

## BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:  
Claim of James Gibson

TIRC Claim No. 2013.139-G  
(Relates to Circuit Court Case No.  
90 CR 3212)

### CASE DISPOSITION

Based on the summary of evidence below and pursuant to 775 ILCS 40/45(c) and 2 Ill. Adm. Code §§ 3500.385(b) and 3500.386, the Commission ("TIRC") concludes that, by a preponderance of the evidence, there is sufficient credible evidence of torture to merit judicial review. The Commission hereby refers this claim to the Chief Judge of the Circuit Court of Cook County. This decision is based upon the Factual Summary and Conclusions set forth below, as well as the supporting record.

#### I. EXECUTIVE SUMMARY

- On December 30, 1989, James Gibson gave an inculpatory statement placing him at the scene of a double murder. His statement came after three days of detention without charge at the Area 3 station by detectives under the command of Jon Burge. Upon his release, and prior to his arrest, Gibson filed a complaint with the Office of Professional Standards claiming detectives had beaten him while in custody. Gibson maintained his claim of physical abuse to his public defender and doctors after his arrest, and contemporaneous pictures of him depict a swollen, bruised ribcage. A forensic pathologist has advised the Commission that the photos appear to be consistent with Gibson's claim. Based primarily on Gibson's inculpatory statement, he was convicted of first-degree murder and sentenced to life in prison.
- Codefendant Eric Johnson was also arrested during Gibson's detention, and later claimed he was tortured into confessing to participation in the same crime by the same detectives. Johnson has since sought post-conviction relief on this basis, and, following an appellate panel's grant of a new hearing, negotiated a plea agreement permitting his release.
- Based upon evidence supporting the named detectives' pattern and practice of physically abusing suspects, substantial independent, contemporaneous corroboration of Gibson's claim of torture, and the paucity of other evidence against Gibson, the Commission finds there is sufficient credible evidence of torture to merit judicial review.

#### II. FACTUAL SUMMARY

##### A. Double Murder

On December 22, 1989, at approximately 10:48 AM, two men were shot in the head when exiting a garage at 5757 S. May Street on Chicago's southwest side. (Ex. 1, p. 1.) The first victim, Lloyd Benjamin, was an insurance agent in the process of collecting weekly insurance premiums. (*Id.* at p. 2.) He died at the scene. (*Id.*) The second victim, Hunter Wash (aka

“Smiley”), was a mechanic who owned and worked out of the garage, and was a client of Mr. Benjamin’s. (*Id.*) Mr. Wash was alive when police arrived, but died shortly after being transported to Michael Reese Hospital. (*Id.* at p. 2.)

Area 3 detectives<sup>1</sup> arrived and began to interview witnesses. Witnesses relayed that Mr. Benjamin had entered Mr. Wash’s garage around 10:30 AM to collect his premium. (Ex. 1, pp. 15-17.) After a brief conversation between the two, Mr. Benjamin exited the garage. (*Id.*) Witnesses then heard Mr. Benjamin call for Mr. Wash, followed by a single shot. (*Id.*) Mr. Wash left the garage to investigate, and additional shots were heard. Witnesses then saw Mr. Wash fall to the ground. (*Id.*) Police reports state the motive for killing Mr. Benjamin was robbery, though Mr. Benjamin’s money and personal effects were with his body. (*Id.* at p. 13.)

## **B. Ensuing Police Investigation<sup>2</sup>**

### **1. December 27-28, 1989**

Police reports from the days following the murder reflect receipt of anonymous tips informing investigators the shooter was James Gibson. (Ex. 2, p. 1.) On the evening of December 27, 1989, Area 3 police received a call from an unidentified female who represented that Gibson “was responsible for the two murders and was, at that time, attempting to repair his disabled car with a view toward fleeing this jurisdiction after having attempted to sell the gun used in the crimes.” (*Id.*)<sup>3</sup> The caller also implicated Gibson’s brother, Harold, in the crime. (*Id.* at p. 2.) Area 3 detectives John O’Mara (Star No. 9162) and Phillip Collins (Star No. 12121) responded by driving to Gibson’s residence, but did not find anyone repairing a car outside. (*Id.*) The detectives then knocked on the door and arrested Harold Gibson. (*Id.*) James Gibson later returned home and called police after being told they were looking for him. (*Id.*) Detectives then picked up Gibson and transported him to the Area 3 station. (*Id.*) Harold could account for his actions on December 22, 1989, and was released. James would only say “I’m not a murderer.” (*Id.*)

While the police report notes Gibson was “eventually” returned to his residence (*id.*), this did not occur until December 30, 1989. (*See* Ex. 3, p. 6.) Gibson was therefore held at the Area 3 station from December 27 until the evening of December 30, 1989, without being charged. (Ex. 3, p. 6.)

On December 28, 1989, Gibson was informed he was “the focal point of the investigation in progress.” (Ex. 4, p. 8.)

### **2. December 29, 1989**

Police reports reflect that Gibson was re-interviewed on December 29, 1989. He said that, on the morning of December 22, 1989, he was at a Ms. Davis’s home. (Ex. 5, p. 8.) Upon

---

<sup>1</sup> These detectives included J. McCarthy, Henry Leja, Jerome Rusnak, and Jack McCann.

<sup>2</sup> The following narrative is derived exclusively from Chicago Police Department reports.

<sup>3</sup> This report, however, was not finalized until January 14, 1990, which was 15 days after Gibson’s formal arrest on December 31, 1989.

leaving, Gibson “ran into” Eric Johnson (his neighbor) and Johnson’s brother, who told him the insurance man “just got run over around the corner.” (*Id.*) According to Gibson, he thereafter found out the victims had been shot, and the word on the street was that brothers “HARP” and “BODINE” were the perpetrators. (*Id.*) Gibson also noted that “K.D.” Johnson (an alias of Eric Johnson) had suggested robbing the insurance man a month ago, but Gibson refused to be involved. (*Id.*)

Detectives took Gibson for a polygraph examination that afternoon, and informed Gibson that he “was not being truthful in his responses regarding participation and knowledge of the shooting of the victim.” (*Id.*) Gibson was re-interviewed, and told detectives that on December 22, 1989, he was approached by “K.D.” (aka Eric Johnson) and “Bodine,” who asked him to go with them and rob the insurance man. Gibson said he declined, but a few minutes later saw K.D. run into his house and come out dressed in different clothes. Johnson then told Gibson “[w]e got paid, from the insurance man, keep cool.” (*Id.*)

According to police reports, Area 3 third-shift detectives Tony Maslanka, John Paladino, Phillip Collins, and Thomas Ptak were assigned to follow-up on Gibson’s statements that night. (*Id.* at p. 9-10.) They first arrested “K.D.” (Eric Johnson) on an outstanding warrant for an unrelated offense. Detectives then identified “Bodine” as Fernando Webb, but he was not at home when detectives visited. (*Id.*)

These detectives then repeatedly interviewed Johnson and Gibson in succession. They first interviewed Johnson, who said he was sleeping at the time of the crime, but “the word on the street was that [James] Gibson had killed the ‘insurance man’ and ‘Smiley.’” (*Id.* at p. 10.) Johnson stated he knew Gibson as “Peter Gunn.” (*Id.*) Gibson was re-interviewed, and told detectives he was awoken by a Mr. Jones at 10:30 AM on December 22 to retrieve a battery charger. (*Id.* at pp. 11-12.) Gibson said he then went down the block to a Kirby Allen’s residence, where he retrieved the charger, and returned home to give the charger to Mr. Jones. (*Id.*) Gibson was then standing in front of his house with his deaf mother when Johnson approached him and said “[l]et’s get paid from the insurance man.” (*Id.* at p. 12.) Gibson refused. He thereafter saw Webb and Johnson meet in the street and head towards 58<sup>th</sup> Street. A few minutes later, Gibson left to smoke a joint at the home of his girlfriend, Ms. Davis. After doing so, he saw Johnson in different clothes on the street. Johnson then stated “I got paid from the insurance man, be cool.” (*Id.*)

Detectives then re-interviewed Johnson and relayed the substance of Gibson’s interview. (*Id.*) Johnson reiterated that he was sleeping at the time of the crime. He then noted, however, that on December 22 he had “met Gibson in front of his, Johnson’s, house at 1100 hrs. and that Gibson had in his possession a .32 caliber nickel plated handgun with brown handles which was scratched up.” (*Id.*) Johnson told detectives Gibson “tried to sell him that weapon,” and had tried to do the same on December 21. (*Id.*) Johnson then described viewing Gibson running down 57<sup>th</sup> Street with a .32 caliber handgun on December 21 in an attempt to rob a potato chip truck. (*Id.*) He further saw Gibson enter the Johnson family’s garage between 3 and 4 p.m. on December 22, where he spent a few minutes. Johnson stated that he and his brother suspect Gibson was hiding the handgun. (*Id.*) Johnson further told police that about two months prior, a drug dealer both he and Gibson were working for (Rick) had warned Gibson about robbing the insurance man. (*Id.*)

Detectives then spoke with Gibson, who reiterated his prior narrative and noted he was present two months ago when Rick had warned *Johnson* about robbing the insurance man. (*Id.*) This information was taken back to Johnson, who then told detectives he was awoken on December 22 to news of the shootings, and saw Gibson emerge from his yard and tell him not to go to 58<sup>th</sup> Street because “the Police were looking for someone dressed in black.” (*Id.*)

### 3. December 30, 1989

Police reports<sup>4</sup> represent that on December 30, 1989, Gibson was again interviewed during the early evening hours. (Ex. 3 at p. 38.) Gibson stated “that on the day of the shooting, he was present at the garage when the incident occurred.” (*Id.*) He “observed Eric Johnson (aka: Keith or K.D.) give a gun to Fernando Webb (aka: Bodine).” (*Id.*) Thereafter, he “saw Webb shoot both of the victims as they came out of the garage.” (*Id.*) He further noted that “Webb and Johnson had been planning to rob the insurance man for two months,” as he “had overheard both discussing it.” (*Id.*)

Detectives took this information to Johnson, who, “[w]hen told of his involvement,” relayed that “he was on the street when he saw James Gibson (AKA: Peter Gunn) and Webb going to rob the insurance man.” (*Id.*) Johnson “saw Gibson shoot both victims as Webb acted as a lookout.” (*Id.*)

Detectives then brought Webb to the Area 3 station Webb initially stated “he knew nothing of it.” (*Id.*) When told of his alleged involvement, Webb then said he was out walking his dog and was returning from a dope house (where he had purchased heroin) when he saw an “unknown black male” standing by a garage door near the alley between May and Aberdeen streets. (*Id.*)

Detectives then conferred with Assistant State’s Attorney Linda Peters, who re-interviewed all three suspects and determined additional corroboration was needed before charging anyone. Johnson and Webb were held for polygraph examinations on December 31, and “Gibson was returned to his residence, acknowledging his availability for 31 December 89.” (*Id.*)

### 4. December 31, 1989

On December 31, 1989, Johnson’s polygraph, showed “deception in knowledge and planning of the robbery/shooting.” (*Id.* at p. 39.) Confronted with these results, Johnson told detectives McCann and Caesar “that Gibson had in fact come by his house just prior to the shooting,” and had “asked him to act as a lookout while he, Gibson, robbed the insurance man.” (*Id.*) Thereafter, Johnson “stood in the alley and watched as Gibson shot the insurance man.” (*Id.*) After the initial shooting, Johnson ran home.

Johnson was then re-interviewed by Detective Moser, and, at that time, noted his sisters, Janice and Carla, had been present during a conversation between Gibson and Johnson regarding robbing the insurance man two or three days prior to the crime. (*Id.*) Gibson had a nickel-plated

---

<sup>4</sup> These reports were written after the fact by Area 3 detectives O’Mara, Collins, McCann, William Moser and Louis Caesar.

.32 caliber revolver, which was “stolen.” (*Id.*) Johnson then said that on the day of the robbery, Gibson had come over and offered him \$50 to be the lookout. (*Id.*) After serving as such and running home after the insurance man was shot, Johnson later met with Gibson, who told Johnson he shot Hunter Wash because “Wash could identify him.” (*Id.*)

Detectives re-interviewed Webb, who, after being told he had been identified as the shooter by Gibson, told detectives he was returning from buying heroin for his habit on December 22, and “observed a m/b he knows as James Gibson, aka: Peter Gunn, standing right next to a garage with a [nickel-plated] handgun in his right hand, positioned along the right leg.” (*Id.*)

Based on these statements, detectives arrested Gibson without a warrant, and transported him to Area 3 – where Gibson “declined to make any further statements in this matter.” (*Id.*)

Detectives then brought in Johnson’s sisters, Carla and Janice, for interviews. Carla told detectives that on December 19, 1989, she had a conversation with Gibson wherein Gibson told her he was going to rob the insurance man so he could fix his car, and “if the insurance man got nervous he would have to shoot the insurance man.” (Ex. 6, p. 2.) She also stated that on December 22, 1989, Gibson came over and displayed a gun to Johnson, who later told her Gibson attempted to sell him the gun. (*Id.* at pp. 2-3.) Janice stated that, on December 20, 1989, she overheard Gibson say that he was going to rob the insurance man. (*Id.* at p. 1.) Both sisters signed statements. (Ex. 6, pp. 1-3.)

Detectives also obtained signed statements from Johnson and Webb. Johnson’s statement noted that around 10:00 AM on December 22, Gibson came to his house “and told him that he was going to rob the insurance man, Lloyd Benjamin.” (*Id.* at p. 5.) Gibson “asked him to be the lookout man and that he would pay him \$50.” (*Id.*) Johnson stated he agreed to be the lookout man, and stood by the alley – where he “saw Gibson shoot the insurance man with a .32 caliber revolver, which [he] knew Gibson had when they agreed to rob the insurance man.” (*Id.* at p. 6.) Johnson then ran home. (*Id.* at p. 6.) Johnson’s statement also noted that “he was treated well by the police and the assistant state’s attorney,” and “he was offered something to drink and allowed to go to the bathroom.” (*Id.* at p. 6.) Webb’s statement noted that on December 22, he observed Gibson “standing by the garage door holding a silver revolver in his hand.” (*Id.* at p. 4.) Detectives then received approval to charge both Gibson and Johnson with first-degree murder.

### **C. Gibson’s Contemporaneous Torture Claim**

#### **1. Gibson’s Immediate Complaint to OPS**

After returning home on December 30, 1989, Gibson submitted a complaint to the CPD Office of Professional Standards (“OPS”) at 9:30 PM. (Ex. 3, p. 6.) Gibson alleged “that from 27 December 1989 to 30 December 1989, at least two unknown male/white detectives detained him without charging him for an excessive length of time, physically abused him by slapping, punching, and kicking him, and made physical threats against him.” (*Id.* at p. 8.) His complaint was triggered by his sister, Lorraine Brown, who was home on leave from the U.S. Army and had gone to the Area 3 station on December 30, 1989, with their mother to “gather more information.” (Ex. 7, p. 1.) Upon arrival, they were informed Gibson “was being questioned

about the murders and [he] would not be released at that time.” (*Id.*) Upon departing, Gibson’s family was “approached by Detective John Burge [sic] who asked [Ms. Brown] to inform [her] mother that [her] brother was not a suspect at [that] time and he would be release[d] once they were finished questioning him.” (*Id.*)

After Gibson’s release, Ms. Brown observed that “he looked as if they had been in a fight,” and “[h]e told me [he] had been beaten by the police.” (*Id.*) Ms. Brown then phoned OPS to lodge a complaint, and put Mr Gibson on the line. She recalls Gibson informed the investigator “that the officers had beaten him and would not allow him to go to the bathroom,” so he “had to urinate on the floor in the room while being handcuffed to the table.” (*Id.* at p. 1-2.) After Gibson’s December 31 arrest, Ms. Brown further complained that Detective Moser had arrested Gibson without a warrant and searched the family home (located at 5734 South Aberdeen) without a warrant. (Ex. 3, p. 6.)

## **2. Photos and Medical Examination**

On January 2, 1990, Gibson’s public defender sought and received a court order permitting his investigator to photograph Gibson. (Ex. 8, p. 3.) Investigator Martorana took pictures of the “left and right” sides of Gibson’s chest and his buttocks, and noted that “[i]njuries are all of swollen areas.” (*Id.* at p. 1.) The pictures demonstrate swollen, tender regions around Gibson’s ribs. (Ex. 9, pp. 6, 8.) Medical records from Cermak Health Services, dated January 3, 1990, state that Gibson sought medical assistance because he had been “hit by police” and that “he was beaten up.” (Ex. 4, pp. 16, 21.) Records also reflect he had “bruises on (L) ribs.” (*Id.* at 22.) The emergency room physician, however, noted that there was “no apparent distress” and “no apparent trauma . . . chest wall.” (*Id.* at p. 16.)<sup>5</sup>

## **3. The OPS Investigation**

Gibson was interviewed by Investigator Jose Ortiz by phone from jail on March 13, 1990. (*Id.* at p. 49.) He identified “Detectives Collins and O’Mara” as the aggressors, and stated that they “punched him in the ribs and neck area approximately 30-40 times, kicked him in the groin area twice, and slapped him about 7 times, and further threatened to ‘beat the shit out of him.’” (*Id.*) Gibson noted that he sustained “soreness to his ribs and neck area.” (*Id.*)

All detectives involved submitted affidavits denying any physical abuse was observed or occurred. (*Id.* at pp. 7, 56; Ex. 4, pp. 1-15.) All affidavits were addressed to their “Commander” or “Commander Jon G. Burge.” (*Id.*) The resulting OPS investigation concluded with a finding that Gibson’s claim of physical abuse was “not sustained.” (Ex. 3, p. 6.) Commander Jon Burge signed that he “concur[red]” with that conclusion. (*Id.* at p. 2.)

---

<sup>5</sup> Additionally, after visiting Gibson in jail on January 4, 1990, his sister (Ms. Brown) noted that she “was told by him that he thought he had a cracked rib.” (Ex. 3, p. 16.)

#### D. Suppression Motion

Gibson told TIRC in an interview that his public defender, Paul Stralka,<sup>6</sup> “refused to file any motions.”<sup>7</sup> Accordingly, he filed two *pro se* motions to suppress (after, he said, he watched an episode of Perry Mason featuring such motions). The first sought to quash his December 31, 1989, arrest, which was effectuated without a warrant, and requested suppression of any post-arrest statements. (Ex. 11, pp. 1-2.) The second sought to suppress statements of Johnson, his sisters, and Webb, as well as any materials or photos gathered by the Area 3 police. (Ex. 12, pp. 1-4.) The motion’s third page noted that Webb had identified the Defendant as “Peter Gunn,” but that “for the record the Defendant[’s] name is James Gibson.” (*Id.* at p. 4.) Accordingly, Gibson alleged, Webb “was mistaken [as] to the identity of the Defendant.” (*Id.*)

Appended as Exhibit A to the second motion was an affidavit from Eric Johnson, which stated that he was “taken into area 3-homicide, [a]nd questioned, [and] beaten repeatedly by Detective[s] O’Mara and Collins,” who “coached and forced me to sign a statement of un-true facts concerning a[n] incident in which I had no such knowledge of.” (Ex. 13.) Exhibit B to the second motion included case notes, but also asserted that Gibson “was not adequately advised of [his] constitutional rights” before giving “the statement.” (Ex. 12, p. 4.) Gibson’s public defender, Stralka, did not file a motion seeking to establish that Gibson’s December 27, 1989, detention constituted an arrest without probable cause, nor did he file a motion to suppress statements made during Gibson’s December 27-30, 1989 detention.

The suppression hearing was held on February 14, 1991. Gibson and Stralka were present. (Ex. 14, p. 1.) Stralka and the prosecutor characterized Gibson’s *pro se* motions to Judge Richard Neville as (1) a motion to quash his December 31, 1989, arrest based on a lack of probable cause; (2) a motion to suppress statements of Johnson and other witnesses; and (3) a motion to suppress statements from Gibson after his December 31, 1989, arrest. (Ex. 14 at pp. 4, 65.) Stralka did not argue that Gibson’s December 27, 1989, detention constituted an arrest that was also the subject of Gibson’s motions to suppress, and did not argue that Gibson’s motions extended to include statements taken during Gibson’s December 27-30, 1989, detention. The State called only Detective Moser as a witness, who testified that he elicited a confession from Johnson during interrogation on December 31, 1989. (*Id.* at pp. 15-16.) Based on Johnson’s confession and a conversation with Webb, Detective Moser testified that he and others officers traveled to Gibson’s home and arrested him without a warrant. (Ex. 14 at pp. 15-21, 50, 54.)<sup>8</sup>

Stralka then argued Gibson’s arrest was not based on probable cause, but the court denied that motion based on corroboration from other witnesses. (Ex. 10 at p. 70.) During this argument, the Court asked if Gibson had requested anything in specific be suppressed. Stralka responded that Gibson’s motions only reached his co-defendant’s statements, but noted that “there might be some statements” from his client, but they were “not inculpatory statements” – rather, they were “exculpatory-type statements.” (Ex. 14 at p. 65.) The prosecutor responded that Gibson’s

---

<sup>6</sup> According to the ARDC, Mr. Stralka is deceased.

<sup>7</sup> See *infra*, section II.K.

<sup>8</sup> While Detective Moser testified that Webb never mentioned Gibson’s name during interviews (*see* Ex. 14 at p. 60), the police reports say Webb identified Gibson as the shooter during his final interview. (Ex. 1 at p. 36.)

motions only reached statements after his arrest on December 31, 1989, and that statements from prior interviews were “not the subject of this motion.” (Ex. 14 at p. 66.) Stralka did not object or seek to clarify this response, and Gibson’s motions were denied.

#### **E. Johnson’s Suppression Motion**

Johnson moved to suppress his confession on the basis that it was coerced by physical abuse. (*See* Ex. 22, p. 3.) Johnson testified at his suppression hearing, and stated that after his December 29, 1989 arrest, he was hit in the face, chest, ribs, arms, and stomach, kicked, called racial slurs, and not Mirandized before being interrogated. (*See* Ex. 14 at pp. 104-115.) As a result, he signed a statement he did not write or review because he “was tired of getting beat” and was told that if he signed the statement, he could go home. (*Id.* at p. 114.) Because Johnson could not identify the offending detectives by name, the State put on the testimony of Detectives Moser, Paladino, Maslanka, Collins, Tovar, McCann, Caesar, Rusnak, and Breska, as well as that of ASA’s Riccardo Correa and Linda Peters, all of whom testified they did not observe any torture, did not hear from Johnson that he had been tortured, and did not see any evidence of torture on Johnson. Coupled with the lack of independent corroboration via medical records or pictures, the Court found Johnson was not credible and refused to suppress his statements. (Ex. 23, pp. 10-18.)

#### **F. ASA Trial Evaluation**

Prior to trial, Assistant State’s Attorney Ray Brogan drafted an internal case summary for his superiors that acknowledged “problem areas” in the prosecution. It noted that “[t]he proof that victim Wash was killed by the defendants is entirely circumstantial.” (Ex. 15, p. 3.) Further, “[t]he evidence that defendant Gibson was the actual killer of Benjamin is extremely weak. Gibson was seen with a gun outside the garage shortly before the murder, but the murder weapon was never recovered.” (*Id.*) It then proceeded to describe the evidence against Gibson as follows:

The entire case against Gibson consists of the testimony of Johnson’s two sisters and a witness who saw Gibson with a gun. Johnson’s sisters are not cooperative. The remaining witness initially lied to police and was in fact named by defendant Gibson as the perpetrator of the murder. That witness is now in custody on an armed robbery.

(*Id.*) Nevertheless, the trial assistant recommended the State’s Attorney “[s]eek death as to each defendant.” (*Id.* at p. 4.) The summary did not mention Gibson’s statement placing himself at the scene.

#### **G. Gibson’s Bench Trial**

Gibson chose a bench trial, which began on October 7, 1991, and concluded on October 8, 1991. After calling witnesses present during the shooting (none of whom saw the shots or shooter), the prosecution called Johnson’s sister, Carla Smith. (Ex. 16, p. 45.) Carla testified that on the evening of December 20, 1989, she was in her basement with Eric Johnson and James Gibson. (*Id.* at pp. 53-54.) Gibson stated that he was “starving,” that his “car needed fixing,” and that he “would have to stick up the insurance man” to get money to fix his car. (*Id.*) Carla testified that Gibson said he “will make Mr. Benjamin which is the insurance man panic, and that



he would have to shoot him.” (*Id.* at pp. 54, 55-56.) Carla further testified that, on December 21, 1989, she was upstairs in her house when she heard Gibson saying to her brothers “that he needed some bullets,” and that he was asking for “some .32 bullets.” (*Id.* at pp. 57-58.) Carla testified on cross-examination, however, that when she was asked to come to the police station on December 31, 1989, she was told by officers that Eric Johnson would be permitted to come home if she gave a statement. (*Id.* at pp. 67-68.) Carla also testified that she did not read the written statement she subsequently signed. (*Id.* at 72.)<sup>9</sup>

The State then called Janice Johnson. Janice testified that on the morning of December 20, 1989, she was in her kitchen while Gibson and her brothers were on the porch. She overheard Gibson say that “he was going to do a stick up” of the “insurance man.” (*Id.* at p. 81.) Further, on the night of December 20, 1989, Janice saw Gibson in the basement with her sister, Carla, but did not hear what he was saying. (*Id.* at p. 83.) On cross-examination, Janice also testified that police told her if she made a statement about the case, her brother would come home. (*Id.* at pp. 93-94.) Further, she testified that after Gibson’s arrest, she encountered Webb on the street twice, and each time he told her he had lied to the police. (*Id.* at pp. 95-96.)

The State thereafter called Webb, who first testified that he was incarcerated on an armed robbery charge, and had struck a deal with prosecutors under which he would receive probation for a lesser charge and be released that evening, after he testified. (*Id.* at p. 109.) Webb then testified that on December 22, 1989, he was walking west on 58<sup>th</sup> Street to go get “a bag of dope.” (*Id.* at p. 110.) While walking, he saw Gibson standing by Mr. Wash’s garage with a gun in his hand. (*Id.* at p. 112-114.) Webb then testified that he called out to Gibson, and asked him “What’s up?” Gibson briefly responded with “what’s up,” and then Webb continued walking. Webb also testified that he saw another person, either a male or female, by the back of the garage. (*Id.* at p. 117.) On cross-examination, Webb admitted he had lied to the police at first. (*Id.* at pp. 125-126.) He admitted that he had identified Gibson as the murderer only after he feared he would be charged. (*Id.* at p. 126.) Webb then admitted he expected to get out of jail that evening based on his deal with prosecutors, that he had previously received one year of supervision for unlawful use of a weapon, and that his armed robbery charge stemmed from the alleged use of a pistol. (*Id.* at pp. 128, 135, 156-158.)

On the second day of trial, the state called Detective Moser to introduce Gibson’s inculpatory statement. Stralka objected to the statement as hearsay. During the ensuing argument, the judge noted that “I have not heard it before. No one has shown it to me. We did not have any pretrial motion on it.” (Ex. 17, pp. 5-6.) The judge permitted Detective Moser to testify on the basis that he had to “hear what the statement is and how they intend to fit it in in order to decide whether it is admissible as an exception to hearsay.” (*Id.* at 7.) Detective Moser testified that he took a statement from Gibson at around 7 p.m. on December 30, while accompanied by Detectives McCann and Caesar. In this statement, Gibson told detectives he “was outside the garage at 1118 West 58<sup>th</sup> Street” at the time of murders, and saw Keith Johnson hand a handgun to Fernando Webb,” whereafter “he observed Fernando Webb shoot both victims outside the garage.” (*Id.* at pp. 9-10.) Detective Moser further testified that Gibson told detectives he had overheard conversations between Johnson and Webb regarding planning the

---

<sup>9</sup> Carla’s written statement contains only part of her in-court testimony, and contains date discrepancies with her testimony as to when the alleged conversations occurred.

robbery. (*Id.* at p. 10.) Gibson's attorney then renewed a motion *in limine* to exclude the statement, to which the judge responded as follows:

Well, I think that based on what I have just heard Mr Gibson puts himself in this statement at the scene of the incident and also indicates that he knew the incident was going to take place for some time before. I suppose that based on that scenario the State can argue inferentially that he was doing something there to assist, and I think that's sufficient to allow them to put it in. What weight I give to it and what else happens with it, I suppose depends on what other evidence I hear in the case, but for the moment, based on what the officer just testified to, the motion in limine is denied and the statement is allowed into evidence.

(*Id.* at p. 11.) Additional argument ensued, and the court admitted the statement as an admission or as a statement against penal interests. (*Id.* at pp. 12-13.) Johnson did not testify during Gibson's trial, and his confession was not introduced during trial.

Based on the evidence presented, the judge found Gibson guilty. In so finding, the court concluded both Johnson's sisters and Webb were credible. The judge also found, however, that if Webb were the sole witness, "his testimony would not be sufficient on its own to convict anyone, including Gibson." (*Id.* at p. 43.) Instead, the court found that "the statement from Gibson is of extreme importance to my finding as it corroborates the testimony of both the sisters and Fernando Webb and more than just some slight details." (*Id.* at p. 46.) Accordingly, the court explained, "I think that that testimony and that evidence coupled with Gibson's knowledge of the robbery and being at the location in his own words are sufficient to prove Gibson guilty of this crime for both murders beyond a reasonable doubt, and I find him guilty." (*Id.*)

## **H. ARDC Complaint**

Gibson immediately filed an ARDC complaint against his attorney, Stralka, on the basis that he did not permit Gibson to testify and did not present Gibson's alibi defense. (Ex. 18.)<sup>10</sup> That defense would have consisted of testimony from three individuals that Gibson awoke around 10:30 AM on December 22, went to retrieve a battery charger, and returned home with said charger. (Ex. 24, pp. 1-2.) The court later denied a motion for judgment of acquittal based on the lack of sufficiently credible witnesses to support a conviction, and sentenced Gibson to life in prison. (*See* Ex. 25.)

## **I. Gibson's Appeal and Post-Conviction Motions**

In 1993, Gibson appealed his conviction on two principal grounds: (1) the State's failure to prove his guilt beyond a reasonable doubt based on credibility and bias issues surrounding the three principal witnesses; and (2) ineffective assistance of counsel based upon his lawyer's failure to call alibi witnesses. *People v. Gibson*, No. 1-92-2306 (1<sup>st</sup> Dist. Sept. 3, 1993) (Ex. 26, pg. 1.) The Appellate Court found the evidence sufficient to support a conviction. (*Id.* at p. 11.) It also found Mr. Stralka's failure to call alibi witnesses did not constitute ineffective assistance of

---

<sup>10</sup> Gibson's initial ARDC complaint was not located in the file, but Exhibit 18 sets forth Stralka's response thereto.

counsel because (1) Gibson failed to identify the respective witnesses and their testimony, and (2) Stralka was competent when his actions were viewed in context, given that he argued a motion to suppress, conducted cross-examination of trial witnesses, raised objections, and provided a “strong” closing. (*Id.* at p. 12.) Gibson filed a *pro se* writ to the Illinois Supreme Court in 1994 and the U.S. Supreme Court in 1995, but both were denied. (Ex. 27.)<sup>11</sup>

Gibson thereafter filed successive post-conviction petitions alleging ineffective assistance of counsel based on his trial counsel’s (1) deprivation of Gibson’s fundamental right to testify, and (2) failure to present the testimony of alibi witnesses. These petitions were denied in the Circuit Court. The Appellate Court affirmed, finding that Gibson was adequately informed about his right to testify and knowingly waived that right. The Appellate Court also found Stralka’s failure to present alibi witnesses did not materially alter the outcome of Gibson’s trial. (Ex. 28 at pp. 6-7.)<sup>12</sup> The Illinois Supreme Court denied a writ of certiorari. (Ex. 19, p. 1.)

In 1999, Gibson filed another petition for post-conviction relief, alleging that the prosecution knowingly induced Carla Smith to offer unfavorable perjured testimony, and relied upon such testimony in its closing. (Ex. 19, p. 1.) He also alleged ineffective assistance of counsel based on his trial attorney’s failure to interview and call the victim’s wife – who would purportedly contradict Carla Smith’s testimony – and his appellate attorney’s failure to procure the transcript from his second day of trial. His petition was denied by the Circuit Court and on appeal. (Ex. 19 at pp. 1-2.)

In 2003, Gibson sought a writ of habeas corpus from the Northern District of Illinois. He again alleged ineffective assistance of counsel based on Stralka’s (1) failure to present alibi witnesses and an alibi defense, (2) failure to permit Gibson to testify at trial, (3) failure to interview Mr. Benjamin’s wife and investigate her testimony, and (4) failure to provide Gibson a legible copy of the police reports. Gibson also alleged the prosecution knowingly introduced the perjured testimony of Carla Smith and committed misconduct when such testimony was used at trial. Finally, Gibson alleged ineffective appellate counsel. (Ex. 19, p. 2.) The district court denied Gibson’s petition. It first found Stralka’s counsel was not ineffective. It then explored Gibson’s contentions regarding Ms. Benjamin. Gibson provided an unsigned and not-notarized affidavit allegedly from Ms. Benjamin that stated her husband had not been robbed the week prior, which would contradict Carla Smith’s testimony. He also provided an affidavit of a William Marshall that stated Carla Smith informed him she had lied on the stand. The court found failure to present this testimony did not constitute ineffective assistance of counsel, and found no evidence the prosecution knew it was introducing perjured testimony. (Ex. 19, p. 4.) Gibson’s subsequent petitions for reconsideration and leave to appeal were thereafter denied.<sup>13</sup>

In 2005, Gibson filed a successive petition for post-conviction relief, alleging that his right to confrontation was violated when a statement by Eric Johnson was introduced at this trial.

---

<sup>11</sup> The Illinois Supreme Court’s denial was not found in the record or via electronic search, but a 2012 post-conviction petition filed by Gibson confirms this writ was denied in 1994.

<sup>12</sup> Exhibits 28, 31, and 32 were received from the Circuit Court Clerk without even-numbered pages.

<sup>13</sup> Additionally, the TIRC’s investigation did not uncover any record of Gibson filing a claim with the Office of the Special Prosecutor.

(Ex. 29.) This petition was denied. He thereafter filed another post-conviction relief petition in late 2012, and alleged that introduction of Mr. Johnson's physically coerced confession at his trial was necessarily not harmless error. (Ex. 30, pp.1-2.) He also argues that, had this fact been established when his motion to quash his arrest was filed, that motion would have been decided in his favor. (Ex. 30, p. 7.) This petition appears to be pending.

#### **J. Johnson's Post-Conviction Release**

Johnson was convicted by a jury under a theory of accountability, and sentenced to life in prison. He first appealed on two bases: (1) that he did not "murder" anyone, as that term is commonly understood, and should therefore receive a remand for re-sentencing; and (2) that imposition of a sentence of natural life was cruel and unusual. (Ex. 31, p. 1.) The Appellate Court affirmed his conviction. (Ex. 31, p. 3.) Johnson thereafter separately sought post-conviction relief on the basis that his trial counsel was ineffective for failing to investigate the crime scene and interview certain alibi witnesses, and that the statute under which he was sentenced was unconstitutional. (Ex. 32, p. 2.) Both avenues for post-conviction relief were denied. (Ex. 32, pp. 2, 5.)

In 2006, Johnson filed another post-conviction petition alleging actual innocence based on the introduction of a coerced confession via physical abuse by Area 3 detectives, which appended the special prosecutor's investigative findings regarding torturing of suspects at Area 2 (Ex. 33, p 4.). In support, Johnson filed an affidavit stating that Detectives Paladino, Maslanka, Breska, and McCann punched and kicked him in his face and ribs, and made derogatory statements towards him after his December 29, 1989 arrest. (Ex. 20, pp. 1-4.) As a result, he signed a statement confessing to a crime about which he had no knowledge. (*Id.*) That petition was denied by the Circuit Court. (Ex. 33, p. 5.).

In the Appellate Court and with the benefit of new counsel, based on new evidence demonstrating Detectives Paladino and Maslanka physically abused suspects under the watch of Commander Jon Burge during the relevant time period, Johnson reached agreement with the State that he set forth "a *prima facie* claim of newly discovered evidence in support of the contention that his confession was the product of coercion engaged in by detectives under the Command of Jon Burge." (Ex. 20, p. 7.) Based on this new evidence, the State agreed "that an Order granting remand for further proceedings pursuant to 725 ILCS 5/122-2.1(b) [is] warranted." (*Id.* at 7.) The parties therefore reached an agreed summary disposition, and the appellate court remanded Johnson's case for further proceedings under the Post Conviction Hearing Act. (*Id.* at pp. 8-9.) This resulted in a plea agreement, whereby Johnson entered an *Alford* plea to a single count of first-degree murder, and was released based upon time served in 2012. (*See* Ex. 21.)

#### **K. TIRC Claim**

On his TIRC claim form ("Claim Form"), Gibson alleged that he was "kicked, hit, burned, [and] called names" by detectives Paladino, Maslanka, McCann and "several others." (Ex. 10, pp. 2-3.) Gibson participated in a recorded interview with TIRC investigators on June 6, 2014. In his interview, Gibson claimed he was punched, kicked, slapped, and burned during his detainment in December 1989. He recalled being kept at the Area 3 police station for at least a

two-day period over December 29 and 30, 1989, and stated he was physically abused by detectives "Pandolis" and "Malasky" – as well as officers "McCain" and "Caesar."<sup>14</sup> He alleged he was kicked in the chest by officer Malasky. He then alleged for the first time that, during interrogation, detectives Pandolis, Malasky, McCain, and Caesar had used a clothes iron to burn off a tattoo on his right arm that read "Peter Gunn." He stated that he was then taken to 11<sup>th</sup> & State for a lie detector test, where he was grabbed by his neck and hit on his back and sides by detectives McCain and Caesar. After his lie detector test, Gibson was attacked a final time when asked to sign a written statement that he was responsible for the murder. To "make the beatings stop," he orally stated that he was at the garage and saw Johnson and Webb carry out the murders.

Gibson said he was presented with a written statement, but he refused to sign it. He noted he was only read his rights after being arrested the second time (December 31, 1989). He said he had informed Cermak staff and his public defender that he had been beaten and burned by the police.

#### **L. TIRC Investigation**

The TIRC's investigation included substantial evidence gathering and review. The Commission subpoenaed records from Chicago Police Department, the Circuit Court, OPS, and the Office of the Cook County Public Defender. The TIRC also obtained post-conviction relief petitions, appellate briefs and opinions, and documents maintained by Gibson. The TIRC conducted a recorded interview of Gibson on June 6, 2014, and obtained an opinion from a forensic pathologist.

The forensic pathologist reviewed Gibson's Cermak medical records and contemporaneous photographs of Gibson's alleged injuries taken by his public defender's investigator. The pathologist observed that the photographs appear to show "swelling" and a "subtle contusion of the underlying subcutaneous tissues." (Ex. 34, p. 2.) While the pathologist noted that examining the original photographs would help, he offered a preliminary opinion to a reasonable degree of medical and pathologic certainty as follows:

These findings are consistent with Mr. Gibson's allegations of being punched in the chest, bilaterally. Such injuries can also be seen due to other causes of such trauma. For that reason, while the findings are consistent with Mr. Gibson's allegations, they are not conclusive that Mr. Gibson's allegations are true. Nevertheless, the four photographs are consistent with those allegations.

(Ex. 34, p. 2.)

---

<sup>14</sup> These names are spelled phonetically for accuracy, though the recorded interview confirms Gibson was referring to Detectives Paladino, Maslanka, McCann, and Caesar.

### III. CONCLUSIONS

#### A. PATTERN AND PRACTICE

Pattern and practice evidence supports Gibson's claim. *First*, there is credible evidence linking Jon Burge to the officers at issue and Gibson. When responding to Gibson's OPS complaint, detectives indicated their commander at the time was Jon Burge. (*See* Ex. 3 at pp. 7, 56; Ex. 4, pp. 1-15.) Mr. Burge then signed off as concurring with the result of the OPS investigation. (*See* Ex. 3 at p. 2.) Further, Gibson's sister alleges Jon Burge was present at the Area 3 station when she sought to determine Gibson's status during his initial detention, and that Mr. Burge informed her Gibson was not a suspect and would be released soon. (*See* Ex. 7, p. 1.)

*Second*, Detectives Paladino and Maslanka, who Gibson claims participated in his physical abuse, have been previously identified in other cases of torture. (*See, e.g.*, Ex. 20 at pp. 6-7.) Moreover, Detectives Collins, O'Mara, and McCann were identified by Johnson as engaging in identical physical abuse to that alleged by Gibson at the same time and when investigating the same crime. (*See* Ex. 13; Ex. 20 at pp. 1-4.)

*Third*, the physical abuse described by Gibson—at a time when the widespread torture of suspects by Burge and detectives under his command was not generally known—mirrors that described by other claimants as carried out by Mr. Burge and his subordinates.<sup>15</sup>

#### B. GIBSON'S CREDIBILITY

Gibson alleges detectives physically abused him to obtain an inculpatory statement.<sup>16</sup> As described below, there are elements that support and detract from his claim. Nevertheless, despite concerns about Gibson's credibility, the Commission finds there is sufficient corroborating evidence of torture such that judicial review is warranted.

##### 1. Corroborating Elements

There is substantial contemporaneous evidence corroborating Gibson's claim. *First*, after being returned home following three days of detention and his inculpatory statement, Gibson immediately filed a complaint with OPS alleging physical abuse. This was triggered by his sister's response to his physical appearance and state.<sup>17</sup>

*Second*, physical and documentary evidence support Gibson's claim. Gibson informed his public defender he had been physically abused, and photographs taken by the public defender's

---

<sup>15</sup> *See, e.g., In re Claim of Kevin Murray* at p. 1 (Claim No. 2012.108-M) (detailing detectives slapping, hitting, punching, kneeling, and kicking him).

<sup>16</sup> A "tortured confession" includes inculpatory statements. *See* 20 Ill. Adm. Code § 2000.10 (defining term to include "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").

<sup>17</sup> His sister's credibility is bolstered by the fact that she was a member of the U.S. Army home on leave.

investigator on January 2, 1990, portray Gibson's swollen, bruised ribs. A forensic pathologist opined preliminarily that these pictures are consistent with Gibson's claim—though not conclusive. Further, Cermak records indicate Gibson told doctors he had been hit and beaten by the police, and sought medical assistance on that basis. While detectives denied all claims of torture or abuse as part of the OPS investigation, the records reviewed contain no other explanation for Gibson's injuries. The Commission credits this contemporaneous evidence.

*Third*, Gibson's claims mirror those of Johnson, who claimed his confession was coerced by torture when seeking and receiving post-conviction relief. Gibson was interrogated by the same detectives, at the same time, in the same station, and for the same alleged crime. He claims the same detectives physically abused him, and did so in the same manner (via slaps, punches, kicks, and threats).<sup>18</sup>

## 2. Inconsistencies

There are, however, inconsistencies in Gibson's claim that undermine his credibility.

*First*, there are inconsistencies between Gibson's Claim Form, interview, and OPS complaint. Gibson accused different officers of torture over time. During the OPS investigation, Gibson told the investigator that he was beaten by Detectives Collins and O'Mara. On his Claim Form, however, he alleges that he was beaten by Detectives Paladino, Maslanka, McCann, and "several others." Further, his Claim Form was filed after his co-defendant, Johnson, asserted similar facts in his ultimately successful post-conviction petition. The Commission, however, recognizes this inconsistency may be explicable in context. Gibson's original OPS complaint refers to "at least two unknown male/white detectives" as his abusers, and his Claim Form references "several other[]" unnamed detectives. The two are therefore not mutually exclusive. Further, Gibson's recollection mirrors that of Johnson, who initially identified Detectives Collins and O'Mara as inflicting his physical abuse, and subsequently identified Detectives Paladino, Maslanka, and McCann—all of whom were involved in the interrogations of both Gibson and Johnson. (See Exs. 13, 20.)

*Second*, Gibson's Claim Form asserts that he was "burned," and he stated during his June 6, 2014 interview that a "Peter Gunn" tattoo on his right arm was burned off by detectives. Gibson made no mention of being "burned" in his OPS complaint. There is no evidence in the record to support this assertion, which was first made before this Commission.<sup>19</sup> Further, because Mr. Gibson was identified by Webb and Johnson as being "Peter Gunn," he had reason to remove this tattoo himself—as it could incriminate him. Indeed, in his second *pro se* motion to suppress, he alleged mistaken identity on the grounds that he was not "Peter Gunn."

---

<sup>18</sup> See *In re Claim of Jackie Wilson* at p. 4 (Claim No. 2011.021-W) (finding that because "Jackie Wilson was accused of the same crime and interacted with some of the same officers and same prosecutor, Andrew Wilson's torture makes it more likely that Jackie Wilson was also tortured").

<sup>19</sup> On July 7, 2015, the TIRC was notified by the IDOC that it had three volumes of Gibson's medical records available upon request. Based upon the lack of corroboration in the Cermak Hospital records, however, the Commission chooses not to credit this allegation. Since the IDOC records could not have verified that a tattoo was removed during police custody, Commission staff did not obtain these records.

Accordingly, there is a significant chance Gibson fabricated this assertion to minimize his potential guilt and/or to increase the severity of the claimed torture.

*Third*, although Gibson filed two *pro se* suppression motions before his trial, neither alleged that he was physically abused. However, the Commission recognizes this may be, in part, due to strategic choices by Gibson's public defender to forego raising this issue—which may have been reasonable in context. During his interview, Gibson stated Stralka “did not see a need” to file a motion to suppress. This led Gibson to draft and file *pro se* motions to suppress seeking relief on other bases, and Stralka to argue such motions on those limited bases at the suppression hearing. Further, as the suppression hearing and trial transcripts make clear, neither Gibson, Stralka, nor the judge were aware that inculpatory oral statements from Gibson's first detention would be used at Gibson's trial. Indeed, Gibson's inculpatory statement is not even mentioned in the prosecutor's internal case evaluation, which was drafted just two weeks before trial. Accordingly, Stralka's tactical decision could be responsible for Gibson's framing of the suppression issues and his failure to maintain his torture claim before the court.

### **3. Weighing Credibility Concerns**

These inconsistencies raise serious questions about Gibson's credibility, and the Commission does not believe that Gibson has consistently told the entire truth. In particular, the Commission is not finding that Gibson is likely innocent.<sup>20</sup>

Nevertheless, the Commission finds that concerns about Gibson's credibility in general are outweighed by the contemporaneous evidence corroborating Gibson's claim. The core of Gibson's claims has remained constant over time (with the exception of the recent embellishment adding the burning of the tattoo). More importantly, Gibson's claims were immediately reported, and evidence of his injuries were observed by a family member and documented in photographs and medical records. Further, a medical expert suggests the photos and records are consistent with Gibson's claims. Coupled with the irregularity of Gibson's extended detention, the parallel allegations in Johnson's case and, as explained next, the otherwise weak evidence of Gibson's guilt, the Commission concludes Gibson's claim is sufficiently credible to recommend judicial review.

#### **C. WEIGHT OF THE EVIDENCE**

The trial judge found Gibson's inculpatory statement to be of “extreme importance” in securing his conviction. The testimony of a heroin addict already in jail for an alleged armed robbery provided the only other evidence of Gibson's presence at the crime scene, and was deemed by the trial judge to be insufficient standing alone to warrant conviction. That witness, Webb, did not identify Gibson until after he was informed Gibson had identified *him* as the shooter—and only after offering two other inconsistent stories to detectives. Johnson's sisters provided biased, inconsistent testimony based on statements overheard days before the murders, and testified that they had initially only made statements to police because they were told that Johnson would be released if they did. There were no other witnesses who could identify the shooter, no murder weapon was recovered, and no other direct evidence was found. The trial

---

<sup>20</sup> Gibson's denial that he is Peter Gunn raises substantial questions on that point.



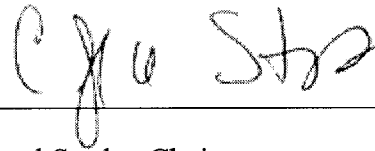
prosecutor's internal case evaluation characterized the evidence as to whether Gibson shot Benjamin as "extremely weak," and the proof either defendant killed Wash as "entirely circumstantial." This internal evaluation did not mention Gibson's inculpatory statements.

Police officers had a difficult time obtaining enough evidence to even charge Gibson. Area 3 detectives held him for three days without obtaining enough evidence to support a charge. They returned Gibson to his residence on December 30, 1989, because the Felony Review Unit expressly found there was insufficient evidence to charge him. Though this occurred after obtaining Gibson's inculpatory statement, the Commission believes police likely recognized this shortage of evidence prior to December 30, 1989, and had a correspondingly strong motive during Gibson's initial detention to secure a coerced inculpatory statement.

**D. FINDING**

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Adm. Code §§ 3500.385(b) and 3500.386, the Commission ("TIRC") concludes that, by a preponderance of the evidence, there is sufficient credible evidence of torture to merit judicial review.

DATED: July 22, 2015



---

Cheryl Starks, Chair  
Illinois Torture Inquiry and  
Relief Commission