

# BEFORE THE TORTURE INQUIRY AND RELIEF COMMISSION

In re:

Claim of Jerry Mahaffey

TIRC Claim No. 2011.043-M

## AMENDED CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Adm. Code 3500.385(b), the Commission concludes by a preponderance of the evidence that there is insufficient evidence of torture to merit judicial review. This decision is based upon the Findings of Fact and Conclusions set forth below, as well as the supporting record.

### SUMMARY.

Jerry Mahaffey and his brother Reginald were convicted of committing a brutal 1983 home invasion involving rape, two murders, and the attempted murder of a child. Each signed a confession. Jerry claimed shortly after his arrest that he was punched in the nose, struck, and threatened into confessing by Chicago police. He also has claimed he is innocent.

The Commission does not find Jerry Mahaffey to be a credible witness, does not find that he is innocent, and does not find sufficient corroborating evidence of torture such that that the Commission believes the Circuit Court should review Mahaffey's claim that he was coerced into confessing.

Evidence potentially corroborating Mahaffey's claim includes:

- a post-arrest police photo that, while not showing major injuries, appears to show a cut or scratch to his nose and possibly dried blood, as well as an apparent bruise to his left temple
- a medical opinion that the photo, while not conclusive, is consistent with Mahaffey's claim;
- medical records that show one brother, Terry (who was arrested with Jerry but not charged with the crime) was treated at Cook County Hospital for a beating within days of his release;
- a statement by Jerry's trial counsel that Jerry told him the details of the beating at their first meeting, shortly after his arrest; and
- testimony by two of Mahaffey's siblings that they saw or heard evidence of police abuse.

In addition, there have been a series of allegations against some of the detectives who arrested Mahaffey, some of which have been accepted by courts. Two of these detectives have asserted the Fifth Amendment in response to questioning by Commission staff.

Evidence not indicative or countering the claims of torture includes:

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- Jerry Mahaffey’s extensive criminal history, which weighs heavily against his credibility;
- The September 3, 1983, Cermak Hospital (the jail hospital) intake form notes no bruises or cuts and reported that Jerry Mahaffey stated he was in good health;
- Irv Miller, the Assistant State’s Attorney who took Jerry Mahaffey’s court-reported confession, voluntarily spoke with TIRC staff, and voluntarily appeared before the Commission, told TIRC he saw no signs of abuse or coercion on Mahaffey, nor did he see detectives engage in any coercive behavior. Prior to the court-reported statement he took, he asked Jerry Mahaffey how he had been treated by police, and Mahaffey reported no abuse.

## I. FACTUAL BACKGROUND.

### A. The Crimes.

The home invasion was vicious and depraved. JoEllen and Dean Peuschel were killed in their home in the Rogers Park area of Chicago by two robbers, in the presence of their then-11-year-old son, Richard. The robbers entered through an open window in the early morning hours of Monday, August 29, 1983. The violence was horrendous. JoEllen was raped and pistol whipped. Both JoEllen and Dean were beaten with baseball bats. The coroner counted thirteen stab wounds on Dean.

Richard was awakened by the robbers, and forced to lie on the floor in the dining room. He watched his mother, crying, being held and beaten. He himself was choked and beaten to unconsciousness. He awoke in the morning and saw his parents dead. His left eye was swollen shut, and he had a fractured skull, multiple stab wounds to the back, and a life-threatening brain hemorrhage.

Richard went outside and met his grandfather, Joseph Heinrich, who was searching for him because Richard had not been dropped off, as Joseph had expected. Richard told Joseph that JoEllen and Dean were dead. Joseph went into the house and found his daughter and son-in-law.

The family and police found that the Peuschels’ car, firearms, jewelry, and other items were stolen. The police canvassed the area and spoke with neighbors. Police officers obtained a description of two people seen in the area that did not match Jerry and Reginald.<sup>1</sup>

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<sup>1</sup>For additional facts of the crime, see, e.g., *Mahaffey v. Schomig*, 294 F.3d 907, 910-11 (7<sup>th</sup> Cir. 2002), *cert. denied*, 537 U.S. 1120 (2003); *People v. Mahaffey*, 194 Ill. 2d 154, 162-65 742 N.E.2d 251(2000), *cert. denied*, 534 U.S. 1029 (2001); *People v. Mahaffey*, 166 Ill.2d 1, 651 N.E.2d 1055 (1995); *People v. Mahaffey*, 128 Ill. 2d 388, 539 N.E.2d 1172 (1989), *cert. denied*, 497 U.S. 873, 1031 (1990).

B. The Information from Cedrick Mahaffey.

Early in the morning on Friday, September 2, 1983, Cedrick Mahaffey contacted police after giving his brother Jerry a ride. Sgt. John Byrne and Det. Charles Grunhard met with Cedrick at 95<sup>th</sup> and State. He told police he knew who committed the double murder on the north side a few days earlier. He correctly described guns that were taken from the Pueschels' apartment, and produced a video cassette that was taken. At first, Cedrick would not identify the criminals, but eventually identified Jerry and Reginald and was met by Sgt. Byrne and other officers.<sup>2</sup> Cedrick said that the Tuesday following the crimes, Jerry went to Reginald's house where they divided the property. Jerry took a rifle, Atari game, and video recorder to their brother Terry's apartment. Earlier that night, Cedrick said that he had helped Jerry move some of the property taken during the break-in, and he showed Byrne a video cassette taken from the victims' residence. 128 Ill. 2d at 398-401.

Cedrick then directed Byrne to the different apartments where Jerry, Reginald, and a third brother, Terry Mahaffey, lived.<sup>3</sup> As they approached Reginald's apartment, the police car passed within 10 or 15 feet of Terry, who was standing on a street corner. According to Byrne's testimony at the suppression hearing, Cedrick screamed and pulled a towel over his face, and that Cedrick said that he feared that Terry might tell Reginald, who lived nearby, that Cedrick was with the police. Cedrick pointed out Terry's and Reginald's apartment to the officers. Cedrick later identified Jerry's apartment, on the south side of the city, and said that stereo equipment and video cassettes could be found there.<sup>4</sup>

Byrne dropped off Cedrick at the police station, gathered other officers, and went first to Reginald's apartment, and then to Jerry's. 166 Ill. 2d at 21-23.

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<sup>2</sup>Jerry Mahaffey had a long record. In 1972 and 1973, charges were dropped for criminal trespass to land and armed robbery. In 1974, Jerry received three years probation for robbery. Failing to complete it, he was convicted of robbery in February, 1976 and sentenced to six months. He received 50 days for tampering with a motor vehicle in September, 1975. In 1976, Jerry was convicted of three different thefts. In February, 1981, Jerry was convicted of criminal damage to property and in July, 1981, he was convicted of robbery and sentenced to four years. In November 1982, Jerry was acquitted of rape. *See Mahaffey Criminal History*, reprinted as App. B to 1/22/14 Mahaffey family presentation; *People v. Mahaffey*, 128 Ill. 2d at 405.

<sup>3</sup>Byrne testified that Cedrick told him Terry had nothing to do with the murders. (2/9/84 Tr. at 83.)

<sup>4</sup>For descriptions of the events leading up to and including the arrests and interrogation, *see* the police reports attached as Exhibits 20-21, and the cases cited in note 1 above.

Note that Cedrick's 2015 description of events leading up to the arrests of his brothers was generally consistent with Sgt. Byrne's trial testimony, with some exceptions. For example, Cedrick said that the officers in the police car asked Cedrick to hide when driving past his brothers' apartments. They did, however, ask him to poke his head up to identify his brothers on the street. In doing so, an officer pointed a gun at Cedrick. (Cedrick Dep. at 15-16; 37-42)

C. The Arrests.

Reginald and Jerry were both arrested that evening. Their brothers Terry and Roosevelt (who lived with Terry) were also taken into custody.<sup>5</sup>

1. Reginald's Arrest.

At the suppression hearing, Sergeant Byrne testified that he and several other officers drove to the apartment where Reginald lived, arriving around 4:15 in the morning. They knocked on the door, and a Morriell Redmond let them in. According to Byrne, the officers explained that they wanted to talk to the defendant about a double homicide. Redmond pointed to the rear of the apartment and said that the defendant could be found there. As Sgt. Byrne and another officer walked toward the rear of the apartment, Redmond signed a form consenting to a search of the premises. Through an open doorway, the officers saw Reginald lying on the floor in a bedroom. He was placed under arrest and various items of property belonging to the Pueschels were recovered from the scene.<sup>6</sup> Sergeant Byrne's partner, Detective Charles Grunhard, also testified at the hearing, stating that Redmond had signed the consent form voluntarily. 166 Ill. 2d at 22-23; 194 Ill. 2d at 162-65.

Reginald and Redmond testified to a different story. As discussed more fully below, Reginald testified that he was struck and kicked in the groin at the time of his arrest. Morriell Redmond testified that he heard the beating. In addition, Redmond testified that he was forced to sign a consent-to-search form at gunpoint.<sup>7</sup> 166 Ill. 2d at 20-21; 194 Ill. 2d at 160-62.

2. Jerry's Arrest.

At the suppression hearing, Sgt. Byrne testified that he arrived at Jerry's apartment with other officers at about 5:40 a.m. on September 2. He said that he knocked on the door and, with Detective Grunhard, showed his identification to Jerry's wife Carol, who allowed them to enter.

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<sup>5</sup>One set of police arrest reports shows that Reginald was taken into custody at 4:15 a.m., and Roosevelt (who was staying with Terry) was arrested at 4:45 on an outstanding warrant. Exhibit 20. We did not receive a formal police report showing the arrest of Terry; only an arrest card, showing that no charge was brought against him, and he was arrested at 4:30 a.m. See Exhibit 17.

Police reports show two different times for the arrest of Jerry: one shows 5:00, see Exhibit 20, and other reports show 5:40, see Exhibits 17, 21.

<sup>6</sup>A partially loaded .357 magnum revolver found on the night stand next to where Reginald was lying when found by police had red blood stains. (R.2539-2540) The blood was determined to be the same type as JoEllen Pueschel's. (R.2818) In the closet, police found a stereo dust cover with 24 pieces of jewelry. From the night stand, boxes of bullets and shotgun shells were recovered, along with a shotgun. JoEllen's mother identified some of the jewelry as belonging to Dean, JoEllen, and Richard. Reginald was wearing a man's ring with a blue stone, and carrying a Seiko watch and a yellow chain with a crucifix. These were identified as Dean's.

<sup>7</sup>Redmond also testified that he had told the police he rented a room to Reginald; Byrne denied that. The tenancy status could have mattered as to whether Redmond had authority to consent to the search.

He said they walked up to Jerry and arrested him and Det. Grunhard gave Jerry his *Miranda* warnings. There was no testimony of a struggle with Jerry.

Byrne said that Carol asked if she could take her daughters out of the apartment, and voluntarily signed a consent-to-search form. All of the detectives denied abusing Jerry.

Carol and Jerry told a different story, saying that the officers pushed their way in past Carol at gunpoint. Jerry testified that after he denied knowing about any murders, Grunhard punched him in the nose, causing it to bleed. Another officer then grabbed him by the collar, threw him against the wall, and put a gun to his head. The officers put him on his daughter's bed and kicked him in the groin and ribs. The officers threatened to put his children in an orphanage and his wife in prison. They retrieved a plastic garbage bag from the closet and tightened it over Jerry's head so he could not breathe. He said he was screaming.

He said that he was wearing a pajama top and bottom, but the police had him change after his pajama top became bloodied due to his bleeding nose. He said the pajamas were put in a plastic bag and removed. Jerry said he was taken to Area 2. He was not hit in the car or at the station, but he was threatened with death in both places.

Carol said that Jerry was bruised when he was taken out of the apartment.<sup>8</sup> She said she signed the consent to search after he was taken away, and not before.

A number of items were located in Jerry Mahaffey's bedroom closet that were identified by either JoEllen's mother or by Richard as stolen from the Pueschels' home.<sup>9</sup>

D. The Interrogation and Confessions.

Jerry Mahaffey claimed that after he arrived at the station, Byrne and Grunhard came to him in the interview room, tightened his handcuffs, and told him to tell them what he knew because he was going to die.

Jerry was formally questioned by a Detective from Area 6. ASA Irv Miller then questioned Jerry. Between 1:00 and 1:30 p.m., Jerry gave a court-reported 20-page confession, which was signed at 4:35 p.m. in the presence of ASA George Velcich. Per standard practice, a photo was taken of Jerry at about the time he signed the confession. A copy is attached as Exhibit 1.

Jerry's confession is attached as Exhibit 2. In general, it admits that he and Reginald committed the crimes, and describes how they were committed.

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<sup>8</sup> At trial, Carol testified that Jerry "had a frightened look on his face and his face was, looked like it had bruises on it because he was, he was dark, he was darker." R. 3391. She was extensively cross-examined about the alleged bruises. R. 3487-3488.

<sup>9</sup>These included a video recorder and video cassettes and video games. 166 Ill. 2d at 7. One video tape was of the Pueschels' wedding. (R.2230)

Reginald Mahaffey signed a 23-page written confession based on questioning by ASA Miller. In the statement, Reginald admitted participating in the robbery, murders, rape, and beating of Richard.<sup>10</sup> A copy is attached as Exhibit 3.<sup>11</sup>

Jerry and Reginald were taken to a lineup, which occurred at about 6:30 p.m. on Sept. 2. Copies of photos taken at the lineup are attached as Exhibit 5.<sup>12</sup>

E. The Escape and Recapture.

While awaiting trial, Jerry and Reginald participated in an armed escape from Cook County Jail. Both brothers pled guilty to the escape. *See Bivens v. Hulick*, 2008 WL 5427748 (N.D. Ill. 2008); *People v. Bivens*, 156 Ill. App. 3d 222, 509 N.E.2d 640 (1st Dist. 1987).<sup>13</sup>

## II. PROCEDURAL BACKGROUND.

A. The Motion to Suppress.

Jerry and Reginald both moved to suppress their confessions, and Reginald moved to quash his arrest.

1. Jerry's Motion.

Jerry's motion said that:

several police officers, particularly Sgt. J. Burn [sic], Det. Yucaitis, Leracz, Binkowski, Kushner, Grunhard, Lottito [sic] and Boffe [sic] told the Defendant, in order to induce a confession, that if he didn't tell them "where he received the property, he would fry that night."

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<sup>10</sup>Reginald's statement was summarized by the Seventh Circuit in *Mahaffey v. Schomig*, 294 F.3d at 912-13. Jerry's and Reginald's statements were generally consistent, but there were some differences, including: (i) the descriptions of the reason they abandoned their initial plans; (ii) each claimed the other stabbed Richard; (iii) each claimed that he took the stolen property to the car; and (iv) the descriptions of the sex acts they required JoEllen Pueschel to perform. *See U.S. ex rel. Mahaffey v. Peters*, 978 F. Supp. at 765 n.1.

<sup>11</sup>Cedrick Mahaffey also gave a court-reported statement. A copy is attached as Exhibit 4. Handwritten notes of the police reports of Reginald's and Cedrick's statements to police are attached as Exhibit 22.

<sup>12</sup>A booking photo of Jerry, dated the next day, September 3, is attached as Exhibit 6.

<sup>13</sup>The escapees obtained two guns from a prison paramedic who was paid to smuggle them, threatened guards at gunpoint, stole their uniforms, and proceeded out. Reginald was recaptured inside the jail complex. Jerry was recaptured at a housing complex, after robbing as many as 17 people of clothing, money, or other items. Reginald was seriously injured when he fell from a window at the police station following his capture. He subsequently alleged that he was dropped; police said that he jumped. *See Bivens*, 156 Ill. App. 3d at 227. *See also* <http://archives.chicagotribune.com/1984/03/24/page/1/article/6-escape-county-jail>.

The motion also claimed that the officers showed Jerry his brothers, who had been beaten, and that he had also been beaten. Finally, it claimed that he had not been read his rights, and that he had said he did not wish to give a statement. (A copy is attached as Exhibit 7.)

The Illinois Supreme Court summarized the hearing on the motion to suppress:

[D]efendant and his wife, Carol Mahaffey, testified in favor of the motion. Their testimony was essentially as follows. On September 2, 1983, at approximately 5:40 a.m., defendant, his wife, and their two daughters were asleep in their apartment. A knock at the door awakened them. Carol opened the door, and Chicago police officers pushed their way into the apartment with their pistols drawn. Carol and the children were soon thereafter taken downstairs.

During his arrest, police punched defendant in the face, causing his nose to bleed; threw him against a wall and put a gun to his head; kicked him in the groin, causing him to collapse and curl up in a ball; and, while he was incapacitated, kicked him twice in the ribs. The officers then tightened a plastic garbage bag over defendant's head until he could not breathe. Defendant's pajamas were bloodied during the beating, so they were removed. Wearing different clothes, defendant was handcuffed and taken to Chicago police department Area 2 headquarters. In a squad car en route to Area 2, police threatened defendant with death.

At the station, defendant was threatened with death if he did not tell the officers what they wanted to know.<sup>14</sup> No one informed defendant of his constitutional rights. After speaking with an assistant State's Attorney, at 1 p.m., defendant gave an inculpatory statement. It was subsequently typed; an assistant State's Attorney read only the first page of the statement to defendant. Having attained only the eighth grade, defendant signed the statement without reading it.

The State's case, consisting mostly of the testimony of Chicago police officers and assistant State's Attorneys,<sup>15</sup> was essentially as follows. Detectives Boffo, Grunhard, and Gutrich, Sergeant Byrne, and Officer Lotito arrested defendant. Defendant was given Miranda warnings. They did not beat, kick, or otherwise abuse defendant. They allowed him to change his clothes prior to taking him to Area 2 Headquarters.

*People v. Mahaffey*, 165 Ill. 2d 445, 651 N.E.2d 174, 182-83 (1995).

A detective from Area 6 interviewed Jerry at Area 2. Jerry was read his *Miranda* warnings, waived them, and gave a statement. ASA Irving Miller and another detective then

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<sup>14</sup>Jerry identified Officer Grunhard as the officer who hit him in the nose (R.735), and Sgt. Byrne and Officer Grunhard as the officers who threatened him at Area 2 (R.744-45).

<sup>15</sup>Both ASA Irv Miller and George Velcich testified that they saw no evidence of abuse, and Jerry said he had not been mistreated. See Exhibit 12.

interviewed Jerry, after giving him Miranda warnings, and took an inculpatory statement from him. Jerry initialed every page of the statement and signed it at the end. 165 Ill. 2d at 460-61.

The Supreme Court said that a photo of Jerry taken on that day (apparently referring to Exhibit 1) did not reveal any facial bruises, scars, or other signs of abuse. The next day, Jerry was taken to Cermak Health Service, where an EMT did not note any signs of recent physical abuse. *Id.* at 461. Jerry signed a sheet provided by the EMT showing no injuries. (A copy is attached as Exhibit 8.) That form, a "History & Physical Examination" intake form, noted no bruises, cuts, swelling, sores, amputations, bandages, casts, tattoos or birthmarks on a diagram of his body. Scars from historical injuries were noted on the diagram, as was a 1976 operation from a gunshot wound. Under a section for "Chief Complaint," the hospital examiner noted "sts. good health."

Assistant State's Attorney Irv Miller testified at Jerry Mahaffey's motion to suppress and testified that he had asked Jerry Mahaffey, both in the presence of police and by himself, how he had been treated, and that Jerry Mahaffey indicated he had no complaints, and did not indicate he had been coerced in any manner.

Jerry did see a doctor on September 7, after his lawyer obtained a court order requiring the exam. Jerry testified that the doctor had recommended x-rays of the spot where Jerry had claimed he had been kicked by the police. (R.751-52) (Exhibit 9 is a record of the visit.)

Judge Hett denied defendant's motion to suppress his inculpatory statement.

After reviewing the evidence, the court found "that the great weight of the evidence" showed that defendant was not abused at the time of his arrest or questioning leading up to his statement. Further, the court found that "there is no substantial evidence to support the claims of brutality and there is overwhelming evidence to refute them." The court also found by "overwhelming" evidence that defendant was given Miranda warnings, which he understood, at each and every appropriate occasion, and that no one coerced defendant. The trial court concluded that defendant gave his statement knowingly, freely, and voluntarily. [165 Ill. 2d at 461.]

## 2. Reginald's Motion.

Reginald testified that he was arrested at his apartment at approximately 4:15 a.m. on September 2, 1983. He testified that one of the officers kicked him in his groin. Reginald said he then fell to the floor and was kicked in his ribs and in the side of his head. He said that he was struck three times by the police in his apartment by two plain-clothes officers. He said he was also struck once in the forehead in the car on the way to Area 2.

Reginald testified that he was struck with a flashlight again in an interview room at Area 2 by the same detective with curly brown hair who had beaten him at his apartment and struck him in the car. Reginald said that a plastic bag was placed over his head and the detective started



bumping the back of his head against the wall. He said that he was told by police that unless he confessed, he would die. Reginald claimed the officers told him what to say.

Reginald also testified that he informed ASA Miller about the beatings during their first meeting, but that Miller left the room after telling Reginald that he was only there to take Reginald's statement. According to Reginald, after Miller left, the beatings began once again. The detective told Reginald that Miller could not assure his safety.

Reginald said that after he gave his court-reported statement, Miller requested that he read it, and defendant replied that he was unable to read. Miller read him portions of the statement and instructed him on how to correct misspellings in the text. Miller told Reginald to initial and sign the statement.<sup>16</sup>

Reginald's landlord, Morriell Redmond, also testified. He said that he had rented Reginald a room in his basement apartment and that he had opened the door to the police on September 2, 1983. He testified that he did not see the police hitting defendant because he was facing away from the kitchen area, but he heard defendant "hollering" and "screaming." He stated that defendant repeatedly said, "Don't hit me no more." However, Redmond admitted that he never informed anyone about what he overheard.

The State called several witnesses in rebuttal. Several police officers, including Sergeant John Byrne, and Detectives William Kurschner, Raymond Benkowski, and Charles Grunhard, testified that they did not see or hear any abuse while in the apartment.

Detective John Yucaitis testified that he was with Reginald essentially from the moment they spotted him in his bedroom, until his confession in the station. He denied any abuse. Det. Edmond Leracz testified that he accompanied his partner, Yucaitis, and Reginald during the ride to Area 2. He also denied that he struck Reginald..<sup>17</sup>

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<sup>16</sup>Reginald further testified that after he gave his court-reported statement, a paramedic was called because he began vomiting. He said that he told the paramedic that he had a headache and pain in his ribs, but admitted that he did not tell the paramedic that he had been kicked in the head or in the ribs. The Commission did not determine if there are records of the paramedic visit.

<sup>17</sup>Yucaitis testified that he and Byrne were the first of many officers to enter Reginald's apartment and the first to enter his bedroom. Reginald was on the floor, with a loaded .357 Magnum revolver on a night stand near him. Yucaitis gave Reginald a quick pat-down search, picked him up, took him into the kitchen, and advised Reginald of his *Miranda* rights. Yucaitis testified that Reginald then began to give a statement, implicating himself in the crimes at the Pueschel residence. However, Yucaitis admitted that the report he filed did not reflect that Reginald made such a statement at the apartment.

Yucaitis said he put Reginald in the police car and that Reginald confessed in the car, but that he did not record this confession in his report. Yucaitis denied that he struck or kicked Reginald in the apartment or the car. Yucaitis said at Area 2, he took Reginald into an interview room, and Reginald confessed to him again. Yucaitis stated that ASA Miller then arrived. Yucaitis denied that he struck, kicked or hit defendant at any time at Area 2. Yucaitis also denied placing a plastic bag over Reginald head, or that he instructed Reginald what to say in the confession.

ASA Miller testified that a Polaroid photo was taken of Reginald on September 2, 1983, at approximately 6:35 to 6:40 p.m. Miller said the photo showed Reginald seated behind a table, fully dressed, and that no injury was apparent.<sup>18</sup>

Judge Hett denied Reginald's motion. He found that the testimony of the police officers and former Assistant State's Attorney Miller was far more credible than that of defendant and Morriell Redmond. He also noted the lack of physical evidence of injury.<sup>19</sup> While Reginald appears not to have challenged the coercion claim on direct appeal, he did bring it again in a post-conviction proceeding. The claim was denied, and the denial was affirmed. *People v. Mahaffey*, 194 Ill. 2d 154, 742 N.E.2d 251 (2000).

B. The Trial.

At the trial, Joseph Heinrich described finding his grandson Richard outside the apartment, covered with blood, and then finding his daughter dead in the apartment. (R. 2230-37) Richard Pueschel described what he saw the night of the crime. He identified Jerry and Reginald as the criminals, but admitted that he had been unable to identify them in a lineup when he was still hospitalized for his wounds.<sup>20</sup> (R.2379-2458)

The detectives testified as to the course of the investigation. Family members identified the goods stolen from the Puschels' apartment and found in Jerry's and Reginald's apartment. (R.2230, 2234, 2470-83) Officers also testified as to the scientific and other evidence. There was also testimony as to the extent of the injuries of the victims.

Sgt. Byrne testified as to the course of events, and the circumstances of the arrest. After being instructed that the evidence was admissible only against Reginald, the jury heard the details of his conversation with Cedrick, including Cedrick's statements that he knew who committed the murders on the north side, and that his brothers had done it, and beaten the boy. Cedrick told him where the various items of property could be found.

ASA Irv Miller testified as to Jerry's (and Reginald's) confessions. He described how he gave Jerry his rights, interviewed him, and went back and took a court-reported statement. He asked Jerry to make any corrections, initial the bottom of each page, and then sign the last page.

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<sup>18</sup>Robert Muralles, an emergency medical technician at Cook County jail, testified that a medical history and physical examination sheet prepared by Muralles on September 3, 1982, indicated that Reginald exhibited no bruises, cuts, swelling or abrasions.

<sup>19</sup>Judge Hett also denied Reginald's motion to quash or dismiss the arrest because it was conducted without a warrant, and/or because the consent to search was allegedly signed at gunpoint. The judge ruled that the arrest was proper because Redmond consented to the search, and exigent circumstances justified the warrantless entry and arrest. Reginald appealed the motion to quash arrest based on the warrantless entry, and the Illinois Supreme Court eventually affirmed.

<sup>20</sup>Emotions at the trial were heated. There were allegations that some of the spectators were mouthing racial and/or other insults to the defendants and their counsel. The court and the prosecutor said they had admonished the spectators. [Trial Transcript 1\_30\_1985.pdf, at 48-50; Tr.2513-15.]

Jerry was photographed, and then taken to the 24<sup>th</sup> Police District to conduct a lineup for Richard Pueschel. Miller testified that he did not see any signs of abuse.

The defense cross-examined police witnesses and also called several witnesses to try to establish that (1) no scientific evidence tied Jerry or Reginald to the crime, (2) Jerry and Reginald were beaten, and (3) the initial description of suspects by neighbors didn't match them, but maybe matched Cedrick. Jerry did not testify in his own defense.

Jerry's wife, Carol, essentially repeated her testimony from the suppression hearing, saying that the police came into the apartment with guns drawn. She and her two daughters were taken outside and waited for about an hour. (R.3388-90) While outside, she heard Jerry screaming, and what sounded like banging and knocking. (R.3390) When Jerry came out of the apartment, he looked frightened and his face looked bruised. (R.3391) Jerry was wearing pajamas when police arrived, but was wearing clothes when he left the apartment. She looked for the pajamas, but never found them. (R.3391-92) Carol acknowledged that she did sign a consent to search form, but only after the police took Jerry away, and only because the police said they would kill Jerry. When she returned to the apartment, it was messy, and there were plastic garbage bags strewn about the floor. (R.3392-95)

Jerry's brother, Terry Mahaffey, also testified.<sup>21</sup> He testified that the police came to his apartment at 3 or 4 a.m. on September 2, 1983, and broke down his door. They held guns to his head and handcuffed him. Two officers then hit him with their fists and kicked him. He said he was beaten in the apartment for about 20 minutes, then taken to police station on the south side. (R.3491-3507) He said that his brother Roosevelt, who was with him, was also taken to the police station. (R.3494) Terry testified that he did not see the police take anything from his apartment. (R.3498.) On cross-examination, he claimed that a television set and rifle that police said were taken from his apartment had not been in his apartment. (R.3504-06)

Terry claimed that he was handcuffed to a rail in the police station, struck by police, and threatened. He testified he was in the station for about 6-14 hours, and was sick when released. Terry said that he had pain on his inside, in his stomach or abdomen area, so he went to Cook County Hospital for examination. He received treatment, but no medication. Terry said they wanted to admit him, but he was too scared to be admitted. (R.3497-98)<sup>22</sup>

The jury found the defendants guilty of all charges, except a deviate sexual assault charge against Reginald. (R.3955-57) After a sentencing hearing, they were sentenced to death.<sup>23</sup>

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<sup>21</sup>/Terry is now deceased. A transcript of his testimony is attached as Exhibit 10.

<sup>22</sup>/Reginald testified at trial. He described his arrest, and denied participating in the crime.

<sup>23</sup>/The trial evidence is summarized in the court opinions in the case, including at 539 N.E.2d at 1176-80, and 978 F. Supp. 2d at 764-66.

C. The Appeal.

The Supreme Court heard the brothers' direct appeal.<sup>24</sup> Jerry's lawyer raised many issues, but did not ask for reversal of the ruling on the suppression. 128 Ill. 2d at 395-96. Reginald's lawyer asked for a reversal of the denial of his suppression motion, but the Court did not address the issue. It ruled, instead, that Reginald should not have been tried with Jerry. *Id.* at 396-97. The Court affirmed Jerry's conviction, but ordered a new trial for Reginald. *Id.* at 432-33.<sup>25</sup>

D. The Post-Conviction Petitions and Federal Court Proceedings.

Jerry filed post-conviction and *habeas corpus* petitions in state and federal courts.<sup>26</sup>

- On November 30, 1990, Jerry filed a petition for post-conviction relief, and filed an amended petition on September 14, 1992. With the petition, defendant filed an affidavit from a neighbor, Charles Patterson, saying that he lived above Mahaffey's apartment and that he heard someone getting the "shit kicked out of him."<sup>27</sup> On March 16, 1993, Judge Hett granted the State's motion to dismiss the petition without an evidentiary hearing.
- On direct appeal, the Illinois Supreme Court affirmed the dismissal of the post-conviction petition. *See People v. Mahaffey*, 165 Ill. 2d 445, 651 N.E.2d 174 (1995). Mahaffey argued, *inter alia*, that he received ineffective assistance at his suppression hearing, because counsel failed to investigate and introduce evidence. The Supreme Court

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<sup>24/</sup>While the case was pending, the U.S. Supreme Court filed its opinion in *Batson v. Kentucky* (1986), holding that prosecutors could not exercise peremptory challenges solely on account of race. The Illinois Supreme Court issued a supervisory order on Oct. 26, 1987, retaining jurisdiction, but directing the trial court to conduct a hearing on the defendants' *Batson* claim. *See People v. Mahaffey*, 128 Ill. 2d 388, 395, 539 N.E.2d 1172, 1175 (1989), *cert. denied*, 497 U.S. 1031 (1990). The trial court conducted the hearing on November 30, 1987, and found that defendants had failed to establish a *prima facie* case of discrimination.

<sup>25/</sup>Reginald was retried and convicted, and the conviction was affirmed. *People v. Mahaffey*, 166 Ill. 2d 1, 651 N.E.2d 1055, *cert. denied*, 516 U.S. 1002 (1995).

<sup>26/</sup>Reginald also filed post-conviction and *habeas* petitions challenging his allegedly coerced confession, and the failure of the state to disclose the pattern of brutality at Area 2. His initial petition was denied, and the Illinois Supreme Court affirmed the denial. *See People v. Mahaffey*, 194 Ill. 2d 154, 742 N.E.2d 251 (2000)(rejecting claim that state should have disclosed pattern of coerced confessions at Area 2, in part because there was sufficient evidence to convict Reginald apart from his confession). A federal *habeas* petition was then denied. *See U.S. ex rel. Mahaffey v. Schomig*, 2001 WL 1464737 (N.D. Ill. Nov. 16, 2001), *aff'd*, 294 F.3d 907, 910-11 (7<sup>th</sup> Cir. 2002), *cert. denied*, 537 U.S. 1120 (2003).

The Illinois Supreme Court's decision in Reginald Mahaffey's case was subsequently overruled on the issue of whether a coerced confession could ever be harmless error. *See People v. Wrice*, 2012 IL 111860 ¶75, 962 N.E.2d 934 (2012)(admission of coerced confession never harmless error)(overruling *Mahaffey*).

<sup>27/</sup>The Patterson Affidavit is attached as Exhibit 11.

disagreed, ruling that Jerry had not shown the “prejudice” required for a post-conviction petition.<sup>28</sup>

- In *Mahaffey v. Peters*, 978 F. Supp. 762 (N.D. Ill. 1997), *rev’d on other grounds sub nom. Mahaffey v. Page*, 151 F.3d 671 (7<sup>th</sup> Cir. 1998), Judge Zagel rejected Mahaffey’s petition for *habeas corpus*.<sup>29</sup>
- The Seventh Circuit affirmed Judge Zagel’s ruling on this point in *Mahaffey v. Page*, *supra*. Jerry argued that his counsel was ineffective in arguing his motion to suppress, relying on the Patterson affidavit. The Seventh Circuit reviewed the evidence that Jerry’s confession was voluntary, and agreed with Judge Zagel, ruling that the Patterson affidavit was insufficient to change the result. *Id.* at 684.<sup>30</sup>
- The death sentences of Jerry and Reginald were commuted to life without parole by Governor Ryan on January 11, 2003.
- Jerry also filed a claim with Special Prosecutor Egan, who was appointed to investigate Burge-related torture claims. The Special Prosecutor’s Office closed the investigation, in part, because Jerry refused to submit to an interview.<sup>31</sup>

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<sup>28</sup>Specifically, the Court ruled that (1) Jerry’s many prior contacts with the criminal justice system, as well as Judge Hett’s observation of him, created overwhelming evidence that he could understand the *Miranda* warnings, 165 Ill. 2d at 463; (2) while the Patterson affidavit corroborated the testimony of Jerry and his wife about a beating, it did not override “the great weight of the evidence” that Jerry was not beaten, *id.* at 464; and (3) there was no proof of a pattern of brutality at Area Two, and the officers who arrested and interrogated Mahaffey were not specifically named as involved in prior incidents, *id.* at 465. The Court rejected Mahaffey’s other claims, and directed the execution to proceed. *Certiorari* was denied by the U.S. Supreme Court. 516 U.S. 977 (1995).

<sup>29</sup>The Commission did not obtain a copy of the transcript of proceedings before Judge Zagel. From Judge Zagel’s opinion, the proceedings largely focused on Jerry’s mental competency, and the competency of counsel. While the Judge found Jerry not credible, he did not note any divergence between any description of the alleged coercion provided to the District Court and Jerry’s prior testimony in the Circuit Court.

<sup>30</sup>The Seventh Circuit also initially rejected Mahaffey’s arguments that his *Batson* rights were violated, but it reheard that conclusion and ordered a new *Batson* hearing in the state Circuit Court. *Mahaffey v. Page*, 162 F.3d 481 (7<sup>th</sup> Cir. 1998)(prosecutors needed to explain reasons for striking all seven black jurors from the venire, and court then should compare those reasons to the characteristics of the jurors who were seated).

A *Batson* hearing was held in the Circuit Court. Relief was denied on July 18, 2003. The Appellate Court affirmed, and the Illinois Supreme Court denied leave to appeal. *People v. Mahaffey*, 358 Ill. App. 3d 1181, 901 N.E.2d 1087 (1st Dist. 2005)(Table), *leave to appeal denied*, 217 Ill. 2d 582, 844 N.E.2d 43 (2005)(Table). Jerry’s counsel moved to reopen the federal *habeas* case on November 21, 2006. Judge Zagel dismissed the petition as untimely. The Seventh Circuit reversed on timeliness, but ruled the state courts had not clearly erred in the *Batson* hearing, and denied relief. *Mahaffey v. Ramos*, 588 F.3d 1142 (7<sup>th</sup> Cir. 2009), *cert. denied*, 561 U.S. 1028 (2010).

<sup>31</sup>In reaching this conclusion, the Special Prosecutor’s office reviewed the court decisions, and noted the lack of corroborating evidence, relying on the description of the post-arrest photo. The Special

### III. THE TIRC CLAIM AND INVESTIGATION.

#### A. Mahaffey's Claim.

Jerry Mahaffey's claim form was dated June 22, 2011. In it, he provided the following details of the alleged torture:

Police punched defendant in face, causing nose to bleed; kicked him in head and ribs; put gun to head; tightened a plastic garbage bag over head until could not breathe; cause pajamas to be bloodied and so made defendant change clothes. All this happened at defendant's apartment. Threatened defendant with death at station.

Mahaffey identified Sgt. Byrne, Detectives Boffo, Grunhard, and Gutrich, and Officer Lotito as committing the alleged torture.<sup>32</sup>

#### B. Mahaffey's Interview.

Mahaffey was interviewed by TIRC staff on June 13, 2013. At the interview, he signed the TIRC form waiving his right against self-incrimination, and agreeing to cooperate with the Commission.<sup>33</sup> Among the points that he made were:

- He said he told the doctor at Cermak on September 7, 1983, that he had been beaten by the police, but the doctor didn't write that down. He told the doctor he was hit on the rib cage on both sides, and that he was also hit on the left temple with a gun.<sup>34</sup>
- He was beaten at his apartment, but not at Area Two. He confessed at the police station after having a gun pulled on him and being threatened with death because he didn't want to be beaten any more. Mahaffey did not remember that his claim said he was threatened in the car on the way to the station, or that he testified about that in his motion to suppress. Mahaffey said it had been thirty years, and his prior testimony was accurate.
- Mahaffey claimed he was told what to say by the officers, leading to his confession.
- Mahaffey said that he saw Charles Patterson outside when he was arrested.

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Prosecutor's office did not, however, have the photos themselves. A copy of the Special Prosecutor's Closing Memo is attached as Exhibit 12.

<sup>32/</sup> A copy of Jerry's claim form is attached as Exhibit 19. Reginald did not file a claim with the Commission. The victim family members have argued that this means that he fabricated his claim of torture, and so did Jerry. The Commission does not view the decision by Reginald not to file a claim before TIRC as dispositive as to whether his contemporaneous claim of torture was, or was not, factual.

<sup>33/</sup>The waiver is required by 775 ILCS 40/40(b). A copy of the signed form is attached as Exhibit 13.

<sup>34/</sup>Mahaffey added that he was not beaten by guards or at the jail prior to seeing the doctor; he was only beaten by the police at the time of his arrest.

- He didn't recall a detective being in the room when he gave his statement. He only remembered one ASA, Irv Miller, being present.

C. Investigation Before The Initial TIRC Referral to Court.

In addition to the TIRC waiver session, Commission staff and outside *pro bono* counsel gathered and reviewed many documents before initial consideration of this claim. The documents included files from the Clerk's office, and the files Special Prosecutor Egan had gathered in reviewing the Mahaffey claim. The then-executive director recommended that Jerry's claim be referred to the Circuit Court for judicial review.<sup>35</sup>

D. The Initial TIRC Referral.

On July 17, 2013, the Commission voted 5-1 to refer Jerry Mahaffey's claim to the Circuit Court. The Commission filed an Order dated July 25, 2013. A copy is attached as Exhibit 14.

E. The Recall of the Original TIRC Disposition Order.

After the press reported the referral, crime victims and family members began contacting state officials. The victims were understandably angered that they had not received prior notice of the TIRC proceedings, and objected to the 2013 referral of the Mahaffey case to the Circuit Court, claiming that it violated the TIRC Act.

In response to the points raised by the family members, the Commission repeatedly apologized to the crime victims and their families. At TIRC's request, Jerry Mahaffey's claim was referred from the Circuit Court back to TIRC. The executive director of the Commission resigned and was replaced, and several new Commissioners were appointed by then-Governor Quinn.<sup>36</sup> The new director promised to reinvestigate the claim. In addition, the Commission invited submissions from the family members.

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<sup>35/</sup>An outside law firm reviewed the file and prepared a preliminary memorandum for the then-executive director. This preliminary memorandum was not presented to the Commissioners at the time by the then-executive director. It is likely the memorandum was not shared, at least in part, because it did not apply the correct legal standards in reviewing the evidence.

Following the referral of the Mahaffey claim back from Court to the Commission, the Commission's current executive director promised to re-investigate the matter. As is discussed more fully below, current staff conducted a detailed investigation, considering additional evidence not available at the time of the law firm's preliminary memorandum. Neither the preliminary memorandum, nor the recommendation of the prior executive director is being relied on by the Commission in issuing this decision.

<sup>36/</sup>The Commission also modified its Rules in 2014 in response to several of the points raised by the crime victims and their families.

F. The Presentations by the Crime Victims.

The crime victim family members made a series of oral and written presentations to TIRC. The submissions included descriptions of the horrible facts and impact of the brutal crime, and directed the Commission to evidence and to prior judicial findings about Jerry.

Many submissions were made on January 22, 2014. They included the following points about the claim:

- Mahaffey gave a detailed, 22-page confession, and not a cursory statement.
- There was other evidence in addition to the confession, including the jewelry and wedding videotape found in Jerry Mahaffey's apartment.
- Mahaffey claimed at his suppression hearing that he told ASA Irv Miller that he had been abused; Irv Miller testified to the contrary.
- Courts that had reviewed the case had believed ASA Irv Miller and not Mahaffey (or the other witnesses who testified for Mahaffey).
- Area 6 detectives were involved in the interrogation at the station, and not just the Area 2 detectives.
- Mahaffey's extensive criminal record and violent escape impeached his credibility.
- Special Prosecutor Egan had not found Mahaffey's claim to be valid.
- The photograph of Jerry taken after the statement showed no sign of injury. The family suggested that TIRC obtain the photo from the Clerk's impounded evidence file.
- The Cook County Jail intake record, signed by Mahaffey, showed no injury on Sept. 3. The first recorded complaint of abuse was on September 6, after Mahaffey spoke to an attorney. The medical records on September 7 and 8 showed complaints, but only tenderness and a chest abrasion.
- Mahaffey was smiling and smirking when he walked into court for his arraignment on September 27, apparently in good condition.

On July 22, 2015, crime victim family members again made a presentation at the Commission's proceedings.<sup>37</sup> Joseph Heinrich, brother of JoEllen Pueschel, informed the Commission that he was present with his nephew, Richard Pueschel, when Richard viewed a lineup that included Jerry Mahaffey. Heinrich reported he saw no marks or signs of abuse on

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<sup>37</sup> The Mahaffey claim was presented to the Commission on that date for a decision, and received four Commissioners' votes to refer the case to court and three Commissioners' votes to dismiss the claim. Because one Commissioner was absent, the case received neither the necessary five votes to refer nor the necessary four votes to dismiss, and was tabled until a full Commission could convene. See 775 ILCS 40/45(c) and 2 Ill. Admin. Code 3500.385(e).



Jerry Mahaffey or anyone else in the lineup.<sup>38</sup> The family members also displayed, but did not submit, a number of photographs during their presentation.<sup>39</sup>

On November 18, 2015, family members again made a presentation before the Commission's vote. Again they displayed, but did not submit, a number of photographs as part of their presentation. They emphasized a number of points, including that:

- Lorraine Mahaffey's claim to TIRC that she saw Jerry removed from his apartment was not corroborated by Carol Mahaffey's suppression testimony;<sup>40</sup>
- The family had presented three pathologists with the lineup photograph of Jerry Mahaffey and they all disagreed with the Commission's pathologist's opinion that the photograph was consistent with Jerry Mahaffey's claims of abuse;<sup>41</sup>
- The TIRC Former Director's statement at the July 22, 2015, proceedings that the crime had occurred six days prior to the lineup rather than four was incorrect and may have influenced the Commission Pathologist's opinion as to whether the marks in the lineup photographs could have been incurred during the commission of the crime;<sup>42</sup>
- The TIRC Former Director's contention that a beaten Terry Mahaffey was shown to Jerry Mahaffey to induce him to confess was directly refuted by Jerry Mahaffey's suppression testimony which said he did not see Terry at the station.<sup>43</sup>
- Carol Mahaffey made no claims of seeing bruises on Jerry Mahaffey during her testimony at the suppression hearing.
- In an interview of Carol Mahaffey by television reporter Dick Johnson conducted shortly after Jerry Mahaffey's lineup, Carol made no allegations of bruises on, or abuse of, Jerry, or that she heard him screaming. Joseph Heinrich said he had spoken with Dick Johnson recently, who told him that, had Carol or any other Mahaffey's had made any allegations of brutality against police, he would have made it a major part of his story.

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<sup>38</sup> *Hear 2015.7.22.Mahaffey.Proceedings.m4a*, Comments of Joseph Heinrich, 31:22-34:15.

<sup>39</sup> Those photographs that the Commission already possessed have been made part of the Administrative Record.

<sup>40</sup> Other than mentioning her two daughters who were in the apartment with her, Carol Mahaffey did not testify, either in her suppression or trial testimony, that others she knew were present outside the apartment, nor was she asked that specifically.

<sup>41</sup> The family did not submit the opinions to the Commission at the Nov. 18, 2015, proceedings, but offered to submit them at a later time, if needed. For the Commission's pathologist's opinion, see subsection F.2., *infra*.

<sup>42</sup> The family is correct that the six day timeframe mentioned is in error; it was four days prior. Contrary to the family's allegations, the error was not deliberate.

<sup>43</sup> In fact, then-Executive Director Barry Miller made no such contention in his July 22, 2015, presentation that Terry was shown to Jerry Mahaffey at the station.

G. The TIRC Investigation Subsequent to the Recall.

TIRC staff subsequently reviewed the materials in the file, including the materials submitted by the crime victims and their family, and conducted additional investigation.

1. The Photographs.

At the suggestion of the crime victims, Commission staff sought access to photographs in impounded evidence. Commission staff subsequently reviewed the impounded evidence and photographs of Jerry provided by the family of the victims, including lineup and booking photos and the Polaroid photo taken upon Jerry's signing his statement. Copies of certain photos, including enlargements of portions of photos, are attached as Exhibits 1, 5, and 6 to this Order.

The photographic evidence does not show extensive damage. The sequence is as follows:

- Exhibit 1 is a copy of the Polaroid photo of Jerry taken at approximately the time he signed his court-reported confession, at about 4:30 p.m. on Sept. 2, 1983.<sup>44</sup> There is a faint indication of a diagonal mark on Jerry's right nostril.
- Exhibit 5 includes photos and magnified portions of photos, obtained from the Chicago Police Dept. and the Clerk's Office, taken at the lineup Jerry attended on the early evening of Sept. 2, 1983. The photos show what appears to be a scratch or cut on Jerry's right nostril. There is also a mark at the top of Jerry's moustache under that nostril, and a mark on the bottom of Jerry's left nostril that is not clear; each could be dried blood.<sup>45</sup> In the frontal closeup photograph of Jerry, the left temple appears to bear a red mark. To ascertain if this was a mark or a shadow, Commission staff scanned at high resolution the lineup photo in which the suspects stand in left profile. An enlargement of the left temple, as seen in profile, also shows that the temple bears a mark. *See* Exhibit 23.
- Exhibit 6 is the CPD booking photo of Mahaffey. While the lighting is different, there is only a faint trace of the mark on the right nostril. The photo is dated Sept. 3, 1983. It has a number on the bottom, 21 06, that may or may not be a timestamp.

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<sup>44</sup>The original is a Polaroid in the Clerk's office; the Exhibit here is a digital photo of that Polaroid.

<sup>45</sup>There appears to be a mark or scar over Jerry's eyebrow on his left temple, and a potential mark on the photo on his right temple that may – or may not – reflect a bruise or may just be a result of the lighting.

The family members have pointed to court decisions, including Judge Zagel's decision in *U.S. ex rel. Mahaffey v. Peters*, 978 F. Supp. 762 (N.D. Ill. 1997), *aff'd sub nom. Mahaffey v. Page*, 151 F.3d 671 (7<sup>th</sup> Cir.), *rev'd in part on reh'g sub. nom. Mahaffey v. Page*, 162 F.3d 481 (7<sup>th</sup> Cir. 1998), saying that judges reviewed the photographs and found no evidence of abuse. The medical opinion the Commission obtained is that the mark in the photo taken at the lineup is consistent with possible abuse.

For comparison, the Commission subpoenaed Police Department photos from Jerry's prior arrests. Some were produced. None – including from an arrest on November 23, 1982, within a year of the arrest at issue here – contained similar marks on the nose.<sup>46</sup> See Exhibit 15.

2. The Medical Report about Jerry Mahaffey.

After obtaining the photo, the executive director submitted photos and the medical records from evidence to an anatomic pathologist for his evaluation. The pathologist concluded that the photos were consistent with Jerry's claims that he was punched in the nose and thrown against the wall, though not conclusive of those claims. The pathologist reported, in part:

Mr. Mahaffey claims that the police punched him in the nose, causing his nose to bleed. Pictures of Mr. Mahaffey after his arrest do in fact demonstrate a linear abrasion which is vertically oriented on his right nares. This is associated with what appears to be a dark material emanating from the posterior portion of his right nose which is seen directly superior to the medial aspect of the right side of his mustache. The picture does not reveal the nature of this material, although it could be dried blood. Thus, these two findings are consistent with Mr. Mahaffey's claim of being punched in the nose with a consequent bleed; however, they do not conclusively establish the legitimacy of that claim.

The report (attached as Exhibit 16) added that the doctor's report at the jail, and other marks on the face, could be consistent with Mahaffey's claims, though they were also not conclusive. At the request of a Commissioner shortly before the July 22, 2015 proceedings, TIRC staff orally inquired of the pathologist whether the marks could be the result of any sort of struggle in the course of committing the murders. The pathologist acknowledged that as a possibility, but thought it more likely that the cut on the nose and possible dried blood were more recent, from the day of the arrest. After the July 22, 2015, proceedings, TIRC staff sent the pathologist enlargements of the left profile lineup photo and the September 3 booking photo (which shows the nose cut less clearly) and inquired whether they provided additional information that either reinforced or changed his opinions. He responded:

Review of the additional pictures taken on September 3, the front view of Mr. Mahaffey does not demonstrate as clear an abrasion on Mr. Mahaffey[']s right nose as those pictures taken on September 2. However, their appearance does not affect my view as to the timing and/or nature of the likely injury \* \* \*

Review of the additional pictures of the injury to Mr. Mahaffey's left temple region, more clearly demonstrates an apparent vertical linear bruise/contusion. These newer pictures,

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<sup>46</sup>Note that unlike the other booking photos in this case, Exhibit 6 does not show the full profile of Jerry. If it did, there would be a good view of any mark on his right nostril. Commission staff checked with the Police Department, and were informed that the negative is cut off, so the full profile is not available.

Note also that while it is conceivable that Mahaffey could have obtained the apparent cut and marks during the crime itself, this was never the position of the prosecution.

as stated in my December 28 report, are consistent with Mr. Mahaffey's claim, but does not conclusively establish its validity.<sup>47</sup>

3. Interviews of Mahaffey's Trial Lawyer.

TIRC staff interviewed Steve Decker, Mahaffey's trial lawyer on three occasions.<sup>48</sup> After reviewing his file, Decker said that he first met with Jerry shortly after his arrest. Jerry described the beating that he claimed he received to Decker during Decker's initial meeting with him; that provided the basis for the motion to suppress. Decker did not recall taking any photos of Jerry's injuries.<sup>49</sup>

4. Deposition of Cedrick Mahaffey.

Cedrick Mahaffey was interviewed by a Commission investigator on March 26, 2015, and then deposed on April 10, 2015. Among the points to which he testified:

- Cedrick's description of events leading up to the arrests of his brothers was generally consistent with Sgt. Byrne's trial testimony, except that Cedrick said that the officers in the police car asked Cedrick to hide when driving past his brothers' apartments. They did, however, ask him to poke his head up to identify his brothers on the street. In doing so, an officer pointed a gun at Cedrick. (Dep. at 14-16)
- Jerry asked him to drive Jerry to pick things up at Terry's apartment. He reluctantly agreed to do it. (Dep. at 11, 31, 34-35) Cedrick realized that the goods were stolen, and asked Jerry about it. Jerry said that the goods were from two murders. (Dep. at 12-13)
- He heard Jerry being thrown around and shouting at the police station.<sup>50</sup> His door was left ajar, so he could see Jerry, and he recognized Jerry's voice. (Dep. at 24-28) Reginald was also shouting at the station. (Dep. at 26-27)
- Prior to Jerry's arrest, Jerry's face did not look as it did in the post-arrest photograph, Ex. 5. (Dep. at 53)

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<sup>47</sup> See Exhibit 24: August 15, 2015 Letter from Pathologist.

<sup>48</sup> On June 11, 2014, TIRC staff conducted a second interview of Jerry Mahaffey, in order to obtain a waiver of his attorney-client privilege so that the Commission could interview Jerry's trial attorney, Steve Decker. The substance of his claim was not discussed.

<sup>49</sup> Decker said he believed Cedrick went into hiding after Jerry's arrest because Cedrick had tipped off police about his brothers' involvement in the Pueschel murders. Decker would not have had any reason to call Cedrick to testify at the suppression hearing because Cedrick was not present when Jerry was arrested. Decker said that Cedrick was not called to testify at trial by either side because he was probably unavailable, and neither side could be sure what he would say. Decker could not recall if he interviewed Cedrick. He did recall speaking with Jerry's wife, and putting her on the stand. He did not recall hearing that Terry Mahaffey and Roosevelt Ross had been arrested and beaten (despite Terry having testified), nor did he know that Lorraine Mahaffey claimed to be present when Terry left the house. He did not recall interviewing her.

<sup>50</sup> Jerry testified that he was not hit at the station, but did not expressly testify about being thrown around or shouting.

- In addition to Jerry and Reginald, their brother Terry was also arrested and beaten up. Terry was beaten up so badly he went to the hospital after his release. (Dep. at 45)
- He was very upset by turning his brothers in, and had subsequently used drugs for a time. (Dep. at 29, 56-57)<sup>51</sup>

5. Deposition of Lorraine Mahaffey.

Commission staff subsequently deposed Lorraine Mahaffey on May 28, 2015.<sup>52</sup> Lorraine testified to several points:

- Lorraine testified that she was summoned by phone by Jerry's wife to Jerry's apartment at the time of his arrest.<sup>53</sup> Lorraine arrived with her mother before Jerry came out. She saw Jerry being taken out, and testified there was blood on his face. (Dep. at 9-11)
- She had not been interviewed by Steve Decker, Jerry's lawyer. She had met with him with her mother. (Dep. at 28)
- She went to the police station with her mother when their brothers Jerry, Reginald, Terry, Roosevelt, and Ronny (Ronald Leslie) were taken there. The police would not let them see any of the brothers, except for Reginald. (Dep. at 17-18)
- She did see Terry after his release. (Dep. at 21-22) He went to the hospital. She saw him the following day. Terry told her that he, Terry, had been beaten by the police, and she said he had a broken nose.<sup>54</sup> (Dep. at 14, 19-22)
- She saw Roosevelt and Ronny, who were released, within a day or two. Both said they had been beaten by the police. Roosevelt said they kept punching him in his ribs. Ronny also said he had been hit. She did not herself see bruising on either.<sup>55</sup> (Dep. at 24-25)
- She reviewed Exhibit 5, and noted that the cut and apparent marks on Jerry's face were not normally present before he was arrested. (Dep. at 32-33)

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<sup>51</sup> Cedrick testified that neither side had asked him to testify at the trial. (Dep. at 59) He also testified that he had heard that Reginald told one of his brothers that Reginald forgave Cedrick for turning them in; Reginald blamed Jerry for telling Cedrick. (Dep. at 60) In addition, Cedrick testified that when his brothers escaped from prison, their mother called to warn him. (*Id.*)

<sup>52</sup> Lorraine refused to be interviewed by Commission staff before her deposition, and was reticent at her deposition. She was accompanied by her son, who calmed her at several points, and told her to answer the questions. She was hostile to Cedrick, referring to him throughout the deposition as "the informant."

<sup>53</sup> Carol Mahaffey's suppression and trial testimony makes no mention of calling anyone.

<sup>54</sup> Terry Mahaffey's medical records do not corroborate Lorraine's claim of a broken nose.

<sup>55</sup> Lorraine did not cooperate in providing addresses for her brothers. Lorraine did say that she and her mother had gone to CPD headquarters to complain about repeated police visit to her mother's house and place of employment. They did not, apparently, file OPS complaints about the alleged beatings. (Dep. at 27)

6. Attempts to Interview Additional Mahaffey Brothers.

The Commission attempted to interview and/or subpoena two additional brothers of Jerry and Reginald Mahaffey: Roosevelt Ross and Ronald Leslie. The Commission's investigator was unable to contact either.<sup>56</sup>

7. Review of Records Relating to Terry Mahaffey.

According to a police record attached as part of Exhibit 17, Jerry's brother Terry Thames a/k/a Terry Mahaffey was arrested on September 2, 1983, at 4:30 a.m. The card indicates he was arrested by the same officers, with Jerry Mahaffey. Unlike the cards for his brothers, the copy of the arrest card for Terry does not show any criminal charges having been placed against him, and does not indicate whether he was held or released.

Based on the information from Cedrick and Lorraine, the Commission subpoenaed Stroger Hospital (f/k/a Cook County Hospital) for medical records. The medical records, attached as Exhibit 18 show that Terry Mahaffey was treated at Adult Emergency Services, with a General Surgery consult, on Monday, Sept. 5, 1993 at 2:15 p.m., and released at 7:26 p.m. The information on the records show:

- Terry reported he was beaten up on Saturday, Sept. 3 from 3-4 a.m. to 3-4 p.m. When he went home at 6 p.m., he had one episode of vomiting blood, was dizzy, and had pain all over his body.<sup>57</sup>
- Terry reported that he presently felt dizzy, and had pain all over, including abdominal pain and in his arms and legs.
- The physical exam notes showed a small area of red bruise over the sternum, and the lower abdomen was tender to palpation in one exam.<sup>58</sup> A test found blood in the stool. No lacerations, broken bones, or other bruises were reported.
- The initial assessment was Upper GI bleeding; trauma to whole body.

8. Interviews of former Assistant State's Attorney Irv Miller.

The Commission's staff interviewed former ASA Irv Miller, who is a respected criminal defense attorney. ASA Miller was the head of the Felony Review unit of the State's Attorney's Office at the time. ASA Miller stated:

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<sup>56</sup>The investigator was told by a relative that Roosevelt has had strokes and is in poor health, and did not want to cooperate with the investigation. He was also told Ronnie had not been arrested, contrary to Lorraine's testimony.

<sup>57</sup>The dates in the records may be one day off from the date of the beating. Terry was taken into custody on the 2d. It is unclear if Terry was off by a day in describing the day he was beaten, or if it was written down incorrectly at the hospital. Given that he describes the beating as beginning in the early morning hours, at the approximate time he was arrested, and lasted all day, it is very unlikely that his report at the hospital was about anything other than the events in police custody to which he testified.

<sup>58</sup>The exam notes from the surgeon show, however, that the abdomen was "soft/non tender."

- He received a call early in the morning notifying him of an arrest in the Pueschel case. Although the case was being investigated by Area 6 detectives, the defendants were in custody at Area 2. After he arrived, Miller met with the arresting police detectives from Area 2 and detectives from Area 6. Miller dealt with the lieutenant for Area 6, though Jon Burge, who was lieutenant for Area 2, was also present.<sup>59</sup>
- Miller reviewed the evidence and interviewed Jerry and Reginald with a detective. Miller gave Jerry his *Miranda* rights at the beginning of the interview. Miller obtained a written statement from both suspects.
- During every suspect interview, he would meet privately with the suspect to make sure the suspect was not mistreated. Neither Jerry nor Reginald complained about any mistreatment by police. Miller did not observe any physical injuries on Jerry.<sup>60</sup>
- After interviewing each suspect, Miller asked a court reporter to prepare a transcribed statement for each to sign. He again advised Jerry of his *Miranda* rights. Miller asked Jerry whether he had been mistreated; Jerry replied that he had not.<sup>61</sup>
- Miller would provide food or beverage to the suspect while the court reporter typed up the statement.<sup>62</sup> After completing the review of the transcript, Miller had the court

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<sup>59</sup>Miller said that he regularly worked on the north side, but the detectives at Area 2 were “strangers.” Miller knew that John Byrne was a sergeant in Area 2, and has since learned that Byrne was identified as one of Burge’s protégés. Miller said he did not know that Byrne had been anywhere near Jerry.

<sup>60</sup>Miller said that he never had a suspect tell him during an interview that a suspect had been abused by police officers.

<sup>61</sup>Miller was outraged when he heard that the TIRC had recommended an evidentiary hearing for Mahaffey. Miller said that “these guys (the Mahaffey brothers) were talking from the moment they came into the police station.”

<sup>62</sup>In his interview with TIRC staff, former ASA Miller detailed his practice of deliberately creating (presumably minor) errors in statements from witnesses, including suspects about to be charged with crimes.

Miller would always instruct the court reporter to make at least one mistake on the typed transcript. After the transcript was prepared, Miller would have read the transcript back to Mahaffey and would also have had Mahaffey read a portion of the transcript himself. When they got to the intentional mistake in the transcript, Miller would have had Mahaffey correct the mistake. (4/7/14 witness interview report)

This is consistent with Reginald Mahaffey’s testimony that when Reginald said he was unable to read the court-reported statement, “Miller read him portions of the statement and instructed defendant on how to correct misspellings in the text. Thereafter, according to defendant, Miller told defendant to initial and sign the statement.” 194 Ill. 2d at 162.

The trial prosecutor argued in Jerry’s suppression hearing that Jerry’s correction of the written statement showed he was misleading the court when he said he couldn’t read or write. (3/5/84 pm TR. at 40; R.969) Similarly, prosecutors have frequently argued in other cases that because a defendant made or just initialed changes to his or her statement, the defendant was paying attention and the statement must be true, and/or voluntary. *See, e.g., People v. Hudson*, 157 Ill. 2d 401, 626 N.E.2d 161 (1993)(permitting change in court-reported confession to go to the jury, and also permitting prosecutor to argue that the fact

reporter take a Polaroid photograph of Mahaffey holding the beverage or food that he was provided.<sup>63</sup>

- At the conclusion of the interviews, Jerry and Reginald agreed to stand in a lineup. Officers took them to the north side so that Richard Pueschel could view the defendants.
- Mahaffey was lying if he testified that he told Miller about being kicked and bagged, and had a gun pointed at him.
- It was chaos at Area 2. Miller focused on interviewing Jerry and Reginald.

Irv Miller also attended the November 18, 2015 TIRC proceedings and offered to answer any questions Commissioners or staff had for him. He was sworn and testified as follows:

- He had no interaction with Terry Mahaffey the day of the arrests; he was one of three assistant state's attorney handling the case;
- He had multiple conversations with Jerry and Reginald Mahaffey the day of their arrest, most of which were not with a detective;
- There were no complaints from Reginald or Jerry either in the presence of police or when Irv Miller was alone with them; He noticed no physical discomfort on either Jerry or Reginald's parts; he saw them walking during the day, apparently without difficulty;
- He had Jerry and Reginald sign their court-reported statements, which included their statements that they had been treated well by police. Both brothers made changes to their statements and initialed their changes;
- He had a court-reporter take a Polaroid photograph of Jerry to document the lack of injuries;

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of the change showed that defendant was thinking and in control at the time he made the change). *Cf.* Brief and Argument of Plaintiff-Appellee, *People v. Oliver*, 1999 WL 33910060, (1st Dist., filed April 28, 1999)(No. 1-98-1449)(arguing changes to a statement written by an ASA were just like changes to a court-reported confession for purposes of Hudson).

Confessions in major cases are now usually videotaped. But it would be appropriate to re-examine the practice of deliberately making mistakes in any written statement, to the extent that may still be done by the State's Attorney's Office. *See generally* Comments 1-1A to Rule 3.8, Ill. R. Prof. Cond. (duties of prosecutor). In addition, creating a deliberate error in a court-reported statement would be particularly troubling. Court reporters are prohibited by current law from "[w]illful failure to accurately transcribe verbatim any stenographic notes taken at any proceeding." 225 ILCS 415/23(a)(18).

In addition to Irv Miller, a Cook County Circuit Court Judge, Thaddeus Wilson, also recently suggested that the state's attorney's office has a history of intentionally making mistakes in statements to bolster authenticity. *See* Steve Schmadeke, "Alvarez was 'livid,' fired prosecutor over alleged perjury in cop shooting," *Chicago Tribune*, Sept. 14, 2015.

<sup>63</sup>Staging a post-confession photo with a can of pop and a cigarette, or something similar, was a frequent practice. It seems likely this was done so that the picture would make the atmosphere look less coercive. Miller incorrectly recalled that Jerry had a toothpick in his mouth in the picture; that was probably a picture of Reginald. *See* Images 1416, 1418-20.



- Nobody liked Area 2 Sgt. Jack Byrne; he's a gruff individual, but nobody told Irv Miller that Jack Byrne or anyone else mentally or physically coerced them; it didn't happen;
- He always instructed court reporters taking the statement of suspects to make at least one insubstantial error so that it could be corrected. In this particular case the court reporter was so experienced, and it was such common practice, it wasn't so much that Irv Miller instructed him to make a mistake, it was policy to do so. The policy was in place to buttress the circumstances under which the confession was taken and he does not view that practice as unethical;
- He does not dispute that Burge and his men tortured some defendants. He is not aware of any assistant state's attorney that reported suspected torture by Burge or his men to federal authorities;
- He was not present at the home where Jerry Mahaffey was arrested;
- There were so many people present at Area 2 that day that he cannot say he was aware of everyone who entered Jerry Mahaffey's interrogation room, or whether they included Area 2 detectives;
- In hundreds of suspect interviews, he never had one suspect tell him he had been abused by police, just one who told him he was worried about being abused by police. Irv Miller reported that to special prosecutions department of the state's attorney's office;
- Jerry Mahaffey had no contact with his own attorney before Irv Miller took his statement; he is not aware whether Jerry had any contact with other of his family members;

9. Attempts to Depose or Interview Police Officers.

The Commission attempted to interview and/or depose key police officers involved in the arrest of Jerry Mahaffey. Two asserted their Fifth Amendment right against self-incrimination.<sup>64</sup>

- John Byrne has been viewed as Burge's deputy in torture-related cases.<sup>65</sup> He was the officer who spoke with Cedrick Mahaffey, and was the police sergeant on Jerry's arrest

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<sup>64/</sup>The victims' family's July 13, 2015, filing makes various arguments about the Fifth Amendment, but misstates the law. Post-conviction proceedings are civil in nature. *See, e.g., People v. English*, 2013 IL 112890, 987 N.E.2d 371 (Ill. 2013). An inference can therefore be drawn from the assertion of the Fifth Amendment that the truth is contrary to the interest of the witness asserting the privilege. *See, e.g., Baxter v. Palmigiano*, 425 U.S. 308 (1976); *Canter v. Cook County Officers Electoral Bd.*, 170 Ill. App. 3d 364, 523 N.E.2d 1299 (1st Dist. 1988)(adverse inference could be drawn by administrative agency from witness' invocation of Fifth Amendment). In addition, there is nothing wrong in this context with permitting a witness to assert the Fifth Amendment through counsel, *see, e.g., Evans v. City of Chicago*, 513 F.3d 735 (7<sup>th</sup> Cir. 2008). Also, TIRC is permitted to review records of prior proceedings until it is satisfied that it has received enough information to make an informed decision; while TIRC has subpoena powers and has deposed witnesses, all potential witnesses need not be placed anew under oath for this agency to reach a decision.

papers. Byrne left the police force to become a lawyer. He was subsequently disbarred for conduct involving fraud, deceit, or misrepresentation.<sup>66</sup> Byrne was deposed by the Commission, and asserted his Fifth Amendment right against self-incrimination.<sup>67</sup>

- Detective Boffo, through counsel, asserted the Fifth Amendment privilege.<sup>68</sup>
- Detectives Charles Grunhard and John Yucaitis are now deceased.<sup>69</sup>

#### IV. STANDARD OF PROOF.

The Commission was created by the General Assembly following the report of Special Prosecutor Egan and the subsequent federal indictment of Jon Burge in order to address the evidence that had been developed of widespread torture of suspects by officers who had served under Burge. The General Assembly noted the procedural rules of courts that, under normal circumstances, limit the ability of convicted persons to re-examine old convictions.<sup>70</sup> It created this body in 2009 because of a special need to review convictions related to Burge and the officers who had worked under him, based on the evidence that had already been developed that the law enforcement and judicial systems had failed to address adequately the consequences of the demonstrated pattern of torture.

The Commission was not tasked 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, 775 ILCS 40/45(c) provides a lower burden for claimants:

If 5 or more of the 8 voting members of the Commission conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit

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<sup>65/</sup>Byrne served as a sergeant under Burge at Area Two, and then transferred with him when Burge was assigned to the Bomb and Arson Squad in 1986 and then to Area 3 in 1988. Byrne has reportedly described himself as Burge's "right-hand man," though he has denied that torture ever occurred.

<sup>66/</sup>*See In re John Edward Byrne*, No. 95 CH 847 (Hearing Board May 30, 1996), *aff'd* (Ill. Nov. 26, 1996), at <https://www.iardc.org/ldetail.asp?id=535484544>.

<sup>67/</sup>After the Burge criminal verdict in 2010, Byrne gave the following quote to reporter John Conroy:

. . . had Jon Burge been an ordinary civilian he would not have been indicted for perjury, the basis for which was lying in interrogatories in a civil action. People lie all the time in interrogatories, depositions, and trials in civil matters on both sides of a suit, and they are not prosecuted for perjury. **Even witnesses for the prosecution and defense lie in criminal trials with impunity.** Lying is never right, but selective prosecution isn't either.

<http://www.wbez.org/blog/burge-trial-police-react-verdict> (emphasis added).

<sup>68/</sup>Staff attempted to contact Det. Francis Gutrich, who now lives out-of-state. We did not reach him.

<sup>69/</sup>Det. Yucaitis was found by the Police Board to have neglected his duty for failure to report abuse of a suspect in the Wilson case. *See Findings and Decision of the Police Board*, Feb. 10, 1983, at 53-57.

<sup>70/</sup>*See, e.g., People v. Edwards*, 2012 IL 111711, 969 N.E.2d 829 (2012).

judicial review, the case shall be referred to the Chief Judge of the Circuit Court of Cook County. [Emphasis added.]

Because of the Commission's role as a gatekeeper for a new hearing in Court, it has interpreted this language, by rule, as not requiring that it be more likely than not that any particular fact occurred, but rather than there is sufficient evidence to merit judicial review. 2 IAC 3500.385(b)(1).<sup>71</sup>

## V. FINDINGS OF FACT AND CONCLUSIONS.

1. Jerry Mahaffey has told a largely consistent story about being beaten and threatened.

Jerry Mahaffey's claim of torture has been largely (though not completely) consistent since his motion to suppress.

2. Jerry Mahaffey's claim of innocence is not credible.

The Commission is not charged with determining the guilt or innocence of persons who claim they were convicted through the use of tortured confessions. Guilt or innocence may be relevant, however, in evaluating the credibility of witnesses, and in evaluating the motivation that police officers may have for coercing a confession.<sup>72</sup>

Jerry continues to maintain his innocence, and has advanced facts that attempt to raise doubt about his guilt.<sup>73</sup> The Commission believes those facts are outweighed by:

- Cedrick's prompt identification of Jerry and Reginald as the criminals, based on Jerry's confession to Cedrick;
- Jerry's possession of goods taken from the crime scene; and
- Cedrick's 2015 deposition testimony before the Commission that continues to maintain that Jerry confessed to Cedrick.

Thus, the Commission believes that Jerry Mahaffey's claim of innocence is not credible.

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<sup>71</sup>In general, the approach the Commission has taken is akin to the concept of "probable cause;" that is, there must be enough evidence that the claim should get a hearing in court. See FAQ No. 8, <https://www.illinois.gov/tirc/Pages/FAQs.aspx/>. Note that the Commission is free under its rules, where it chooses, to make findings of fact. 2 IAC 3500.385(b)(2).

<sup>72</sup>See, e.g., *Hill v. City of Chicago*, No. 06-C-6772 (N.D. Ill. May 24, 2011)(evidence suggestive of innocence relevant to whether a confession was coerced)(St. Eve, J.).

<sup>73</sup>These facts include:

- the absence of fingerprint or DNA evidence at the crime scene tying him to the crime, see *Mahaffey*, 539 N.E.2d at 1179;
- the difference between neighbors' description of persons seen in the area and the physical description of Jerry and Reginald Mahaffey, *id.* at 1176-77;
- the lab analyst who testified on the case, Pam Fish, was discredited in other matters and fired for providing inaccurate testimony favorable to the prosecution, see *Mahaffey v. Schomig*, 294 F.3d 907 919 (7<sup>th</sup> Cir. 2002)(rejecting same argument by Reginald because of lack of prejudice); and
- the failure of Richard, the surviving son of the deceased, to identify Jerry Mahaffey at the first lineup shortly after the crime, see 539 N.E.2d at 1176.

3. Jerry Mahaffey is not a credible witness.

The Commission finds that Jerry Mahaffey is not a credible witness. In addition to his claim of innocence, another telling indication of his lack of credibility is his testimony at his motion to suppress that he did not understand the *Miranda* warnings. See 165 Ill. 2d at 463. As noted above, Mahaffey had been arrested many times. *Id.* The notion that he did not understand his *Miranda* warnings is simply not credible.<sup>74</sup>

4. Irv Miller is a credible witness.

Commissioners had the opportunity to see and hear Irv Miller and find his testimony very credible.

5. Jerry's brothers were taken into custody at about the same time he was arrested.

Police records demonstrate that Roosevelt Ross, Terry Mahaffey, and Reginald Mahaffey were taken into custody at the same time that Jerry was. Terry and Reginald testified that they were beaten.<sup>75</sup>

6. Terry Mahaffey was likely beaten in police custody.

The medical records of Terry Mahaffey's examination at Cook County Hospital on September 5, 1983, do not show bruises all over his body. But they do support a conclusion that he was beaten while in custody.

Given the medical records that corroborate the trial testimony of Terry Mahaffey and partially corroborate the deposition testimony of Lorraine Mahaffey and Cedrick Mahaffey, the Commission finds that it is more likely than not that Terry Mahaffey was beaten while in police custody. The arrest card for Terry, which shows him being arrested but contains neither a time of release or that he was charged, also supports this conclusion.

7. There is potential evidence Jerry Mahaffey was struck in police custody.

While Jerry Mahaffey is not himself credible, there is evidence that could be interpreted as corroborative of his claim. The evidence includes the following:

- The post-arrest police photo that appears to show a cut or scratch to his nose and possibly dried blood, an apparent bruise to his left temple, and a medical opinion that the photo is consistent with Mahaffey's claim

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<sup>74</sup>Judge Zagel specifically found Mahaffey was not credible and would testify in such a way as to enhance what he believed his current interest was. 978 F. Supp. at 770. The Commission agrees with that general assessment of Mahaffey.

<sup>75</sup>Lorraine also testified to TIRC they were beaten, though Lorraine may have incorrectly testified that another brother, Ronald, was also beaten.

The Commission also notes that the testimony of Officers Yucaitis and Leracz at Reginald's suppression hearing that Reginald had orally confessed prior to arriving at Area Two raises some concern as to their credibility, since they did not document that fact in any report.

- Lorraine Mahaffey's testimony that she saw Jerry being led from his apartment, bloodied.<sup>76</sup>
- The affidavit from Charles Patterson that he heard Jerry crying out, together with the testimony of Jerry's wife, Carol.
- Reginald Mahaffey also claimed that he was beaten when he was arrested.
- The trial testimony from Terry Mahaffey and the deposition testimony from Cedrick and Lorraine Mahaffey that other Mahaffey brothers were beaten at the same time supports the inference that the officers also beat Jerry. As noted above, the testimony of Terry is substantially buttressed by the Cook County Hospital medical records.
- Cedrick and Lorraine Mahaffey both told the Commission that Terry Mahaffey did not have certain marks on his face prior to his arrest.
- The statement of Jerry's trial counsel, Steve Decker, that Jerry described the beating in their first meeting, shortly after Jerry's arrest.
- Several of the Area 2 detectives involved in the investigation have been repeatedly accused of torturing suspects into confession,<sup>77</sup> and their testimony can no longer be viewed as credible.
- The Sergeant in charge of the arrests, John Byrne, took the Fifth Amendment when subpoenaed for his deposition by the Commission, as did Detective Boffo.
- The types of beating and the bagging alleged by Jerry is consistent with the conduct identified in the Office of Professional Standards' findings of systematic and methodical torture at Area 2 under Jon Burge.

8. Evidence weighing against Mahaffey's claim of Torture.

The evidence that undercuts Mahaffey's claim of Torture includes:

- Irv Miller's very credible testimony before TIRC that he was alone with both Jerry and Reginald Mahaffey and asked them how they had been treated, and neither complained;
- A complete lack of *immediate* documentation of injury or torture allegations by Jerry Mahaffey upon arrival to Cook County Jail. The documentation Jerry Mahaffey relies upon is from a medical examination several days after his arrival at Cook County Jail and after he had an opportunity to consult with counsel. The jail intake form, while listing medical conditions specific to Jerry Mahaffey, such as an old gunshot wound and other

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<sup>76</sup> Lorraine also testified Terry's nose was broken by police. This is not supported by Terry Mahaffey's medical records. Also, there is no testimony by Carol Mahaffey at the suppression hearing that Lorraine was present outside Jerry Mahaffey's apartment when he was led out by police.

<sup>77</sup> See, e.g., *Cannon v. Burge*, 752 F.3d 1079 (7<sup>th</sup> Cir. 2014)(involving Sgt. Byrne and Det. Grunhard); *People v. Wrice*, 406 Ill. App. 3d 43, 940 N.E.2d 102 (1<sup>st</sup> Dist. 2010)(discussing allegations against Byrne), *aff'd as modified*, 2012 IL 111860, 962 N.E.2d 934 (2012); *Tillman v. Burge*, 813 F. Supp. 2d 946 (N.D. Ill. 2011)(discussing certificate of innocence following confessions procured by Byrne, Yucaitis, and Boffo). See also <https://www.law.umich.edu/special/exoneration/pages/casedetail.aspx?caseid=4625> (discussing exoneration of David Bates and Gregory Banks).

scars, is bereft of any mention of recent cuts, bruises or injury, and contains a notation that Jerry Mahaffey stated he was in good health;

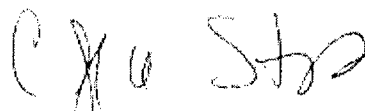
- The utter lack of credibility of Jerry Mahaffey. His long criminal record weighs against his credibility, as does his testimony that he was unfamiliar with Miranda rights;
- Carol Mahaffey's credibility about alleged abuse is undercut by her failure to mention any bruises, screaming, or alleged abuse occurring on the night of the arrest when she was interviewed by at least one reporter shortly after Jerry Mahaffey's arrest. Additionally, her suppression testimony contained no mention of bruises or marks on Jerry Mahaffey's face. That allegation came only at trial. The absence of testimony about bruises at her first testimony undercuts her trial testimony credibility about them.
- The Commission pathologist's acknowledgement that marks shown in Jerry Mahaffey's booking photo are also potentially consistent with being incurred in the course of the commission of the murders four days prior to arrest;

### CONCLUSION

On balance, the Commission finds that the evidence detracting from Jerry Mahaffey's credibility, the very high credibility of Irv Miller, and the complete absence of immediate documentation of injury at the Cook County Jail significantly undermine potential factors in his favor.

The Commission finds by a preponderance of the evidence that there is insufficient evidence of torture to merit judicial review. This matter is referred to the Chief Judge of the Circuit Court pursuant to 775 ILCS 40/45(c) and 2 Ill. Adm. Code 3500.385(b) and 3550.386.

AS AMENDED -  
DATED January 20, 2016



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Cheryl Starks, Chair  
Illinois Torture Inquiry and  
Relief Commission

### CHAIR STARKS, concurring in the determination.

I agree with the determination in this case, but for slightly different reasons. I think the evidence may support the conclusion that the claimant was struck at the scene of his arrest. However, I do not believe there is sufficient evidence that he was tortured into confessing. The statute requires that the claimant was "tortured into confessing to the crime for which the person was convicted[.]" 775 ILCS 40/5. The claimant himself denied that he confessed at the scene of the arrest, and affirmatively represented that he was not physically tortured at Area 2. Given the obvious credibility issues with the claimant, I find it very unlikely that any abuse that may have occurred during his arrest motivated his confession hours later at the police station. Like the

majority, I found former ASA Irv Miller very credible and believe his representations that he worked to ensure the interrogation of the claimant at Area 2 was proper, voluntary and not coerced. I find it more likely that, confronted with the statements of his own brother (to whom, he knew, he had already confessed about the murders), the claimant saw his conviction as inevitable and voluntarily confessed.

COMMISSIONERS STEVE MILLER and JAMES MULLENIX, dissenting.

We would like to give a brief explanation of why we think the majority of the Commission has applied the wrong standard and procedure to this claim, and why we think the matter should be referred to the Circuit Court.

1. The role of TIRC is not to determine whether or not a person who was convicted of a crime is guilty. That role belongs to a court. The role of TIRC, under the statute that created it, is to determine if there is “sufficient evidence of torture to merit judicial review,” – whether enough evidence is present to give a convicted person the right to a new chance in court to prove that he was tortured into making a confession.
2. Because the Commission has a role as a gatekeeper for a new hearing in Court, it doesn’t have to decide that torture definitely or even likely occurred. Instead, the Commission has interpreted the language of the statute as requiring a standard of review akin to probable cause – enough evidence that a judge should take a fresh look at the claim. 2 IAC §3500.385(b)(1). *See* FAQ No. 8, <https://www.illinois.gov/tirc/Pages/FAQs.aspx>.3.
3. The police conduct that was alleged amounts to torture. Under TIRC rules, “‘Torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of obtaining from that person a confession to a crime.” 20 IAC §2000.10.79.
4. A punch in the nose plus a threat of murder and putting a defendant’s children in an orphanage (along with bagging and other conduct alleged by Jerry Mahaffey) is clearly within the definition. While we take none of Jerry Mahaffey’s claims at face value, much of what he said about his arrest and interrogation was corroborated. Corroboration is supplied by several sources. Cedrick Mahaffey has no reason to be disputed because he is the person who turned Jerry into the police. He states that he heard Jerry being thrown about the police station and that his appearance was different after his police encounter than prior to the encounter. Lorraine Mahaffey stated in a deposition under oath that she saw blood on Jerry’s face as he was being taken out of the apartment. (Carol Mahaffey testified she saw no blood, but rather bruises or marks on Jerry Mahaffey’s face). Terry Mahaffey, who was not charged in connection with the offense, stated he was beaten by the police and medical records are consistent with his claim.
5. Our review of the suppression ruling in this case suggests that the trial judge thought that everything that happened in the arrest and interrogation of the Mahaffey brothers was regular, and that there was no reason to disbelieve the police officers. There were several reasons – unknown to the trial judge – to disbelieve the police officers.

6. In our view, the majority opinion has committed error in failing to give proper weight to the fact that two police officers involved in the arrest of Jerry Mahaffey, including the lead officer, former Sgt. John Byrne, have taken the Fifth Amendment about whether or not Jerry Mahaffey was beaten. The Illinois Appellate Court has recognized that the fact that a police officer has asserted the Fifth Amendment privilege and refused to testify is a key fact in evaluating whether a Burge-era confession should be dismissed, and that a negative inference can be drawn. *See, e.g., People v. Whirl*, 2015 IL App (1st) 111483 (2015). That inference should have been drawn here.
7. The majority opinion also failed to give proper weight to the many allegations of torture against Sgt. Byrne, as well as to the impeachment of his credibility created by his disbarment from the practice of law, and his comment about the common nature of lying in court proceeding. This information was not available to the trial judge when he denied his motion to suppress.
8. The majority opinion also gave too much weight to the unannounced appearance before the Commission by Irv Miller, the former Assistant State's Attorney who was chief of Felony Review at the time of the Mahaffey case, and who took Mahaffey's confession. This is true for several reasons:

-While Miller's statement that no beating in his presence is entirely credible, Jerry Mahaffey never claimed to have been beaten at the police station. He claimed he was beaten at the time of his arrest and threatened into confessing. Mr. Miller was miles away from the arrest scene, and not present at any of the claimed misconduct. (He also said he had no contact with Terry Mahaffey that day.)

-Miller's statement that he didn't see any evidence of a beating may be credited, but it does not negate the photographic evidence of bruises and/or a cut on Jerry Mahaffey's face.

-The fact that Jerry Mahaffey didn't complain and signed a statement that he hadn't been coerced is meaningless.<sup>78</sup> As Miller acknowledged, he was not aware of any assistant state's attorney that reported suspected torture by Burge or his men to federal authorities. As he also acknowledged, in hundreds of suspect interviews, he never had one suspect tell him he had been abused by police, and just one who told him he was worried about being abused by police.

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<sup>78</sup>It is also troubling that Miller sees nothing wrong with his routine practice – and the apparent routine practice of the State's Attorney's Office – to instruct court reporters taking the statement of suspects to make at least one insubstantial error so that it could be corrected. The policy was in place to buttress the circumstances under which the confession was taken, and permit a prosecutor to rebut any challenge that a statement was coerced by pointing in court to concocted corrections. The practice (to the extent it may still occur in non-videotaped confession) is very questionable ethically, and may violate Illinois law.

As the majority opinion correctly notes, Miller's practice was consistent with both Reginald Mahaffey's and Jerry Mahaffey's testimony about the statements they were given to sign.



10. In retrospect, there was a procedural error in the manner in which this case was heard at the Commission's November meeting. While victims of crime have a statutory right to speak at Commission proceedings on a claim of torture, other witnesses do not. The Commission can choose to hold an evidentiary hearing, but it is not required to do so. Some members of the majority may have been swayed by Irv Miller's testimony. But permitting Miller to testify, without hearing directly from actual witnesses to Mahaffey's arrest, created an imbalance of testimony. The entire Commission heard only from Miller and the family members, but not from other occurrence witnesses who are still alive, including Sgt. Byrne and Det. Boffo, and Lorraine and Cedrick Mahaffey. If the Commission had heard all of the witnesses (or none), as it should have done, we believe a different result may well have been reached. (Watching Sgt. Byrne take the Fifth Amendment in person, by itself, would have been a powerful statement.)

The crimes in this case were particularly, horribly vicious. The family members have been eloquent in expressing their distress. And we do not find substantial evidence that the Mahaffey were innocent.<sup>79</sup>

But the guilt of a defendant is not the only consideration. As the people of Chicago are all too aware, police misconduct does happen, and when it is uncovered, the justice system must respond. The courts in the United States and Illinois have long held that exclusion of evidence can be necessary to deter police misconduct and protect the integrity of the judicial system.<sup>80</sup>

The rule against coerced confessions is even older than the exclusionary rule. As the Supreme Court explained in *Dickerson v. United States*, 530 U.S. 428, 432-35 (2000), the common law of England realized centuries ago that coerced confessions are inherently untrustworthy, and should not be used as evidence. All criminal defendants – whether innocent or guilty – deserve the right to be tried without a coerced confession being used against them. *People v. Wrice*, 2012 IL 111860, 962 N.E.2d 934 (2012)(admission of a coerced confession is never harmless error). Additionally, where there is evidence that a suspect was not injured prior to police custody, but had injuries later in custody, “the State is held to the higher standard of establishing, by clear and convincing evidence, that such injuries were not inflicted by police officers to induce the defendant’s confession.” *Whirl*, 2015 IL App (1st) ¶196.

When the police go too far, and torture and abuse defendants to get them to confess, that conduct creates consequences that can last for decades. Where, as in Areas 2 and 3 in Chicago, there was a pattern of such conduct, the consequences of addressing the pattern of torture by police officers include the deprivation of defendants’ constitutionally-protected right to due process of law. Protecting the integrity of the judicial system requires that due process of law be

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<sup>79</sup>Some of the interested persons have unfortunately, at times, engaged in personal attacks that are inaccurate and improper. The Commission and its staff have been carrying out in good faith the functions given it by state law. That is true whether or not, as here, there would still be both witness and evidence that could be used by prosecutors were Mahaffey to receive a new trial after a court hearing.

<sup>80</sup>See *Mapp v. Ohio*, 367 U.S. 643 (1961); *People v. Kruger*, 175 Ill. 2d 60 (1996).

afforded to all – the guilty as well as the innocent. Ensuring due process is important to restoring public confidence in the judiciary.

We believe that there was sufficient evidence of torture to merit judicial review. We respectfully dissent.