

[56] *See* Exhibit 7, G-12

> which he was initially charged with because in there the specific language is 'intended to kill Michael.' * * * The effect of this ruling falls within the case of *People v. Berquist*, * * * in which the effect of your ruling is to preclude introduction of evidence which is – it restricts our – by granting their motion, you are restricting our opportunity of a legal, viable defense * * * along with the fact that it's not purely an exculpatory statement, that we should be able to go into that in cross examination of the officers especially when you base that in conjunction with the ruling on your motion in limine that if Mr. Johnson were to testify, that the State could impeach him with his prior murder conviction.[57]

Gubin told Commission representatives she desired to introduce the statement during the prosecution's case-in-chief for several reasons. First, she wanted to call into question the veracity of the statement by cross examining the police officers about the circumstances surrounding the statement.[58] Second, Gubin wanted to highlight exculpatory language in the statement that would likely have lessened Johnson's charge from murder to manslaughter.[59] The statement also maintained that Johnson was fired upon first, which had the potential to support a self-defense claim. But the judge again denied Gubin's request to reconsider excluding the statement.

During the trial, the only witnesses who placed Johnson at the scene of the crime were his accomplices, at least one of whom testified against Johnson in exchange for leniency.[60] Gubin told TIRC she decided not to place Johnson on the stand during the trial because, if Johnson testified, the prosecution would have introduced the statement he made after the alleged torture. Without the ability to attack the statement and discredit it during the prosecution's case-in-chief, she believed the statement would have destroyed her case.[61] The prosecution also likely would have introduced the Miles conviction as impeachment evidence if Johnson took the stand.

After the jury trial, Johnson was found guilty of murder in the first-degree and two counts of aggravated battery with a firearm.[62] Johnson was eligible for the death penalty, but he was ultimately sentenced to a term of natural life in prison without parole for the murder charge and concurrent 30-year terms on the charges of aggravated battery with a firearm.[63]

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[57] *See* Exhibit 9, H4-H5
[58] *See* **Exhibit 10**, Deborah J. Gubin Interview Report.
[59] *Id.*
[60] *See* Exhibit 5; *see also* Exhibit 7, G-62, Testimony of Anthony Wilson (Wilson agreed to exchange testimony against his co-defendants in exchange for being allowed to plead guilty as a juvenile to the murder of Jeremiah Miggins, rather than being charged as an adult).
[61] *See* Exhibit 10, Deborah J. Gubin Interview Report.
[62] *See People v. Johnson,* Order of the Appellate Court of Illinois, Case No. 1-95-3312, dated March 16, 1998, at 1.
[63] *Id.*

### F. Appeals and Post-Conviction Petitions

After the guilty plea and sentencing in the Kathryn Miles murder case, Johnson filed a *pro se* motion to vacate his plea, arguing that his guilty plea was unknowing and involuntary because he wasn't adequately advised of the possible sentence and repercussions.[64] The trial court denied the motion.[65] Johnson appealed this decision. The appellate court affirmed the judgment of the circuit court, and Johnson filed a petition for rehearing.[66] The appellate court denied the petition for rehearing.

Johnson also appealed the jury convictions in the second case by arguing, *inter alia*, that he was not proven guilty beyond a reasonable doubt and admitting his prior murder conviction was improper.[67] After a thorough opinion, the appellate court affirmed the circuit court judgment.[68]

Johnson continued filing appeals and other post-conviction petitions in both cases, many of which were denied outright or denied as frivolous.[69] For example, on July 25, 2011, Johnson filed a *Pro Se* Petition to Withdraw Guilty Plea and Vacate Sentence. *See* **Exhibit 12**, *Pro Se* Petition. In his petition, Johnson alleged that the "States Attorney's breached the proposed plea agreement with the suppression of evidence that officers who supervised and implemented the torture of petitioner were acting pursuant to a systematic pattern and practice of torture and abuse. . ."[70] He also stated that his "confession was coerced."[71] This was the first time that Johnson raised the issue of torture in an appellate proceeding.

### G. Johnson's Allegations to TIRC

On September 11, 2011, Johnson sent a letter to the TIRC seeking assistance because he was "a prisoner serving a natural life without parole prison sentence for two first-degree murder convictions based on confessions obtained through torture by Chicago police under [Commander] Burges." [sic] *See* **Exhibit 13**, Correspondence of Jerome Johnson to the TIRC, dated September 11, 2011. Johnson went on to say that his conviction for the murder of Jeremiah Miggins was "wrongful" because it was "based on the confession obtained through torture and a questionable investigation by" Commander Burges' [sic] crew.[72] He sent another letter days later to clarify that he had been convicted of two murders where confessions were

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[64] **Exhibit 11**, Brief and Argument for Defendant-Appellant at 5-6, *People v. Johnson*, No. 1-95-0338, 1996 WL 33652180 (Ill App. 1 Dist. Aug. 15, 1996).
[65] *Id.*
[66] Petition for Rehearing for Defendant-Appellant at 1-2, *People v. Johnson*, No. 1-95-0338, 1997 WL 34677357 (Ill. App. 1 Dist. May 19, 1997).
[67] *See People v. Johnson,* Order of the Appellate Court of Illinois, Case No. 1-95-3312, dated March 16, 1998, at 1.
[68] *Id.* at 23.
[69] *See e.g., People v. Johnson*, Nos. 1-02-1624 and 1-02-2092, Order of the Appellate Court of Illinois, dated April 23, 2003.
[70] *See* **Exhibit 12** at 1.
[71] *Id.* at 1.
[72] *See* **Exhibit 13.**

used either directly or indirectly to obtain his convictions. *See* **Exhibit 5**. In that letter, Johnson maintained that he "did not take the stand [in the Miggins case] to testify due to the fact the statement would have been used."

On September 28, 2011, Johnson signed a Commission form to file a claim of torture ("Claim Form") alleging that "he was handcuffed awkwardly in a heated room that appeared to be a locker room" and that, after refusing to answer questions, he was "slapped across the head and handcuffs kicked because of refusal." *See* **Exhibit 14,** Claim Form. In the section entitled, "Names of persons committing alleged torture," Johnson listed Detectives Kill, Halloran, Boudreau, Smith, Stehlik and O'Brien.[73]

TIRC interviewed Johnson on April 6, 2015. Johnson's account largely tracked earlier accounts. He mentioned the slapping and kicking in the middle of the night as well as the can of pop from the State's Attorney. Johnson also stated that after being slapped and kicked around, the officers removed his handcuffs, placed a gun on the table, and encouraged him to reach for the gun. Johnson refused.

Johnson was also asked about the procedural aspects of the Miggins trial. The following exchange took place:

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| TIRC: | In the [Miggins] case, you did not take the stand and testify? |
| JOHNSON: | No. |
| TIRC: | And they did not introduce any statement you made in the [Miggins] case? |
| JOHNSON: | No. |
| TIRC: | The judge did rule that if you took the stand you could be impeached by your conviction? |
| JOHNSON: | Well, he said they could use the conviction and the statement. |
| TIRC: | If you took the stand? |
| JOHNSON: | Yes. |
| TIRC: | And was that, did that affect any decision as to whether you would take the stand or not? |
| JOHNSON: | Yes. |
| TIRC: | How? |
| JOHNSON: | Well, I was told that, that would go toward my credibility – the convictions – so I figured I just have to show these guys not telling the truth and hopefully I wouldn't be convicted.[74] |

Later in TIRC's investigation, TIRC met with Johnson again via videoconference in 2017 to have him review certain photographs. After the photographs were reviewed, Johnson's attorney, Matt Darch, requested time to ask his client certain questions for the record. The request was granted. The following exchange took place:

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[73] *See* **Exhibit 14**.

[74] Transcript of TIRC interview with Jerome Johnson, April 6, 2015, 20-21.

DARCH: In the 22460 case, that's the Jeremiah Miggins case?
JOHNSON: Correct.
DARCH: Did you testify in that case?
JOHNSON: No.
DARCH: Did your lawyer tell you anything about testifying?
JOHNSON: Well, I was instructed if I testify that the plea...
DARCH: Yeah.
JOHNSON: ...would be used against me, and the statement.
DARCH: Great. And that was part of the reason why you may not have testified?
JOHNSON: Correct.
DARCH: OK.
JOHNSON: That was the reason.

## III. OTHER RELATED EVIDENCE

George Ellis Anderson, Johnson's co-defendant in both actions, submitted a TIRC claim to this Commission asserting similar allegations of torture that arose during the same period of interrogation that began on August 21, 1991. His claim was recommended for judicial review by this Commission. *See* **Exhibit 15**, Notice of Filing Supplement to the Case Disposition of George Ellis Anderson.

On July 26, 2016, *pro bono* counsel for the TIRC issued a subpoena for documents to Cermak Health Services. The facility stated they were unable to submit responsive documentation because "the records were destroyed under the authority of the Illinois Local Records Commission as they were inactive and greater than 10 years old." *See* Subpoena Response, **Exhibit 16**.

## IV. PATTERN AND PRACTICE EVIDENCE

### A. Jon Burge

In 1990, the Office of Professional Standards of the Chicago Police Department concluded after an internal investigation that there had been systematic abuse at Area 2 under Jon Burge for over ten years. The Report was released in 1992. On November 12, 1991, Jon Burge was suspended, and on February 11, 1993, the Police Board of the City of Chicago separated him from his position as a Commander with the Department of Police after finding him guilty of abusing Andrew Wilson at Area 2 in 1982. Although Johnson did not mention Detective Burge during the suppression hearing, he stated none of the officers who testified at the suppression hearing (Halloran, Kill, O'Brien and Stehlik) slapped or kicked him. Burge did not testify at the suppression hearing.

### B. Detective Halloran *See* Exhibit 23

Detective John Halloran has been the subject of numerous complaints involving allegations of attempts to physically coerce confessions. A number of complaints come from persons who gave confessions to crimes but were later either acquitted, shown to be provably innocent or DNA testing strongly suggested innocence.

Harold Hill, Peter Williams and Dan Young all confessed to the rape and murder of Kathy Morgan. However, after confessing, Williams was shown to have been incarcerated when Morgan was killed and charges were dropped. Young and Hill were convicted, but later DNA testing showed someone else's DNA under Morgan's fingernails. The state dropped all charges and Hill was eventually settled for $1.25 million in a lawsuit. Hill insisted Halloran and Detective Kenneth Boudreau each pay $7,500 out of their own pockets as part of the settlement.

Frederick Ewing and Darnell Stokes each gave murder confessions but were acquitted at trial. Each alleged Halloran and Boudreau beat them to obtain confessions.

Tyrone Hood and Wayne Washington alleged in lawsuits that physical coercion by police led to their confessions. Their lawsuits name Halloran and Boudreau as defendants, but do not specify their exact conduct. The lawsuits are pending. The state's attorney dropped charges against Hood and Washington after the victim's father was convicted of other murders with highly similar characteristics to the murder at issue in Hood and Washington's case.

Nevest Coleman and Derrell Fulton alleged in lawsuits that a detective punched them in the face to help secure their confessions to the murder of Antwinica Bridgeman. The lawsuits alleged Halloran and Boudreau and other detectives were aware of the punching. Their convictions were reopened in 2016 for DNA testing, and results showed that sperm in multiple locations on the victim and DNA under her fingernails came from another donor who had a record as a serial rapist. Both men were granted certificates of innocence and have pending lawsuits.

### C. Detective Boudreau *See* Exhibit 24

Johnson stated that none of the officers who testified at the suppression hearing slapped or kicked him. Boudreau did not testify at the suppression hearing, but he is mentioned in Johnson's TIRC Claim Form and police reports in the case. State's Attorney Brent also stated that Boudreau was present during one of his meetings with Johnson on August 22, 1991.[75]

Boudreau has been the subject of numerous complaints of abuse. In addition to sharing allegations of abuse in the same cases noted above for Halloran, Boudreau was also accused by defendant Vincent Thames of keeping him in a room without sleep for two days to induce a confession. Thames also alleged he was continually handcuffed and that a phonebook placed on

[75] *See* Exhibit 1, at C-73.

his chest was hit with a flashlight. Thames and three co-defendants (Michael Saunders, Harold Richardson and Terrell Swift) confessed and were convicted of the murder of Nina Glover. A fifth man's confession (Jerry Flincher) was ruled illegal and excluded at a suppression hearing, so prosecutors dropped charges. Each convicted man was eventually exonerated and received certificates of innocence after DNA testing implicated a single DNA donor suspected of being a serial rapist. On December 13, 2017, Chicago's City Council approved a $31 million settlement to be divided between the four men.

### D. Detective O'Brien *See* Exhibit 25

Detective O'Brien has pled the 5th Amendment protection against self-incrimination when questioned about physically abusing detainees in another case.[76] *See* **Exhibit 17**, Report of Proceedings in *People v. Brown*, dated May 18, 2009. O'Brien has told TIRC investigators he subsequently offered to waive the Fifth Amendment in that case.[77]

Defendant Robert Wilson accused O'Brien of hitting several times him after lengthy questioning in the investigation of a knife attack on a woman at a bus stop. After Wilson was arrested, five more attacks with nearly identical characteristics occurred in the weeks following, but Wilson's trial judge refused to allow evidence of those attacks into evidence and he was convicted. At his trial, the victim, who had identified Wilson in a lineup, identified distinctive gym shoes presented by Wilson's attorney as the gym shoes her attacker had worn at the time of the attack. The shoes were not Wilson's, but the suspect in the other five attacks. After Judge Ruben Castillo of the Northern District of Illinois ordered a new trial featuring evidence of the other attacks, the victim recanted her identification and disclosed that she had told detectives showing her pictures that she had told them Wilson looked older than the man who attacked her. The state's attorney elected not to retry Wilson, and he was eventually awarded $3.6 million in a civil lawsuit.

### E. Detective Stehlik *See* Exhibit 26

Detective Joseph Stehlik has relatively fewer abuse complaints than the above-mentioned detectives. As already noted, Johnson's co-defendant, George Anderson alleged Stehlik and O'Brien placed a phone book against his side and hit it with a pipe or hose to obtain a confession to murder. Murder defendant Ivan Smith made almost identical allegations at his suppression hearing.[78] Recently, the Illinois Appellate Court remanded to the trial court for an evidentiary hearing the claim of Antonia Nicholas that O'Brien, Stehlik and Detective McWeeny abused him

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[76] While invocation of the 5th Amendment is not an admission of guilt, in a civil proceeding such as this a negative inference can be drawn from that fact. *See* 2 Ill. Adm. Code 3500.375 (g).

[77] *See In re Ivan Smith*, TIRC determination decided January 20, 2016, 20, fn. 57.

[78] *See In re: Claim of Ivan Smith*, TIRC Claim No. 2011.001-S, decided January 20, 2016 and referred to court for an evidentiary hearing.

to obtain a murder conviction.[79] A summary of complaints against Stehlik may be found at **Exhibit 18.**

### F. Detective Kill *See* Exhibit 27

Detective Michael Kill has been the subject of at least a dozen abuse complaints connected to interrogations. In 2004, he invoked his Fifth Amendment right against self-incrimination when called to testify by the Special Prosecutor investigating the possibility of charges against police or prosecutors in connection with Burge abuse allegations.[80] In one post-conviction case, a judge decided that Kill's claim that he had taken incriminating statements from a suspect, but never written those statements down, was not credible. Prosecutors appealed, and the Illinois Appellate Court agreed with the trial judge, writing "[W]e cannot say that Judge Suria committed manifest error by reassessing Kill's trial testimony and finding that it provided no credible support for the facts to which Kill testified."[81]

### G. Detective Smith

Detective John Smith was Halloran's partner[82] at the time of Johnson's interrogations and may have been at the station during the alleged torture. Detective Smith does not appear to have any significant complaint register history in regards to torture allegations, being listed only once in a complaint that alleged multiple officers improperly searched a home and money was discovered missing afterwards. The complaint was not sustained.[83]

## V. PHOTO ARRAY

On July 14, 2017, Johnson was presented with 47 photographs by an independent photo array administrator to determine whether he recognized any of the individuals as the Chicago

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[79] *See People v. Nicholas*, 2017 IL App (1st) 160229-U

[80] *See* Grand Jury transcript of Oct. 25, 2004

[81] *See People v. Gray*, 04-0868, 1st Dist, unpublished opinion of Dec. 16, 2005.

[82] *Id.*, at C-12.

[83] The John Smith involved in Johnson's case is an Area 3 detective John A. Smith, Star No. 3023 as of August 27, 1991. *See* Supplementary Report of Det. John A. Smith, RD No. P-405-642. That appears to correspond with a John A. Smith, Star No. 3023, named in a Complaint Register file (CR 185207) alleging search without a warrant. That John A. Smith has a Date of Appointment of June 1, 1964, and pre- and post-2000 CR indices reflect no other complaints against a John Smith of that Appointment date.

*People v. Earnest*, 224 Ill. App. 3d 90, recounts allegations against a Det. John Smith of Area 3 that he denied a 16-year-old juvenile suspect access to his parents in 1986; *People v. Aguinaga*, 231 Ill. App.3d 153 recounts allegations that unspecified detectives (in a case in which a Det. John A. Smith of Area 3 was involved) struck him in 1986 to induce a written statement; *People v. Hoskins*, 168 Ill. App. 3d 904, recounts the appellate court's suppression of a defendant's statement who claimed he was beaten in 1983 by unspecified detectives (in a case in which a Det. John Smith of Area 3 was involved). However, it cannot be conclusively determined without further investigation whether the John Smith involved in those cases is the same John Smith involved in Johnson's case. In *Hoskins*, the appellate court did not reach the beating allegations, but suppressed the confession because Johnson had already been visited by counsel, who repeatedly admonished police not to question Hoskins, when a Det. John Smith, another detective and a state's attorney questioned Hoskins nonetheless.

police officers who he alleged physically abused him in August 1991. The independent administrator had no details of TIRC's investigation or familiarity with the photographs.[84]

More than a third of the photographs (18 of the 47) were "filler" images of individuals who were either assigned to different areas or districts or who never served as Chicago police officers at all. Photographs of Detectives Boudreau, Halloran, Kill, O'Brien, Smith and Stehlik were included in the array. The remaining 24 photographs were images of Chicago police officers who were involved in Johnson's arrest and investigation to some degree. A photograph of Detective Burge was not included in the photo array.

Johnson was asked to identify whether he recognized any of the individuals in the photographs. During his first review of the photographs, Johnson requested that the following photographs be set aside for further review: 3, 6, 7, 8, 12, 13, 18, and 28. After a second review, Johnson eliminated photographs 12 and 13, noting that he did not recognize those two individuals. Johnson characterized photographs 6, 7, 8, 18, and 28 as faces that looked familiar but he was "not sure" about. He definitively identified photograph 3 as someone he recognized. Johnson recalled that the individual testified against him in court. When asked whether he remembered the individual's name in photograph 3, Johnson replied, "If I'm not mistaken, it's Halloran." Johnson was further asked whether the individual in photograph 3 was someone who had abused him. Johnson replied that the person in photograph 3 had abused him.[85]

Johnson was correct to note that photograph 3 was a familiar face. However, the image was a photograph of Detective Kill, not Detective Halloran. Of the remaining five photographs (6, 7, 8, 18, and 28) that Johnson identified as familiar, three of them were photographs of Chicago police officers that were involved in either the Miles or Miggins (or both) murder cases - Detective Bresca (or Breska), Detective John McCann and Detective Duffin. The other two were "filler" photographs.

## VI. STANDARD OF PROOF

Section 40(d) of the Illinois TIRC Act permits the Commission to conduct inquiries into claims of torture.[86] "A 'claim of torture' is 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."[87]

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[84] A copy of the Memorandum of Independent Photo Array Administrator and the fully-executed Instructions to Witness on Photo Spread Procedures are attached hereto as **Exhibit 19**.

[85] *Hear* audio of photo array on July 14, 2017 (2017.7.14 Photo array Audio in CHICAGO.MP3); *see* video of photo array (2017.7.14 Photo array VIDEO.mp4). The video recording contains only the audio that Johnson could hear. The audio recording includes that audio as well as discussion in Chicago that Johnson could not hear.

[86] 775 ILCS 40/40(d) (emphasis added).

[87] 775 ILCS 40/5.

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 the 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.[88]

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 that torture likely occurred. That remains the role of the courts. 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.[89]

## VII. ANALYSIS OF WHETHER BOTH CLAIMS ARE COVERED BY THE ACT

Both of Johnson's convictions were the product of allegedly tortured confessions. The TIRC Act empowers the Commission "[t]o conduct inquiries into claims of torture." "Claim of torture" is a statutory term, defined as: "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 occurring within a county of more than 3,000,000 inhabitants." 775 ILCS 40/5 (emphasis added).

### A. The Guilty Plea Falls Within the Commission's Purview (91-CR-22152)

In regards to the confession to the Kathryn Miles murder, the allegedly tortured confession to the Miles shooting was clearly used to obtain the conviction, as it was cited by the prosecution in securing the plea deal. Johnson's former attorney, Borges, also indicated the statement that Johnson made after allegedly being tortured was a deciding factor in Johnson's choice to accept a guilty plea for the Miles murder.[90] This commission has previously

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

[89] 2 Ill. Adm. Code 3500.385(b)(.l) (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 also* FAQ No. 8, https://www.illinois.gov/tirc/Pages/FAQs.aspx/. It is worth noting that the Commission is free under its rules, where it chooses to find that any fact, more likely than not, occurred. *See* 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.

[90] *See* **Exhibit 20**, Ernesto Borges Interview Report.

determined a confession used to support a guilty plea brings a claim within the jurisdiction of this body.[91]

### B. The Jury Conviction Also Falls Within the Commission's Purview (91-CR-22460)

Whether Johnson's written, signed confession[92] in regards to the Miggins murder brings it within this Commission's jurisdiction requires closer examination. Johnson's letter, submitted with his claim form, contends that he was prevented from testifying on his own behalf because, if he had, he would have been impeached with his confession in the Miggins case. If true, it would bring the claim within the Commission's jurisdiction.

"Used to obtain the conviction" is a broader term than "introduced into evidence," and the Commission has previously found that an express statement [by prosecutors] that a confession would be used for impeachment would deter a defendant from testifying at trial, and that the deterrence would be of significant benefit to the prosecution."[93]

A preponderance of the evidence demonstrates that Johnson was kept off the stand because of the confession in the Miggins case. Johnson's former counsel, Gubin, decided not to place Johnson on the stand because the statement would have likely been introduced to impeach Johnson if he testified at the jury trial.[94] When asked why she did not place Johnson on the stand during the trial, Gubin immediately responded by saying, "There was the statement. That's why I didn't put him up." Accordingly, Johnson's claim regarding the Miggins conviction (91-CR-22460) lies within the Commission's jurisdiction.

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[91] *See In re: Claim of Tony Anderson*, TIRC Claim No. 2011.014-A, Order Following Referral to the Commission by Chief Judge Evans, Decided May 20, 2015, 11-13, *available at https://www.illinois.gov/tirc/Documents/May%202015%20Anderson%20Order.pdf*; *but see People v. Anderson*, oral ruling of Cook County Judge Stanley Sacks, July 29, 2016, determining that a guilty plea is a break in the chain of causal events and therefore not subject to review unless the plea itself was involuntary.

[92] We note that even though Johnson's statement to police about the Miggins shooting had elements of a self-defense claim, it is properly considered a confession for TIRC purposes under the Commission's definition of torture. *See* Definition of Terms, "Tortured Confession," 20 Ill. Admin 2000.10, which includes "any incriminating statement, vocalization or gesture." Johnson's statement in the Miggins case put him at the scene of the crime and had him shooting a gun and was therefore incriminating and a confession under the Commission's Rules. We therefore use the terms "confession" and "statement" interchangeably in the context of Johnson's statement to police on the Miggins shooting.

[93] *See In re: Claim of Tony Anderson*, TIRC Claim No. 2011.014-A, Order Following Referral to the Commission by Chief Judge Evans, Decided May 20, 2015, 14, *available at https://www.illinois.gov/tirc/Documents/May%202015%20Anderson%20Order.pdf*.

[94] *See* Exhibit 10, Deborah J. Gubin Interview Report.

## VIII. WEIGHING THE EVIDENCE

### A. Johnson's Allegations are Credible and Largely Consistent

Johnson's account of the alleged torture that transpired from August 21, 1991 through August 23, 1991 is largely consistent and similar to allegations made at his suppression hearing, with two notable exceptions.

The first inconsistency that undermines Johnson's credibility is his recent remark about the officers urging him to reach for a gun. There seems to be little reason why, if slapping and hitting were being alleged during the suppression hearing, this would not have been mentioned also. The second inconsistency will be discussed below in the Photo Identification section.

Despite this inconsistency, Johnson has consistently maintained that he was handcuffed to a ring on the wall in a hot, dark interview room for long periods of time without food or access to a bathroom or telephone. He has also been resolute that, in the middle of the night, two officers entered the room where he was restrained, and began kicking his handcuffs and slapping him repeatedly.

### B. Photo Identification

The second inconsistency involves Johnson's photo identification. Johnson definitively and properly identified photograph 3 as an individual that he recognized, but he could not remember the officer correctly by name. In addition, Johnson's declaration that the officer in photograph 3 (Detective Kill) abused him is inconsistent with his prior testimony.

As noted above, Johnson testified that none of the officers who testified at the suppression hearing abused him. Detectives Halloran, Kill, O'Brien, and Stehlik each testified at the suppression hearing. During the photo array, Johnson noted that the individual in photograph 3 testified against him. So, regardless of whether photograph 3 was Detective Halloran or Kill, Johnson's statement that the individual in photograph 3 abused him is inconsistent with his previous testimony that none of the officers who testified abused him.

On the other hand, Johnson selected photographs of three other officers who looked familiar that did not testify against him during the suppression hearing - Detective Bresca (or Breska), Detective John McCann and Detective Duffin. Accordingly, it is plausible that Johnson correctly identified an officer that physically abused him in August 1991.

It should also be noted that the photographs of officers shown to Johnson were not necessarily from the 1991 time period. In fact, two of the photographs of detectives were from when they were uniformed officers, presumably significantly before they made detective.

### C. History of the Detectives

The relevant investigations took place while Burge was supervising Commander of Area 3. Several of the detectives involved in the investigation have long histories of abuse allegations, and some have recorded instances of securing confessions from the wrong person.

That none of the detectives who appeared at the suppression hearing were accused of direct abuse is significant, but does not rule out their complicity in the alleged abuse by two unidentified officers. At the time of this investigation, August, 1991, the Office of Professional standards had already issued its November, 1990 report about Burge's torture tactics to the Chicago Police Superintendent, and news of the "heat" on Burge would likely have been circulating at Area 3, even though Burge would not be suspended for another three months. It is conceivable that detectives and an Area headquarters under such scrutiny would modify behavior and make sure that detectives unlikely to testify in the future would be the ones to inflict physical coercion.

It is also highly improbable that a man detained for more than 40 hours would consistently refuse invitations to eat and drink as detectives claimed Johnson did. Such testimony undermines the credibility of the detectives who also testified that Johnson was not abused.

### D. Balance of the Evidence

Johnson's account is largely consistent, but his recent allegation about a gun and that one of the detectives who testified at his suppression hearing abused him do raise credibility issues. This new detail regarding the gun may have been previously overlooked, or Johnson may have misremembered the event from the interrogation, which occurred over two decades ago on August 21, 1991. He may also have fabricated the event. However, the Commission notes that there were a number of other occasions during his TIRC interview where Johnson could have gone far beyond his previous accounts during this interview, but did not.

The history of the officers investigating the case, and their own credibility are also troubling. The inquiry here is not whether torture definitively occurred, but whether there is sufficient evidence of torture meriting judicial review.

The Commission finds that there is sufficient, credible evidence of torture meriting judicial review because of (1) Johnson's initial allegations of torture were largely consistent throughout the decades[95], (2) Johnson's claims are analogous to the numerous allegations of torture against the detectives named in Johnson's Claim Form, and (3) Johnson's allegations are

[95] While the complaints of physical abuse and coercion against the accused officers are allegations and not judicial findings, they are nevertheless relevant in deciding whether abuse occurred in a specific case. *People v. Patterson*, 192 Ill.2d 93, 114-15,735 N.E.2d 616 (Ill.Sup. Ct. 2000); *People v. Cannon*, 293 Ill. App.3d 634, 640, 688 N.E.2d 693 (1 Dist. 1997).

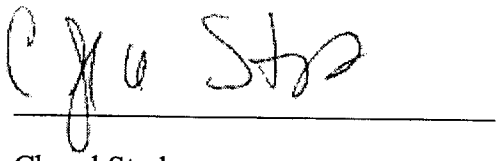
similar to claims made by George Ellis Anderson, his co-defendant, whose claims were recently submitted to the Circuit Court by this Commission, and (4) the dubious testimony of some detectives involved in this case undermines their credibility.

## IX. CONCLUSION

In conclusion, the Commission finds that there is sufficient, credible evidence of torture to refer the convictions in Cook County Circuit Court No. 91-CR-22152 and No. 91-CR-22460 to the Chief Judge for further judicial review.

This determination shall be considered a final decision of an administrative agency for purposes of administrative review under the Administrative Review Law (735 ILCS 5/3-101).[96]

Dated: March 28, 2018



Cheryl Starks
Chair
Illinois Torture Inquiry and Relief Commission

[96] *See* 775 ILCS 40/55(a) of the TIRC Act. Although this determination does not concern a "contested case" as defined in Section 1-30 of the Illinois Administrative Procedures Act (5 ILCS 100/1-30) because no opportunity for a hearing is required (*See* 775 ILCS 40/45(a)), the Commission notes that the rules of the Commission do not require any motion or request for reconsideration before appeal under the Administrative Review Law, and notes that the service address of interested parties is listed in the Notice of Filing certificate that accompanies the filing of this determination with the Court.