

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Claim of Rickey Robinson

TIRC No. 2011.086-R
(relates to Circuit Court
Case No. 98-CR-3873)

I. CASE DISPOSITION

Pursuant to section 40/45(c) of the Illinois Torture Inquiry and Relief Act (TIRC Act, 705 ILCS 40/1 *et seq.*), the Commission concludes that there is insufficient credible evidence of torture to merit judicial review of Robinson's claims of torture.

FILED

JAN 22 2016

II. EXECUTIVE SUMMARY

**DOROTHY BROWN
CLERK OF CIRCUIT COURT**

Rickey Robinson alleges that he confessed to murdering Nicole Giles after Chicago Police Department Detective Michael McDermott threatened to take him out to an alley and shoot him if he did not cooperate. *See* Exhibit 1. No physical coercion is alleged.

The chief elements supporting Mr. Robinson's claim are a polygraph examination¹ by CPD which detected no deception in his answers denying involvement in the crime, and the checkered history of Robinson's interrogator, Det. Michael McDermott, who courts and the special prosecutor have concluded abused other defendants and committed perjury when asked about it.² Robinson also submitted to TIRC a letter purportedly written by him to the victim's friend several months after his arrest. In the letter, he alleges a detective threatened to kill him.

Outweighing these factors are Robinson's failure to raise any claims of coercion or torture at trial or any post-conviction proceeding until January, 2005, seven years after his arrest. Moreover, Robinson's trial attorney told TIRC staff that he had asked Robinson whether there were any grounds to suppress the 70-page, court-reported confession Robinson gave police and an assistant state's attorney, and that Robinson had not indicated in any way that he had been threatened, abused or coerced.

Additionally, Robinson's letter to the victim's friend protests his innocence in ways that seem highly improbable in several respects. Given the apparent falsity of this letter and other affidavits that associates of Robinson submitted on his behalf, it demonstrates a propensity to craft a false narrative and documents to fit known facts in an effort to avoid or reverse conviction, and further discredits his claim of torture.

¹ *See* Rickey Robinson Polygraph Results, Jan 6, 1998. Although the results of polygraph examinations are inadmissible in Illinois courts as evidence of guilt or in making probable cause determinations, they can be considered as a factor in determining whether a statement was given voluntarily. *People v. McClellan*, 232 Ill. App. 3d 990, 1002 (1 Dist., 1990).

² *See* Pattern & Practice section, *infra*.

III. FINDINGS OF FACT

A. The Crime and Investigation

1. On December 29, 1997, firefighters were called to a trash can fire in the alley behind 9041 S. Luella Avenue.³ The charred body of a then-unidentified female was discovered. Referencing distinctive jewelry on the body, police tentatively identified her as 18-year-old Nicole Giles, who had been reported missing by her Park Forest mother the day before, when Giles failed to pick her up as scheduled at 6 p.m. An autopsy revealed the cause of death as a single gunshot to her head. Her body had been set afire after death. DNA testing later confirmed the body was Giles'.⁴
2. A teenage boy who lived near where the body was found testified that shortly before fire crews arrived and the body was discovered, he saw two males – one carrying a gas can – head into the alley and then run out with the gas can.⁵
3. The evening before Giles' body was discovered, Chicago Police had received a report from two witnesses who had seen three people tussling with a fourth person outside of a car underneath a viaduct at 88th and Kingston.⁶ Those witnesses reported that one of the three individuals placed a gun to the fourth person's head and fired, and the victim collapsed. The three then put the body back in the car and drove off. The witnesses were not close enough to identify the three people involved, and the assailants had left by the time the witnesses flagged down a police car. DNA testing later identified the blood under the viaduct as belonging to Giles. A shell casing for a Mak-90 rifle (similar in design to an AK-47 rifle) was also recovered under the viaduct.⁷

³ See *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of CPD Det. Michael McDermott, K162-171, (Trial 11_17_1999.pdf)(detailing this background information).

⁴ *People v. Robinson*, ROP, Nov. 19, 1999, testimony of Illinois State Police forensics expert Joanna Olson (Trial 11_19_1999.pdf).

⁵ *People v. Robinson*, ROP, Nov. 16, 1999, Testimony of D'Andre Weaver (Trial 11_16_1999.pdf).

⁶ *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of CPD Det. Michael McDermott, K168 (Trial 11_17_1999.pdf). See also *People v. Robinson*, ROP, Nov. 16, 1999., Testimony of witnesses Anjanette Vance and Lavell Rogers (Trial 11_16_1999.pdf). Illinois State Police forensics expert Joanna Olson testified that DNA testing later confirmed the blood under the viaduct belonged to Nicole Giles. *People v. Robinson*, ROP, Nov. 19, 1999, Testimony of Illinois State Police forensics expert Joanna Olson (Trial 11_19_1999.pdf).

⁷ *People v. Robinson*, ROP, Nov. 16, 1999, Testimony of Chicago police officer John Paulson, (Trial 11_16_1999.pdf)(describing recovery of the shell cartridge case); *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of CPD Det. Michael McDermott, K176-177, (Trial 11_17_1999.pdf) (describing the firearm).

4. Giles' car was discovered abandoned in the south suburbs with large blood stains in the back seat.⁸ The blood was identified as Giles'.⁹
5. Elise Reed testified she had a three-way telephone conversation with Giles and Robinson around 3 or 4 p.m. on December 28, in which Giles said she would stop by Robinson's home and then pick up Reed.¹⁰ Telephone records confirmed a three-way call occurred between the residences of Giles, Reed and Robinson and that it ended at 3:42 p.m.¹¹ Giles never arrived at Reed's home, Reed testified.
6. Giles' mother, Sherrilyn Bivens, picked up Reed later that evening in search of Giles and they stopped at Robinson's house. Bivens testified Robinson initially denied even speaking with Giles that day, but was confronted with Reed's participation in the three-way call. Bivens testified Robinson then admitted the call took place, but denied Giles had ever arrived.¹²
7. Detective Michael McDermott testified he stopped by Rickey Robinson's home around 2-3 p.m. on December 30, 1997, after learning from Bivens that Giles had plans to stop by Robinson's home on December 28, the evening she disappeared. McDermott testified he did not find Robinson, but left a message with his sister at his home, asking Robinson to call.¹³
8. McDermott testified that on December 30, 1997 around 6:30 p.m., Robinson and his friend Peter Ganaway came into Area 2 police headquarters in response to the message and talked to detectives.¹⁴ Ganaway initially remained in a cafeteria in the building while Robinson spoke with detectives.¹⁵

⁸ *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of Illinois State Police Forensic Investigator Bruce Johnson, K-146, 147 (Trial 11_17_1999.pdf).

⁹ *People v. Robinson*, ROP, Nov. 19, 1999, Testimony of ISP forensics expert Joanna Olson, M-53-M-59 (Trial 11_19_1999.pdf)..

¹⁰ *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of Elise Reed, K51-60 (Trial 11_17_1999.pdf).

¹¹ *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of Ameritech representative Jacqueline Goodwin, K75-K81 (Trial 11_17_1999.pdf)

¹² *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of Sherrilyn Bivens, K7-K39 (Trial 11_17_1999.pdf).

¹³ *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of CPD Det. Michael McDermott, K171-173, (Trial 11_17_1999.pdf) .

¹⁴ *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of CPD Det. Michael McDermott, K174, (Trial 11_17_1999.pdf).

¹⁵ *People v. Robinson*, ROP, Nov. 23, 1999, Testimony of CPD Det. Michael McDermott, C6-7, (Trial 11_23_1999.pdf). See also Robinson's March 30, 2012 amended post-conviction petition (noting that when he left for 11th & State to take a polygraph, Ganaway was still in the cafeteria, but was not there when he returned) (2012 30 pro se Amendment to postconviction petition.pdf, p. 33)

9. Police attention eventually turned to Ganaway, and McDermott testified that Ganaway confessed that he, Robinson, and Marques Northcutt had murdered Giles.¹⁶
10. Sometime after 10:30 p.m., Ganaway led police to an alley where they retrieved a Mak-90 assault rifle that Ganaway identified as the murder weapon.¹⁷
11. A State Police forensics expert testified that the bullet that killed Giles was not found, but that the shell casing found at the scene of her shooting under the viaduct was the same caliber of ammunition used by the Mak-90 assault rifle to which Ganaway had led police.¹⁸ The casing could not conclusively be said to have been fired and ejected by the Mak-90 that police recovered, the expert additionally testified.¹⁹
12. After locating the rifle, police arrested Marques Northcutt at his apartment at approximately 1 a.m. on December 31, 1997.²⁰
13. McDermott testified that Northcutt initially told police Nicole never arrived at Robinson's home on Dec. 28. After police confronted Northcutt with the fact that Ganaway had led them to the rifle, Northcutt confessed.²¹
14. According to McDermott, Northcutt admitted the three planned to rob Giles and lured her to Rickey Robinson's house. Northcutt allegedly said he kept Giles occupied, while Robinson and Ganaway placed the rifle in Nicole's car. The three then asked Giles to drive them somewhere.²² McDermott testified that Northcutt said he asked her to stop under a viaduct under the guise of having to urinate, at which point Robinson and Ganaway dragged Giles from the car and Robinson shot her once in the head.²³

¹⁶ *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of CPD Det. Michael McDermott (Trial 11_17_1999.pdf).

¹⁷ *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of CPD Det. Michael McDermott, K175-176, (Trial 11_17_1999.pdf)

¹⁸ *People v. Robinson*, ROP, Nov. 18, 1999, Testimony of ISP Forensic Investigator James Mackie, B62, (Trial 11_18_1999.pdf).

¹⁹ *People v. Robinson*, ROP, Nov. 18, 1999, Testimony of ISP Forensic Investigator James Mackie, B62, (Trial 11_18_1999.pdf).

²⁰ *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of CPD Det. Michael McDermott, K179-180, (Trial 11_17_1999.pdf).

²¹ *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of CPD Det. Michael McDermott, K182, (Trial 11_17_1999.pdf)

²² *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of CPD Det. Michael McDermott, K185, (Trial 11_17_1999.pdf).

²³ *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of CPD Det. Michael McDermott, (Trial 11_17_1999.pdf).

15. McDermott testified that Northcutt confessed that the three put the body back in the car and then dumped it in a trash can in an alley behind Luella and 90th.²⁴ Northcutt told McDermott that the day after the killing, Robinson told Northcutt that Robinson and Ganaway had returned to the alley with gasoline to burn the body.²⁵
16. The burning of the body was subsequently confirmed by Maisha Muhammad, who testified that she drove Robinson and Ganaway to a gas station to get gas and then dropped the two near the site where the body was found and waited. The two returned, jogging, and Robinson told her they had just burned Giles' body.²⁶
17. Robinson's friend, Leonard Tucker, and Robinson's girlfriend, Michelle McClendon, testified Robinson confided in them that he had committed the murder and/or burned the body.²⁷ Tucker testified Robinson had given him Mak-90 ammunition and Giles' pager to hold after the crime; both were recovered by police.²⁸
18. Shortly before trial, McClendon received an anonymous letter encouraging her to suffer a contempt of court ruling rather than testify against Northcutt, Robinson and Ganaway. The letter closed with the threat, "If things don[']t go right, I pray for you!!" See Exhibit 2.²⁹

B. The Confession

19. McDermott testified he first interviewed Robinson at 6:30 p.m. on December 30, 1997. Robinson said Giles had planned to come over on December 28, 1997, but did not arrive and so Robinson left his home at 4 p.m.³⁰
20. McDermott testified that Robinson was then taken to police headquarters at 11th and State by other detectives to take a polygraph exam, but returned to Area 2 before 10 p.m.³¹

²⁴ *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of CPD Det. Michael McDermott, K187-188, (Trial 11_17_1999.pdf).

²⁵ *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of CPD Det. Michael McDermott, K189-190, (Trial 11_17_1999.pdf).

²⁶ *People v. Robinson*, ROP, Nov. 18, 1999, Testimony of witness Maisha Muhammad, B18-22, (Trial 11_18_1999.pdf)

²⁷ *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of Leonard Tucker, K92-98, K106-111 (Trial 11_17_1999.pdf); *People v. Robinson*, ROP, Nov. 19, 1999, Testimony of Michelle McClendon, M17-18, (Trial 11_19_1999.pdf).

²⁸ *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of Leonard Tucker, K94-98, (Trial 11_17_1999.pdf); *People v. Robinson*, ROP, Nov. 17, 1999, Testimony of CPD Det. Michael McDermott, K190-191, (Trial 11_17_1999.pdf).

²⁹ See CPD General Offense Case Report, September 9, 1999 (Police 7 – witness intimidation.pdf, pp. 3-5).

³⁰ *People v. Robinson*, ROP, Nov. 23, 1999, Testimony of CPD Det. Michael McDermott, C5, (Trial 11_23_1999.pdf)

21. Robinson supplied TIRC with a copy of his CPD polygraph results, in which “no deception” was indicated when Robinson denied being with Giles the day she disappeared, taking part in her killing, knowing who killed Giles, assisting in the burning of Giles’ body, or lying to police about the investigation. *See* Exhibit 3.³²
22. McDermott testified that, at 2 a.m. on December 31, 1997, he, Det. Boylan and Detective Przepiora reinterviewed Robinson and confronted him with Ganaway’s and Northcutt’s statements and the fact that they had the rifle.³³ McDermott testified Robinson then admitted to the robbery and murder.³⁴
23. Assistant State’s Attorney John Karnezis³⁵ testified he arrived at Area 2 at 4:00 a.m. on December 31, 1997, and spoke with Robinson at 4:30 a.m. for half an hour.³⁶ Karnezis testified he interviewed Robinson again at 6 a.m. for an hour, before taking Robinson’s court-reported statement at 8:42 a.m.³⁷ The statement is 70 pages long, and contains a full confession. *See* Exhibit 4.³⁸

C. The Trial

24. Robinson did not file a motion to suppress.
25. Robinson’s attorney did not make an opening statement.³⁹

³¹ *People v. Robinson*, ROP, Nov. 23, 1999, Testimony of CPD Det. Michael McDermott, C10, (Trial 11_23_1999.pdf)

³² TIRC staff attempted to obtain a copy of the polygraph results directly from CPD to verify their authenticity. A subpoena was served on the Department on April 30, 2015. Follow-up letters were mailed to the Corporation Counsel on August 28, 2015, resulting in the production of some police reports, but not the polygraph results. A follow-up letter was sent directly to the CPD on October 7, 2015, asking specifically for the polygraph results. On November 4, 2015, the CPD reported they had no polygraph reports in their records. Nonetheless, the records supplied by Robinson appear genuine. The records indicate the exam was administered by John Stout, whose name appears in polygraph results in other CPD investigations. Additionally, Permanent Retention File police reports that were supplied by the CPD about the Giles murder do indicate a polygraph test was administered to Robinson, but do not list the results.

³³ *People v. Robinson*, ROP, Nov. 23, 1999, Testimony of CPD Det. Michael McDermott, C15, (Trial 11_23_1999.pdf).

³⁴ *People v. Robinson*, ROP, Nov. 23, 1999, Testimony of CPD Det. Michael McDermott, C15, (Trial 11_23_1999.pdf)

³⁵ Karnezis is deceased.

³⁶ *People v. Robinson*, ROP, Nov. 23, 1999, Testimony of Assistant State’s Attorney John Karnezis, C58-62, (Trial 11_23_1999.pdf)

³⁷ *People v. Robinson*, ROP, Nov. 23, 1999, Testimony of Assistant State’s Attorney John Karnezis, C62-66, (Trial 11_23_1999.pdf).

³⁸ Statement of Rickey Robinson, dated Dec. 31, 1997, and as beginning at 8:42 a.m. and concluding at 9:43 a.m.

³⁹ *People v. Robinson*, ROP, Nov. 16, 1999, J1-J21 (Trial 11_16_1999.pdf).

26. Robinson waived his right to testify at his trial, and his attorney, Tod Urban, put on no witnesses in his defense and waived closing argument in an exchange as follows:

MR. URBAN: Judge, I have spoken to Mr. Robinson, and we have come to an agreement that we will waive closing argument

THE COURT: Is that correct, Mr. Robinson, you discussed this with your attorney?

THE DEFENDANT: Yes, sir.

THE COURT: It's part of your trial strategy?

Mr. URBAN: It is, Judge.

THE COURT: Defense waives.⁴⁰

27. Urban did make an oral motion for a directed verdict, but offered no argument in support of that verdict. The motion was denied.^{41 42}

28. After prosecutors made a short closing argument, Judge Dennis A. Dernbach immediately found Robinson guilty of all charges: murder, armed robbery, aggravated vehicular hijacking and concealment of a homicide.⁴³

29. At sentencing, the state argued for the death penalty but Judge Dernbach found that Robinson's lack of criminal record was a mitigating factor and sentenced Robinson to life in prison plus 35 years.⁴⁴

D. Allegations of Torture

30. On approximately September 18, 2011, Mr. Robinson signed a Commission claim form alleging that he suffered mental abuse, death threats, and coercion by Chicago Police Department, Area 2 detectives. Specifically, Mr. Robinson claims that Detective Michael McDermott threatened to shoot him, and that McDermott told Robinson that when anyone asked about the shooting, Detective McDermott would say that Mr. Robinson reached for something, which prompted Detective McDermott to shoot.⁴⁵ See Exhibit 1.

⁴⁰ *People v. Robinson*, ROP, Nov. 23, 1999, C-153 to C-156 (Trial 11_23_1999.pdf).

⁴¹ *People v. Robinson*, ROP, Nov. 23, 1999, C-153 to C-156 (Trial 11_23_1999.pdf).

⁴² TIRC staff members did attempt to conduct follow-up interviews with Urban by telephone on October 6, 2015 and November 12, 2015, to ask about the trial strategy and other matters. The calls were not returned.

⁴³ *People v. Robinson*, ROP, Nov. 23, 1999, C-153 to C-156 (Trial 11_23_1999.pdf).

⁴⁴ *People v. Robinson*, Appellate Court of Illinois, First District, Fifth Division, 1—00—2981, (Sept. 20, 2002), 4.

⁴⁵ Claim form of Rickey Robinson, dated September 18, 2011.

31. Robinson supplied TIRC with copy of a letter he wrote to Elise Reed, the friend of the victim Nicole Giles, purportedly on April 21, 1998, approximately four months after his arrest. In the letter, (*see* Exhibit 5) he attributes the murders to Ganaway, unassisted by himself or Marcus Northcutt:

[Ganaway] decided he wasn't going down by hi[m]self so he put me as the shooter and my cousin as a participant. They [police] went and got Marcus from his house, set us both up. Made statements for us and threatened us with death if we didn't agree to the confession. We felt we had no other choice but to agree with what they told us to say or they would let us go and kill us.⁴⁶

32. Robinson did not raise any allegation of torture or threats in his direct appeal.⁴⁷ Instead his attorneys argued he was denied due process because of the extended term sentence he received, that he did not waive his right to a jury sentencing, that the statute allowing the extended term was unconstitutional and that he was entitled to a grand jury indictment for the elements that led to his natural life sentence.
33. Mr. Robinson's first claim, in official court filings, of a coerced confession came on January 25, 2005, seven years after his arrest.⁴⁸ Robinson filed a *pro se* post-conviction petition arguing he was denied effective assistance of counsel because, among other reasons, his attorney Tod Urban had failed to file a motion to suppress.⁴⁹ The petition states: "Trial counsel never questioned the statement testified to by detectives and assistant state's attorney that petitioner made while in custody. The conviction of this petitioner is partially based on the confession that he gave after he was illegally arrested and subject to coercion, intimidation, trickeration [*sic*] and deceit by Chicago detectives and assistant state's attorneys."⁵⁰ Robinson additionally argued that the language attributed to him in the 70-page confession was not in his voice but the voice of a prosecutor or police officer testifying, indicating it was fed to him by police and prosecutors.⁵¹ He argued the multiple interviews and the shuttling of him from Area 2 to 11th and State and back to Area 2 eroded his will.⁵²

⁴⁶ Letter supplied by Rickey Robinson, dated April 21, 1998, and addressed to "Elise." TIRC located a current address for Ms. Reed and attempted to verify that she received the letter in 1998, but was not successful in contacting her.

⁴⁷ *People v. Robinson*, Appellant's brief, 00-2981, filed June 6, 2000; *People v. Robinson*, Appellant's reply, 00-2981, filed Nov. 14, 2001.

⁴⁸ In his interview with TIRC staff, Robinson confirmed this was the first instance of him alleging a coerced confession. Audio recording of TIRC interview with Rickey Robinson on September 26, 2013.

⁴⁹ Petition for Post Conviction Relief, Jan. 25, 2005, 3, 4, 16-18.

⁵⁰ Petition for Post Conviction Relief, Jan. 25, 2005, 16-18.

⁵¹ Petition for Post Conviction Relief, Jan. 25, 2005, 16-18.

⁵² Petition for Post Conviction Relief, Jan. 25, 2005, 16-18.

34. On November 17, 2011,⁵³ after Robinson's court-appointed, post-conviction counsel represented to the court in a Rule 651(c) certificate that he had investigated Robinson's claims and could not assist him in amending his petition, Robinson was given leave to amend his 2005 petition *pro se*.⁵⁴ Robinson, for the first time, added specific details describing the alleged coercion.⁵⁵ He claimed that McDermott, angry about Robinson's acquittal on a previous murder arrest,⁵⁶ had threatened to take Robinson to an alley and "pop a couple of slugs into him."⁵⁷ See Exhibit 15.⁵⁸ Robinson alleged he recalled a similar situation in which someone had been shot in an alley by police and feared the same would happen to him.⁵⁹

35. In an interview with TIRC Staff, Robinson said that he had wanted to file a motion to suppress before his trial, but his attorney at the time did not. When asked why the attorney did not want to file such a motion, Mr. Robinson first said the attorney did not want to bring in the testimony of Mr. Robinson's co-defendants. When a TIRC staff member pointed out that co-defendants, unless they were in the room during the interrogation, could not testify on the motion to suppress, Mr. Robinson said he did not clearly remember why his attorney, Tod Urban, did not wish to file a motion to suppress. Mr. Robinson gave the Commission permission to speak with Mr. Urban about the decision.⁶⁰

E. Interview with Claimant's Trial Counsel (See Exhibits 6, 6A, and 6B)

36. Commission staff spoke with Mr. Robinson's trial lawyer, Tod Urban. Mr. Urban remembered the case immediately. Mr. Urban recalled that Mr. Robinson had made an approximately 75-page confession to police. Mr. Urban remembered asking Mr. Robinson why he made the statement and whether there were any grounds for a motion to suppress. Mr. Urban said that Mr. Robinson had not indicated in any way to

⁵³ The long lag time between Robinson's filing of his post-conviction petition and his subsequent receipt of permission to amend was attributed to Robinson's court-appointed post-conviction counsel and was the subject of much criticism by the appellate court. Justice Cunningham called the years-long delay "one of the worst that I have ever seen." *People v. Robinson*, 2015 IL App (1st) 123360-U, ¶62. Nonetheless, the appellate court did not find the delay rose to the level of ineffective assistance of counsel.

⁵⁴ *People v. Robinson*, 2015 IL App (1st)123360-U, ¶¶ 14, 37 (Feb. 23, 2015).

⁵⁵ *People v. Robinson*, 2015 IL App (1st) 123360-U, ¶¶ 37, 42 (Feb. 23, 2015).

⁵⁶ TIRC staff followed up with Robinson, through his counsel, in an effort to obtain records on the previous murder. Robinson could not remember the name of the murder victim and informed TIRC he had had those records expunged. The criminal history report supplied by CPD does not reference a previous murder charge ("B 829 545 Records IV.pdf", pp. 3-5; see also "Police 13.pdf"), although if it occurred when Robinson was a juvenile or was expunged by court order, it would not necessarily be on such a report. TIRC, therefore, was unable to verify that there was a previous murder acquittal.

⁵⁷ *People v. Robinson*, 2015 IL App (1st) 123360-U, ¶ 42 (Feb. 23, 2015).

⁵⁸ Affidavit of Rickey Robinson, contained in his amended post-conviction petition (2012.3.29 pro se Amendment to post-conviction petition.pdf, p. 33).

⁵⁹ *Id.*; See also *People v. Robinson*, 2015 IL App (1st) 123360-U, ¶ 42 (Feb. 23, 2015).

⁶⁰ Audio recording of TIRC interview with Rickey Robinson on September 26, 2013.

Mr. Urban that he had been threatened, abused, or coerced into making the statement. Urban said he gave Robinson “multiple opportunities” to give him something with which to discredit the confession, but Robinson did not. “That’s why I remember this case.” If Robinson had indicated in any way that there were threats or coercion, “I’d have filed a motion immediately.” Mr. Urban no longer has any notes or files from Mr. Robinson’s case.

37. Mr. Urban did not make openings, closings or put on a defense because there was nothing to defend Robinson with, given the unchallenged confession.

38. Mr. Urban did not remember why the case went to trial. He does not remember whether there may have been an “issues conference” where the judge may have indicated that he would not impose the death penalty,⁶¹ whether the prosecutors refused to accept a plea, or whether Robinson refused to make a plea in exchange for a life sentence.⁶²

F. Pattern and Practice Evidence/Credibility Determinations for Det. McDermott

39. A number of courts and investigative bodies have found that Det. McDermott engaged in abuse of suspects and false testimony regarding such abuse.

a) Alfonso Pinex

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

⁶¹ At least one Illinois Supreme Court case indicates that Cook County defense attorneys sometimes thought they would receive a “signal” from the judge as to whether the death penalty would be imposed if the client was convicted. *See, generally, People v. Maxwell*, 173 Ill. 2d 102, 112-120 (1996).

⁶² See reports of telephone interviews by TIRC staff with Tod Urban on January 28, 2015 and November 12, 2015. (“Conversation with Tod Urban.pdf” and “2015.11.12 Conversation w Tod Urban.pdf”.)

and diagnosed bilateral subconjunctive hemorrhages. Another prison doctor told the special prosecutor these injuries were consistent with blows to the head. McDermott invoked his Fifth Amendment right against self-incrimination when Egan attempted to question him about Pinex. Egan also concluded there was evidence beyond a reasonable doubt of McDermott's perjury and obstruction of justice for testifying falsely at Pinex's suppression hearing.⁶³ See Exhibit 7.

b) Burge Trial Testimony regarding Shadeed Mu'min

A federal judge has concluded that McDermott committed perjury regarding Pinex and that, at a minimum, he gave testimony at Police Commander Jon Burge's criminal prosecution "that was inconsistent with his grand jury testimony."⁶⁴ The judge was referring to the June 14, 2010 trial testimony of McDermott about Burge's interactions with Shadeed Mu'min. On that date, McDermott testified Burge had pointed a gun in the direction of Mumin's side of the room, that they had a "scuffle," and that Burge had placed something in front of Mumin's face. Prosecutors impeached McDermott with his grand jury testimony in which he stated Burge pointed the gun directly at Mumin and placed a bag over his head in order to restrict Mumin's breathing and elicit a confession.⁶⁵

c) Danny Smith probable cause testimony

On March 23, 1990, a trial judge rejected McDermott's testimony that he and four other officers went to the house of suspect, Danny Smith, merely to verify Smith's address before seeking a warrant. Instead, the judge found McDermott had arrested Smith without probable cause on a pretext to put him in a lineup.⁶⁶

d) Eric Caine civil suit testimony

On March 28, 2011, Det. McDermott invoked his right against self-incrimination when called to testify at a deposition in a civil suit filed by Eric Caine against Jon Burge and other officers.⁶⁷ On July 24, 2013, the Chicago City Council voted to settle the lawsuit for \$10 million.⁶⁸ Caine, a co-defendant of Aaron Patterson in the 1986 Vincent and Rafaela Sanchez murders, alleged he was punched and

⁶³ *Report of the Special State's Attorney* ("Egan Report"), 275-290

⁶⁴ See *U.S. v. Burge*, Memorandum Opinion and Order, 5 (N.D. Ill. Jan. 17, 2014) (J. Lefkow) (2014.1.17 Lefkow order.pdf).

⁶⁵ Report of Proceedings, *U.S. v. Burge*, June 14, 2010 (2010.6.14 McDermott testimony in Burge.pdf).

⁶⁶ *People v. Smith*, 232 Ill. App.3d 121, 125 (1st Dist. March 23, 1990).

⁶⁷ *Caine v. Burge, et al*, Deposition of Michael McDermott, March 28, 2011.

⁶⁸ City of Chicago Settlement Order No. 2013-485.

threatened to elicit a confession.⁶⁹ Caine's confession was thrown out in 2011 by Judge William Hooks, and prosecutors declined to re prosecute. In 2012, a judge granted Caine's innocence request.⁷⁰

e) Patterson, Orange, Hobley and Howard civil suits

On September 19, 2008, McDermott invoked his Fifth Amendment right against self-incrimination when asked about a number of police investigations during a deposition in civil suits brought against Jon Burge by plaintiffs Aaron Patterson, Leroy Orange, Madison Hobley, Stanley Howard and Darrell Cannon.⁷¹

f) Interrogation of Keith Mitchell

In *People v. Mitchell*, the Illinois Appellate Court described McDermott as "an admitted perjurer," and cited the unreliability of his trial testimony that contended a 15-year-old boy initiated a confession when his mother stepped out of the interrogation room. The mother had made detectives promise not to question him in her absence.⁷² The court found that the special prosecutor's report on McDermott and Pinex was highly relevant, in that, "the evidence of McDermott's perjury in similar cases involving alleged confessions significantly shifts the balance of credibility in the contest between McDermott's testimony and [Mitchell's and his mother's]."⁷³ The court then remanded the case for a new suppression hearing.

G. Submissions by Claimant and his Counsel

40. Robinson, his attorneys or his relatives submitted a number of materials on his behalf. In one submission, Claimant argues that the language exhibited in his 70-page court-reported confession is not the language of a young man on the South Side of Chicago, but the language of a coached confession regurgitated by a coerced suspect. Specifically, he points to the phrases: "the price for quantities up there are higher," "Standing at a pillar, pretending to be urinating," "Exiting the passenger's door," "To obtain money," "I did not want it to be in my possession.," "We formulated that the

⁶⁹ Jason Meisner, "Another Burge case, another \$10 million" *Chicago Tribune* July 19, 2013, available at http://articles.chicagotribune.com/2013-07-19/news/ct-met-burge-million-dollar-settlement-20130719_1_eric-caine-burge-case-police-torture.

⁷⁰ *Id.*

⁷¹ Deposition of Michael McDermott, Sept. 19, 2008, Case Nos. 03-C-4433, 04-C-168, 03-C-3678, 03-C-8481, 05-C-2192.

⁷² *People v. Mitchell*, 2012 IL App (1st) 100907. p. 9 (May 16, 2012).

⁷³ *Id.* at ¶62.

clothes had to be burned,” and “We proceeded up Commercial Avenue.” *See* Exhibit 8.

41. Claimant’s mother submitted the following affidavits to TIRC:

- a) **Andre Mamon**, currently incarcerated for murder at the same prison as Robinson, claims to have witnessed the murder and saw that it was someone named Lenny, and that Robinson was not present. *See* Exhibit 9. Although not mentioned in the affidavit, Mamon was 9 years old at the time of Giles’ murder.⁷⁴
- b) **Donald Shaw**, currently incarcerated at Lawrence Correctional Center for murder, claimed to witness “Lenny” and others on the night of the murder hiding the murder weapon in the alley where it was found by police. *See* Exhibit 10. Although not mentioned in the affidavit, Materials submitted for Robinson’s sentencing hearing by Robinson’s sister include an endorsement by a Donald Shaw, who “grew up with Ricky Robinson” and is a friend. *See* Exhibit 11.
- c) **Tavares Hunt-Bey**, currently incarcerated at the Western Illinois Correctional Center for murder, claims he saw Lenny Tucker and two friends at a gas station the day after the murder, that Tucker bought gasoline and pumped it into a container, and that Tucker told him he had killed a woman underneath the viaduct the day before, and that he had to tie up loose ends. *See* Exhibit 12. _Hunt-Bey acknowledges he is a member of the same gang as Robinson.
- d) **Yasmyn Johnson** claims to be a girlfriend of Robinson’s and provides an alibi for him at the approximate time of the murder. *See* Exhibit 13.

42. The mother of murder victim Nicole Giles, Sherilyn Bivens, was notified of TIRC’s investigation as required by statute and submitted a letter for the Commission’s consideration. In it, she acknowledges that not every man in prison is guilty, but she is convinced of the guilt of Ricky Robinson. She also related that the detectives involved in the case attended her daughter’s funeral, hugged her and supported her through her ordeal. *See* Exhibit 14.

IV. STANDARD OF PROOF

Section 40(d) of the Illinois Torture Inquiry and Relief Act permits the Commission to conduct inquiries into claims of torture.⁷⁵

⁷⁴ Publicly available online IDOC records indicate Mamon was born in November, 1988.

⁷⁵ 775 ILCS 40/40(d).

“ ‘Claim of torture’ means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is **some credible evidence** related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge.”⁷⁶ (Emphasis added.)

If five or more Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief Judge of the Circuit Court of Cook County. If fewer than five Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the Commission shall conclude there is insufficient evidence of torture to merit judicial review.⁷⁷

The Commission was not asked by the General Assembly to conduct full, adversarial, evidentiary hearings concerning the likelihood of torture, or even to make a final finding of fact that torture likely occurred. That remains the role of the courts. Instead, the Commission has interpreted Section 45(c), through its administrative rules, as not requiring that it be more likely than not that any particular fact occurred, but rather that there is sufficient evidence of torture to merit judicial review.⁷⁸

V. WEIGHING OF THE EVIDENCE

A. **There are substantial reasons to doubt the credibility of Mr. Robinson**

In his interview, Robinson acknowledged that he had made no allegations of coercion to anyone other than his attorney until seven years after his arrest – 2005 – the year he filed his post-conviction motion. (Robinson apparently did not remember the letter written to Elise Reed, purportedly four months after his arrest.) The long delay in making allegations to someone other than his lawyer undercuts his claim of abuse.

Another six years passed before he made specific allegations regarding the details of the alleged coercion. Those were made in his 2011 amendment to his post-conviction petition. Although Mr. Robinson cannot be faulted for the delay in his post-conviction court process (the appellate court identified his post-conviction counsel for being at fault in the lengthy delay), it

⁷⁶ 775 ILCS 40/5.

⁷⁷ See 775 ILCS 40/45(c). To dismiss a claim, a minimum of four votes to dismiss are required. See 2 Ill. Adm. Code 3500.385(e).

⁷⁸ 2 Ill. Adm. Code 3500.385(b)(1). In general, the approach the Commission has taken is akin to the concept of “probable cause.” That is, there must be enough evidence that the claim should get a hearing in court. See FAQ No. 8, <https://www.illinois.gov/tirc/Pages/FAQs.aspx/> Note that the Commission is free under its rules, where it chooses to find that any fact, more likely than not, occurred. 2 Ill. Adm. Code 3500.385(b)(2).

does not explain why specifics were not included in the 2005 petition, or why Robinson would not have mentioned the allegations before then.

Mr. Robinson's claim that he wanted to file a motion to suppress but his trial attorney disagreed is severely undercut by his trial attorney's (Tod Urban's) interview with TIRC, in which Mr. Urban said he asked Mr. Robinson why he made the confession and whether there were any reasons to suppress it. Additionally, the first reason Mr. Robinson offered TIRC staff for the difference of opinion – that the attorney wanted to keep the co-defendants from testifying at his motion to suppress – does not seem to be a credible answer.

Robinson's 1998 letter to Elise Reed, while much closer in time to his arrest, is unconvincing and appears to be a fabrication to explain away incriminating facts against him while blaming Ganaway for the murders. (See Exhibit 5). For example, Robinson, in the letter, says that Ganaway and Giles left his home in Giles' car, and Ganaway returned an hour later in Giles' car without Giles. This implies the murder occurred during this hour. However, witnesses saw Giles murdered by three individuals under a viaduct. For this letter to be true, Ganaway would have had to have left with Giles, persuaded or forced her to pick up two accomplices, driven to the viaduct and murdered her, dropped his accomplices off and returned to Robinson's home – all within one hour.

The letter also claims that Ganaway, Robinson and Northcutt then drove to the South Suburbs in Giles' car, with Robinson and Northcutt still unaware of what had happened to Giles. However, lab reports and testimony indicate that Giles' car's back seat and floor was soaked with blood.⁷⁹ It is almost impossible that such fresh blood would have gone unnoticed by both Robinson and Northcutt during the ride.

Further, Robinson himself discredits his letter in a later addendum (undated) added to the top of the letter before he submitted it to TIRC: "Written when I suspected co-defendant Ganaway. Information is false as herein provided."

While the letter contains no such obvious falsehoods regarding the alleged threats by a detective, the letter demonstrates Robinson's willingness to manufacture untruths to avoid or reverse a conviction, which severely undercuts the torture claim in the letter.

Robinson's allegations seem to have shifted from Ganaway as the murderer, to witness Lenny Tucker as the murderer. Three of the affidavits he supplied (dated much more recently than the 1998 letter) point to Tucker as the one framing Robinson for the murder. (See Exhibits 9, 10, 12). These affidavits – each from a convicted murderer – are similarly unavailing. It is an

⁷⁹ *People v. Robinson*, ROP, Testimony of Illinois State Police Forensic Investigator Bruce Johnson, K-146, 147 (Trial 11_17_1999.pdf).

incredible coincidence that the three affiants – all of whom are either incarcerated with Robinson, friends with him, or in the same gang as him – happened to observe Tucker at the key points in the commission or follow-up of the murder (committing the murder, hiding the gun, and buying the gas to burn the body). Again, this highly suggests that Robinson is orchestrating false evidence to reverse his conviction, and only further discredits any late-raised claims of torture.

While Robinson’s lie-detector results indicating “no deception” in his denials of involvement in the murder gave TIRC pause, upon closer inspection they serve as a reminder of why such results are inadmissible in court. A number of studies have shown them to be highly unreliable.⁸⁰ Further, one of the questions that Robinson “passed” with the polygraph examiner was his denial of seeing Giles the night she disappeared. Robinson’s own letter to Elise Reed concedes he did see Giles that night – a direct contradiction of what he told the polygraph examiner and what Sherilynn Bivens testified Robinson told her the night Giles went missing. This contradiction logically casts doubt on either the polygraph results or his exculpatory letter in which Robinson claimed torture – or both.⁸¹

B. There are reasons to believe the detective at issue was capable of the threats alleged

As noted above, Detective McDermott has been implicated in a number of instances of perjury and likely abuse of suspects during interrogations.⁸²

However, there was no shortage of evidence in this case, lessening the need for torture of Robinson to secure his confession. Police quickly obtained a confession from his co-defendant Ganaway and had possession of the murder weapon within 4 hours of Robinson’s arrival at the police station. Additionally, two witnesses – Giles’ mother Sherrilyn Bivens and Giles’ friend Elise Reed – had already established for police that Giles was on her way to Robinson’s home before she disappeared.

⁸⁰ See *U.S. v. Scheffer*, 523 U.S. 303, 309 (1998) (“There is simply no consensus that polygraph evidence is reliable. To this day, the scientific community remains extremely polarized about the reliability of polygraph techniques. [citing studies]”). *Scheffer* involved a military airman who passed a lie detector test about drug use, but whose urine tested positive for methamphetamine use.

⁸¹ The Commission is also not convinced by Robinson’s argument that the language of the confession is necessarily beyond his vocabulary. His other writings and interviews exhibit language that is also non-colloquial. For example, in his letter to Reed, he wrote “Later that night[,] you and Nicky[’]s mother came to my house that night asking for her whereabouts.” See Exhibit 5. In his oral interview, he stated “When you’re making reference to just the threats, I understand. But in that motion would have been more than just the threats.” He also posed the following question to his attorney, “I was thinking of asking Ms. Greenwood -- do you think that anything I might have supplied you with would be helpful?” Hear TIRC Interview with Rickey Robinson of September 26, 2013 (2013.9.26.Rickey.Robinson.waiver.session.MP3, at 12:08-12:18, 15:46-15:58).

⁸² See Section III, F, *supra*.

C. Balance of the Evidence

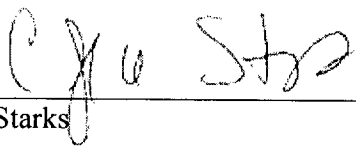
Given the absence of supporting evidence beyond McDermott's highly questionable history, that history is not enough to overcome: (1) Robinson's failure to raise in court filings any allegations of torture at or near the time they allegedly occurred; (2) the apparent fabrication of documents purporting to exonerate Robinson; and, (3) most significantly, the contradiction of Robinson's claims of torture by his trial attorney.

VI. CONCLUSION

The Commission finds that there is insufficient credible evidence of torture to refer this matter to the Circuit Court.

The Commission dismisses Mr. Robinson's claim and instructs its Interim Executive Director to notify Mr. Robinson of the dismissal and of his right to judicial review under the Illinois Administrative Review Law.

Dated: January 20, 2016



Cheryl Starks
Chair
Illinois Torture Inquiry and Relief Commission