

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Mark Maxson

TIRC Claim No.: 2011.019-M
(Relates to Cook County Circuit
Court No. 92-CR-22090)

CASE DISPOSITON

Pursuant to 775 ILCS 40/40(a) and 775 ILCS 5(1), it is the decision of the Commission that, with the recent vacation of Claimant Mark Maxson's conviction and the dropping of all charges, the Commission is without jurisdiction in this matter. Accordingly, the Commission dismisses this claim for lack of jurisdiction. The Commission notes, however, that if jurisdiction still existed, it would find sufficient evidence of torture exists to merit judicial review.

EXECUTIVE SUMMARY

Mark Maxson was convicted on March 24, 1994, of the murder of 6-year-old Lindsey Murdock, Jr. On April 27, 1994, he was sentenced to life in prison plus 50 years.

Prior to trial, Maxson claimed he was detained at Area 2 police headquarter for approximately 60 hours before giving a court-reported confession. He claimed that he was beaten into confessing to police. After giving the court-reported confession, Maxson refused to sign it. His suppression motion was denied.

At trial, the State's Attorney argued that – even though blood was found on Lindsey's clothes that did not match either Lindsey or Maxson – Maxson's confession should be believed. The jury agreed.

Maxson filed a complaint with this Commission on May 19, 2011, alleging that he had been tortured into confessing by detectives who worked for Jon Burge. The Commission staff investigated the claim, and determined that the evidence (including the blood-stained clothing) was still in the possession of the Circuit Court. In 2014, the Commission voted to request the Attorney General file a petition in court for DNA testing of the evidence.

As discussed more fully below, the Circuit Court ordered DNA testing, and the testing showed that the blood matched that of one Osborne Wade, who had lived in the neighborhood at the time.

Hindsight, of course, provides 20/20 vision. And it is easy, in hindsight, to say that things in Mark Maxson's interrogation and prosecution should have been done differently. That became self-evident on September 27, 2016, when the current Cook County State's Attorney supported Maxson's motion to vacate his conviction for murder and rape, dropped all charges

against him, and brought charges against another man, Osborne Wade. A certificate of innocence followed on October 27, 2016.

Yet hindsight is also essential to avoiding future mistakes. The outgoing state's attorney, Anita Alvarez, is to be commended for her willingness and ability to engage in hindsight and re-examine a decades-old case at the risk of embarrassment to her predecessors, who, a court has now ruled, convicted the wrong man. Yet it is an imperfect solution to release a man after nearly a quarter-century of confinement without a thorough examination of what went wrong in an effort to avoid a similar mistake in the future.

While it is not the Commission's place to conduct a wide-ranging examination of the justice system, the legislature intended that the Commission would call attention to possible deficiencies when it came across them in the course of its investigation. The TIRC Act directs that the "Commission shall have the discretion to refer its findings together with the supporting record and evidence, to such other parties or entities as the Commission in its discretion shall deem appropriate." 775 ILCS 40/45(d).

The Commission, therefore, refers this determination to the State's Attorney-elect and other parties as stated in the accompanying referral orders to this case.

Because of the referral orders, and because of the value in the public and the criminal justice system examining this case, we are erring in favor of providing the public more details rather than fewer in this opinion.

This case is the first and only time in which this Commission has sought DNA testing in examining a torture claim¹. The Commission decided to pursue this extraordinary step based on the need for a further explanation of blood on the victim's clothes that was known, at the time of trial, did not belong to Maxson.

While this Commission is not, and does not intend to become, an innocence commission, DNA evidence suggestive of innocence is "relevant to * * * coerced confession claim[s] because innocent individuals do not normally confess to crimes they did not commit." *Hill v. City of Chicago*, 06-C-6772 (N.D. Ill., May 24, 2011) (J. St. Eve.)

With Maxson's conviction now vacated, the Commission has no further jurisdiction in this matter and dismisses the claim. But it also concludes that there is sufficient evidence of torture that would merit judicial review were Maxson not already free.

¹ At the time the Commission requested DNA testing, the Maxson case was not a statutory priority case under the 2014 version of the TIRC Act. While priority remained with other cases, TIRC took the intermediate step of investigating DNA testing because of the length of time the process entails and because of the possibility of actual innocence. Some additional resources, per Commission rules, were expended establishing the employment history of the detectives involved to determine whether the Commission even had jurisdiction over the matter. Subpoenas returned indicated one of the detectives, John Duffy, who had questioned Maxson and allegedly threatened him was, in fact, a former supervisee of Jon Burge.

Among the key factors supporting Maxson's claims of torture, many of which were known at the time of trial:

- The lack of any forensic evidence against Mark Maxson and the presence of the blood of a third party on the clothes of the victim, Lindsey Murdock, is suggestive of Maxson's innocence.
- Also suggestive of innocence is the presence of head and pubic hairs on the victim's clothes that belonged to neither Maxson nor the victim.
- Presented with a paper copy of his court-reported confession, testimony and the document indicates Maxson asked that the phrase "to clear myself" be inserted after a passage noting he had voluntarily given blood and hair samples. Maxson also refused to initial any changes or sign the confession. In TIRC interviews he said he was not tortured to sign the confession because, unlike previous interviews, there were non-police present as witnesses.
- The length of Maxson's extended stay at Area 2 for more than three nights raises doubts about authorities' explanation that Maxson remained there voluntarily for almost the entire time.
- The absence in police records, or in evidence prosecutors submitted at trial, of any map or "plat" of the crime scene that Maxson supposedly marked with his own hand to indicate where key events occurred, is odd. The failure of police or prosecutors to preserve what would have been highly damning evidence is irregular.
- Similar allegations of abuse against one of the detectives, William Marley, serve as pattern and practice evidence making the allegation of torture more likely. An appellate court ruled that Marley deliberately ignored a suspect's request for an attorney in another case. Also relevant is a court filing in the Shawn Whirl case indicating that Marley, had he been called to testify in that case about torture claims, would have exercised his Fifth Amendment rights.
- The lack of any leads other than Maxson, the lack of any forensic evidence against Maxson, and the authorities' knowledge that he had been at the police station for an exceedingly long time increased the motivation to secure a confession, and weighs in Maxson's favor.

Yet there are also facts that suggest Maxson's confession may not have been the product of torture.

- Maxson gave several shifting accounts of the abuse allegedly perpetrated by detectives, even within the same interview with the Commission.
- A previous conviction for gang rape is properly considered as evidence detracting from his credibility.

- Also weighing against his credibility are questionable explanations he gave for falsely asserting that a particular Burge-era detective was involved in his case. Maxson also tried to re-cast a picture of himself with bruises as evidence of his abuse by police. At trial, his attorneys had stipulated that those bruises were inflicted by fellow inmates, and photographs taken immediately after his interrogation show no signs of abuse.
- A psychologist testified that Maxson had a borderline personality, making him a people-pleaser in the extreme and highly vulnerable to suggestion in situations of conflict. This leaves open the possibility that physical abuse may not have been necessary to get Maxson to talk himself into a confession in the face of an extended detention and questioning that Maxson said grew increasingly hostile and suggestive as time at the police station passed.

On balance, there is sufficient evidence of torture in Maxson's case that would merit judicial review were he not already free.

FINDINGS OF FACT

The Crime and Investigation

1. On August 29, 1992, relatives of six-year-old Lindsey Murdock, Jr. reported to police that he had gone missing from his home in the 0-100 block of West 108th Place. A missing person's report was filed with police, and it noted that Lindsey's grandmother, Marie Murdock, had last seen him on the front porch around 3 p.m.² Relatives scoured the neighborhood and circulated flyers with the boy's picture on it.³
2. On August 30, 1992, at approximately 4:45 p.m., CPD officers Beverly Fanniel and Vanessa Mitchell checked an abandoned garage at 10730 S. State Street, about 1 ½ blocks from the boy's home. They saw a child's clothing on the floor of the garage that matched the description of the outfit Lindsey had been wearing at the time of his disappearance and called for a supervisor.⁴ Lindsey's grandmother was summoned and she identified the clothing as Lindsey's. Another officer then searched the garage and discovered Lindsey's body, unclothed, underneath a pile of debris in the garage.⁵
3. An autopsy conducted on August 31, 1992 by Assistant Cook County Medical Examiner's Mitra Kalelkar found Lindsey had been stabbed in the back of the head with a sharp instrument with "some degree of force" approximately 13 times. Kalelkar

² Missing Person's Report of Sg. G.L Farrer, CPD, August 30, 1992. (Subpoena 2016-043 AIF.pdf) (p. 130 of 149-page .pdf).

³ *Id.*, and flyer (Binder1.pdf) (p. 133 of 134-page .pdf).

⁴ Testimony of Ofc. Beverly Fanniel, Trial ROP, March 22, 1994, H-50-H-59 (Maxson.94-1586.V6.PDF).

⁵ Testimony of Ofc. Paul Howard, Trial ROP, March 22, 1994, H-60-H-67 (Maxson.94-1586.V6.PDF).

recovered a fragment of glass in one of the head wounds. Lindsey was bruised on his face, back and neck, had a deep wound in his left mid-back that went between his ribs and perforated his lung and diaphragm. He had cuts to his anus that perforated his colon and were consistent with an object being inserted. He had bleeding on his tongue and in the muscles of his neck, consistent with strangulation. Kalelkar concluded most of the injuries had occurred prior to death and Lindsey had died from multiple blunt force injuries and sharp force injuries, with strangulation a contributing cause. He also had abrasions consistent with drag marks on his front that may have occurred after his death.⁶

4. Glass shards of a mirror were found in the garage, in the yard outside the garage, and in the basement of the abandoned house on the same lot as the garage. One shard, found in the yard, had apparent blood stains on it. Human head and pubic hairs were found on Lindsey's clothes.⁷
5. As police processed the crime scene, spectators and media gathered, and at 8:30 or 9:00 p.m., police learned that a man had given an interview to a television crew stating he had seen Lindsey the night before around 10 or 10:30 p.m., Detective Angelo Pesavento testified.⁸ Pesavento found the man, Mark Maxson, nearby and asked him to come to the police station with him.⁹ Maxson testified that, although he inquired how long it would take, he voluntarily agreed to go with police at that time to assist in the investigation.¹⁰
6. In the television interview given on August 30, 1992, Maxson told interviewers he saw Lindsey around 10:30 p.m. on August 29, 1992, on 111th Street, bought the child some potato chips, encouraged him to go home to his parents and parted ways with Lindsey at 111th and State Street. He said he was "positive" the boy was Lindsey.¹¹
7. Police reports indicate some canvassing of the neighborhood was done by the police. Four residents of the 10700 block of South Lafayette (the block that shared the alley next to the garage where Lindsey was found) were interviewed and had "no information," for police. [EXHIBIT A] A neighbor a few doors down from Lindsey's house was interviewed, but what information, if any, was gleaned is not reflected in police reports. The report does not reflect any interviews of residents of the 10700 block of South State Street.¹²

⁶ Testimony of Dr. Mitra Kalelkar, Trial ROP, March 23, 1994, I-54-I-90 (Maxson 94-1586.V7.PDF).

⁷ Testimony of Robert Berk, Crime Lab Analyst, Trial ROP, March 23, 1994, I-176-I-202 (Maxson 94-1586.V7.PDF).

⁸ Testimony of Detective Angelo Pesavento, Motion to Suppress ROP, June 17, 1993, A-8-A-47 (Maxson 94-1586.V2.PDF).

⁹ *Id.*

¹⁰ Testimony of Mark Maxson, Motion to Suppress ROP, June 17, 1993, A-148-A-213 and June 22, 1993, B-2-B-47 (Maxson 94-1586.V3.PDF).

¹¹ Transcript of videotape of television interview, Trial ROP, March 23, 1994, I-10-I-11 (Maxson.94-1686.V7.PDF).

¹² Supplementary report of Dets. Pesavento and Marley, dated August 31, 1992, 3 (Pesavento-Marley report.pdf).

Police Accounts of the Interrogation and Investigation

8. Detective Pesavento testified that Maxson gave him a brief account of his interaction with Lindsey at the scene and then readily agreed to come to the station. “He said he was very willing, very cooperative. He said he would do anything he could to help out with the case,” Pesavento testified.¹³
9. Pesavento testified he and Detective Marley drove Maxson to Area 2 and spoke with Maxson again at approximately 10 p.m., with Maxson relaying essentially the same details about his encounter with Lindsey at 111th and Michigan as well as a “more detailed” account of the previous night concerning people Maxson had talked to and been with. The conversation lasted an hour and a half. Pesavento testified he was concerned Maxson might be someone just looking for some publicity. Pesavento, in the early morning hours of August 31, 1992, asked Maxson to take a lie detector test the following morning. Pesavento said Maxson agreed to spend the night at the police station.¹⁴
10. Pesavento testified that police were unable, that night, to contact any of the individuals Maxson had referenced in his account.¹⁵
11. Police reports show that on August 30, 1992, CPD Detectives Lenihan and Baker contacted employee Joyce Beard at Fortenberry’s Liquor store, who confirmed she saw Maxson and Lindsey come in the store, with Maxson buying himself some wine and some chips for Lindsey. Joyce Beard was re-interviewed on August 31, 1992 by Detectives Budz and Brannigan and repeated her account.¹⁶ [EXHIBIT B]
12. A handwritten police report indicates that unidentified police officers contacted James Beard at 1 a.m. on August 31, 1992, and that Detectives Budz and Brannigan contacted him again at 4:30 p.m. that day. [EXHIBIT C].¹⁷
13. Detective John Duffy testified that, at 9:30 a.m. on August 31, 1992, he and Detective James Dwyer entered Maxson’s unlocked interrogation room, spoke with Maxson at Area 2 and advised him of his Miranda rights “[b]ecause I did not know what he was going to tell me. I did not know if what he would tell me would implicate him in the case, and I had limited knowledge of the case at that time.” The three spoke for about a half hour and Duffy asked Maxson to take a polygraph examination at police headquarters at 11th and State. Before leaving for 11th and State, Duffy allowed Maxson to make three phone

¹³ Testimony of Detective Angelo Pesavento, Motion to Suppress ROP, June 17, 1993, A-8-A-47 (Maxson 94-1586.V2.PDF).

¹⁴ *Id.*

¹⁵ Testimony of Detective Angelo Pesavento, Motion to Suppress ROP, June 17, 1993, A-19 (Maxson 94-1586.V2.PDF).

¹⁶ Testimony of Detective Angelo Pesavento, Motion to Suppress ROP, June 17, 1993, A-8-A-47 (Maxson 94-1586.V2.PDF); *see also* Report of Det. T. Budz and K. Brannigan, August 31, 1992 (Budz-Branigan report.pdf).

¹⁷ General Progress report of Dets. Brannigan/Budz, dated 8/31/1992 (Budz-Branigan handwritten report.pdf).pdf).

calls to relatives. Suspects who are in custody are usually allowed only one phone call, Duffy testified.¹⁸

14. Duffy's police report indicates that Maxson repeated basically the same account he had given Pesavento and Marley, but added details of where he had been before the encounter with Lindsey, including that he went to Sunshine Liquors at 108th and Michigan around 11 p.m. where he bought a six pack of beer, a fifth of Wild Irish Rose Wine and Newport cigarettes. He then ran into Lindsey before purchasing the boy the chips at Fortenberry's liquor store and parting company with him at 111th and State. Maxson spent the night at James Beard's house (309 W. 111th Street) and returned home to 10756 S. Wentworth on Sunday where his girlfriend's mother, Ida Falls, showed him the missing person's flyer and told Maxson the boy had been found at 108th and State, strangled. Maxson told detectives he told Falls the boy was the one he had encountered the night before, Duffy said in his report. Maxson told Duffy he had been in the garage about 1 month ago, Duffy reported. [EXHIBIT D]¹⁹
15. Maxson was not handcuffed during the 10:30 a.m. ride on August 31, 1992, to 11th and State, Duffy testified, and polygraph examiner Robert Tovar concluded his exam of Maxson at about 2:30 p.m., and Maxson was returned to Area 2, still unhandcuffed. Upon return to Area 2, Duffy asked Maxson to consent to giving blood, hair and saliva samples. Maxson questioned why the samples were necessary, but agreed to give them and signed a blood draw consent form, Duffy testified.²⁰
16. Tovar testified he told Maxson, Duffy and Dwyer it was his opinion that Maxson was not being truthful.²¹
17. Duffy's police report indicates that, back at Area 2, Maxson told Duffy he had failed the polygraph because he was nervous. He also gave a new account of his purchase at Sunshine Liquors: a 40-ounce bottle of King Cobra malt liquor, a pint of Night Train Wine and a package of Kool cigarettes. Duffy informed Maxson that blood had been found at the crime scene. [EXHIBIT D]²²
18. Duffy testified he fed Maxson hamburgers before taking him to Roseland Community hospital for blood tests, arriving there at 6:15 p.m. Blood was drawn at 6:40 p.m. and at 6:43 p.m., they left to return to Area 2 with Maxson still unhandcuffed.²³

¹⁸ Testimony of Detective John Duffy, Motion to Suppress ROP, June 17, 1993, A-47-A-88 (Maxson 94-1586.V2.PDF).

¹⁹ Supplementary report of Det. Duffy, dated Sept. 4, 1992, (Duffy-Dwyer report.pdf).

²⁰ Testimony of Detective John Duffy, Motion to Suppress ROP, June 17, 1993, A-47-A-88 (Maxson 94-1586.V2.PDF).

²¹ Testimony of Robert Tovar, Motion to Suppress ROP, June 17, 1993, A-89-A-105 (Maxson 94-1586.V2.PDF).

²² Supplementary report of Det. Duffy, dated Sept. 4, 1992, (Subpoena 2016-043 PRT.pdf) (pp. 19-24 of 34-page .pdf).

²³ Testimony of Detective John Duffy, Motion to Suppress ROP, June 17, 1993, A-47-A-88 (Maxson 94-1586.V2.PDF).

19. Duffy's police report states that upon return from the blood test, he informed Maxson that pubic hairs had been recovered from the victim's clothing, and Maxson said he would give hair samples the next morning. [EXHIBIT D]²⁴
20. Duffy testified that on the morning of September 1, 1992, he called the CPD crime lab to request they take hair and saliva samples from Maxson.²⁵
21. Police reports by the CPD technicians who took the head and pubic hair samples indicate they arrived at Area 2 at approximately 11:40 a.m.²⁶
22. Duffy testified that at 1:45 p.m. on September 1, 1992, he and Dwyer again spoke with Maxson for about a half hour, and then again at 6:00 or 6:30 p.m. During the evening conversation, Duffy testified, Maxson admitted he had been in the garage where Lindsey's body was found and saw the body and that it was covered with a window frame. At that point, Maxson requested some time by himself to think, Duffy testified.
23. Duffy's police report states that while head and pubic hair samples were being taken on September 1, 1992, Maxson told detectives they may find his hair in the garage because he had been in it a month ago.[EXHIBIT D]²⁷
24. Duffy's police report states that detectives (presumably in their first interview at 1:45 p.m. on September 1) confronted Maxson with accounts from Ida Falls that she had not mentioned Lindsey had been strangled, and that Maxson had made no comment to her upon being shown the missing person's flyer. They also confronted him with accounts from employees of Sunshine Liquors that they had not waited on him. Maxson said he had actually been buying crack cocaine behind the liquor store rather than in it. Detectives asked him where his clothes from that night were, and Maxson consented to sign a permission to search form for the clothes at his home.[EXHIBIT D]²⁸
25. Duffy's police report states that detectives (presumably in their second interview at 6:00 or 6:30 p.m. on September 1, 1992) "questioned [Maxson] as to the presence of a window frame[,] Maxson stated that there was a window frame in the garage and there was no glass in the frame." Detectives told Maxson that the child had been found naked and Maxson responded that the child had been found under debris with the window frame on

²⁴ Supplementary report of Det. Duffy, dated Sept. 4, 1992, (Subpoena 2016-043 PRT.pdf) (pp. 19-24 of 34-page .pdf).

²⁵ Testimony of Detective John Duffy, Motion to Suppress ROP, June 17, 1993, A-47-A-88 (Maxson 94-1586.V2.PDF).

²⁶ Evidence Report, Crime Laboratory Division, dated Sept. 1, 1992, signed by Technicians Robert Davie and Harold Fujara (Police Report indicating time of hair & saliva samples.pdf).

²⁷ Supplementary report of Det. Duffy, dated Sept. 4, 1992, (Subpoena 2016-043 PRT.pdf) (pp. 19-24 of 34-page .pdf).

²⁸ Supplementary report of Det. Duffy, dated Sept. 4, 1992, (Subpoena 2016-043 PRT.pdf) (pp. 19-24 of 34-page .pdf).

top. Maxson stated he wanted to tell the detectives what had happened but needed a little time to think, Duffy reported. [EXHIBIT D]²⁹

26. Pesavento testified that on September 1, 1992, at 10 p.m., Maxson asked to speak with him. Detective Marley read Maxson his rights because “[i]t was a feeling that I had * * * that he wanted to – he was going to give us a statement pertaining to the actual homicide because when we walked in there * * * he said everything would come out, but it was going to take time.” Over the next two hours, Pesavento testified, Maxson implicated himself in the murder of Lindsey Murdock.³⁰
27. Police reports dated September 3, 1992, indicate that Maxson was formally placed under arrest on September 1, 1992 at 10 p.m. at Area 2. [EXHIBIT E]³¹. Pesavento testified that Maxson was placed under arrest “about 10:00 o’clock that night” on September 1, 1992.³²
28. Pesavento and Marley’s police report states that Maxson (presumably at this 10 p.m. interview) stated that after parting ways with Lindsey, he went into the abandoned garage to smoke crack cocaine. While there, the boy entered, startling Maxson and “something came over him and he was horny.” Pesavento’s report said Maxson admitted to striking the boy in the face and receiving oral sex, during which the boy collapsed. Maxson prodded the boy with a stick in the back and realized he was dead, so he covered the body with debris, the report states. The report does not state that Maxson provided any details about how the boy’s anal injuries or cuts to the back of the head occurred. The report states that during the interview, Pesavento drew a plat of the garage and Maxson placed “X marks” both where the sex act took place and where he had hidden the body under debris, information that was not general knowledge. [EXHIBIT F]³³
29. Pesavento testified he then contacted the State’s Attorney’s Office and requested an Assistant State’s Attorney be dispatched.³⁴
30. Assistant State’s Attorney Carlos Weeden testified at Maxson’s suppression hearing that he arrived at Area 2 on September 2, 1992 at 2:10 a.m. and spoke with Duffy, Marley and Pesavento for 20 to 30 minutes. He then spoke in Pesavento’s presence to Maxson, who implicated himself in the crime. At 6:15 p.m., Assistant State’s Attorney Timothy Joyce

²⁹ Supplementary report of Det. Duffy, dated Sept. 4, 1992, (Subpoena 2016-043 PRT.pdf) (pp. 19-24 of 34-page .pdf).

³⁰ Testimony of Detective Angelo Pesavento, Motion to Suppress ROP, June 17, 1993, A-8-A-47 (Maxson 94-1586.V2.PDF).

³¹ Supplementary report of Dets. Marley and Pesavento, Sept. 3, 1992 (Police Report reflection 10 p.m. 9-1-1992 time of arrest.pdf).

³² Testimony of Detective Angelo Pesavento, Motion to Suppress ROP, June 17, 1993, A-26 (Maxson 94-1586.V2.PDF).

³³ Supplementary report of Dets. William Marley and Angelo Pesavento, dated September 3, 1992, 3-4 (Marley-Pesavento report.pdf).

³⁴ Testimony of Detective Angelo Pesavento, Motion to Suppress ROP, June 17, 1993, A-8-A-47 (Maxson 94-1586.V2.PDF).

arrived. At 6:40 a.m., Pesavento, Joyce and Weeden again spoke with Maxson for 30-40 minutes, with Maxson again implicating himself in the crime, Weeden testified.³⁵

31. There are handwritten notes by an unknown author of a conversation with Maxson dated September 2, 1992, and bearing an illegible time that may or may not be 6:40. Next to the pre-printed phrase "Statement witnesses" is handwritten the following: "ASA Weeden, Det. Marley, Det. [blank space] ASA T. Joyce. The notes indicate that Maxson repeated, substantially, the same details memorialized in Marley and Pesavento's report, but this interview contained the additional detail that after the boy collapsed, Maxson had anal sex with him. It does not contain any notes reflecting any statements about how the head wounds were incurred. [EXHIBIT G]"
32. Weeden testified that, at 8:00 a.m., Joyce and Weeden again spoke with Maxson without police present and Joyce asked how Maxson had been treated by police. Maxson stated he had been treated well, Weeden testified. At 8:32 a.m., Weeden, Joyce and Pesavento took Maxson's court-reported confession. At about 11:30 a.m., Pesavento, Joyce and Weeden returned with the typewritten statement and reviewed the statement with Maxson. Handwritten additions were made to the statement. Weeden was aware that Maxson had been with police since about 8:30 p.m. on August 30, 1992, Weeden testified at the suppression hearing.³⁶ At trial, Weeden testified he was *not* aware how long Maxson had been with police.³⁷
33. All police and assistant state's attorneys who testified denied that Maxson had ever been struck or mistreated in their presence, or that he had ever asked to leave the police station. Rather, they reported, Maxson had indicated that it was very important that police discover what happened to the boy and said he would stay as long as necessary. They also denied anyone had falsely informed Maxson that forensic evidence such as fingerprints, blood and hair linked Maxson to the crime scene.

Maxson's Suppression Hearing Accounts of the Interrogation

34. On March 11, 1993, Maxson's attorney, Assistant Public Defender Joseph Kennelly, filed a motion to suppress all statements, alleging that Maxson's statements were "obtained as a result of physical coercion * * * in that the defendant was kicked in his side and slapped in the face while in police custody." [EXHIBIT H] It also alleged that police had threatened Maxson with a beating, threatened him with a handgun, and falsely told Maxson that blood, fingerprints and hair linked him to the crime scene.
35. Maxson testified that on the afternoon of August 30, 1992, he approached a uniformed officer near 107th and State Street and told him that he had seen the boy. The officer directed him to another location and Maxson began speaking with whom he thought was an officer, but was a "newsman." A camera came on and Maxson spoke to a reporter. Afterwards, another uniformed officer directed him past crime scene tape and waited

³⁵ Testimony of ASA Weeden, Motion to Suppress ROP, June 17, 1993, A-106-A-129 (Maxson 94-1586.V2.PDF).

³⁶ Testimony of ASA Weeden, Motion to Suppress ROP, June 17, 1993, A-106-A-129 (Maxson 94-1586.V2.PDF).

³⁷ Testimony of ASA Weeden, Trial ROP, March 23, 1994, I-52-I-53 (Maxson 94-1586.V7.PDF).

with him until Pesavento came. After being assured by Pesavento that a trip to the police station “wouldn’t take long,” Maxson agreed to go to Area 2.³⁸

36. At Area 2, Maxson testified, Pesavento spoke with him alone and left, locking the door. Maxson was allowed to visit the bathroom, and Pesavento returned, questioning Maxson for about an hour about his “background.” Maxson asked why he was being questioned about his background and Pesavento told Maxson he was a suspect. In a third interview that night with Pesavento, Maxson asked if he was free to leave, and Pesavento asked whether he would stay around take a polygraph test to prove his whereabouts. “I was willing to cooperate at that point,” Maxson testified, but he also testified that Pesavento told him he could not leave without taking such a test. He was then left alone for the night until Duffy and Dwyer arrived the next morning.³⁹
37. Maxson testified that the next morning, August 31, 1992, Duffy and Dwyer read him polygraph paperwork and let him make a phone call to his sister but the call was disconnected before he could finish talking to her. He then called his mother and went with Duffy and Dwyer to 11th and State for the lie detector test. There, Duffy and Dwyer let him buy some candy at a stand in the lobby. One detective always walked in front of him while another trailed behind him.⁴⁰
38. Maxson testified that he met alone with Officer Tovar, who went over a polygraph consent form with him. He did not feel he had a choice in signing it because refusing “would lead them to believe me – take me as I am not telling the truth.” He also did not feel free to leave. After the test, Tovar told him he had failed. Duffy and Dwyer returned to pick up Maxson and as they walked back to their car with him, told him not to try to run.⁴¹
39. Maxson testified Duffy and Dwyer returned him to the Area 2 interrogation room, but did not lock the door. A short time later, Duffy and Dwyer re-entered the room, with Dwyer becoming “pretty hostile toward me” and telling him to just go ahead and admit to the crime. Maxson asked if he could speak with Duffy, and Dwyer left the room. Duffy “seemed to be the nice one” and asked him to take a blood test. Maxson asked to leave, and Duffy denied the request. Maxson then asked for a phone call, which Duffy also denied, encouraging him just to take the test “and everything would be okay at that point.” Maxson agreed. Duffy left.⁴²
40. Maxson testified that Duffy and Dwyer returned later, had Maxson sign a blood draw consent and took him to the hospital for the blood test. After returning to the station, Dwyer returned him to the interrogation room and denied another request by Maxson to

³⁸ Testimony of Mark Maxson, Motion to Suppress ROP, June 17, 1993, A-148-A-213 (Maxson 94-1586.V2.PDF); ROP, June 22, 1993, B-2-B-47 (Maxson 94-1586.V3.PDF).

³⁹ Testimony of Mark Maxson, Motion to Suppress ROP, June 17, 1993, A-148-A-213 (Maxson 94-1586.V2.PDF); ROP, June 22, 1993, B-2-B-47 (Maxson 94-1586.V3.PDF).

⁴⁰ Id.

⁴¹ Id.

⁴² Id.

use the phone and to leave. Duffy returned and they asked more questions. They left and locked the room.⁴³

41. Maxson testified that another unidentified officer then brought Maxson food, but Maxson asked if he could use his own money to buy different food. The officer denied the request.⁴⁴
42. Maxson testified that Duffy and Dwyer returned and Maxson again asked to leave, but was denied. A request for a phone call was again denied. Questioning continued about where Maxson had been prior to coming forward to police. At this point, no violence had occurred, and both detectives left.⁴⁵
43. Maxson testified that Dwyer later returned alone, told him he might as well confess, and said the only way Maxson could leave would be to stay until the next day to give pubic hair samples. "I pretty well knew that I was going to be staying at the police station so I cooperated," Maxson testified.⁴⁶
44. Maxson testified that Duffy returned at some point, got upset with an answer Maxson had given and said "Mother fucker, if you don't cooperate with us, we're going to kick your ass" and then both detectives left the room, locking the door.⁴⁷
45. Maxson testified that the next detective he saw was Pesavento, who woke him up to question him. He did not know how long he had been at the police station "but I knew it was pretty well past my time and I was pretty tired at that time." After an hour, Pesavento left.⁴⁸
46. Maxson testified that Duffy and Dwyer returned and told him his statements weren't adding up to be true, and that he had to stay to give samples in the morning.⁴⁹
47. Maxson testified that someone later came and took head and pubic hair samples. After the samples were taken, Dwyer returned and Maxson again asked to make a phone call to call his employer; Dwyer refused and questioned him again. Dwyer told him he was going to cooperate and when Maxson said he had been cooperating to the best of his ability, Dwyer slapped his left hand to the right side of Maxson's face, knocking him out of his chair. Maxson stood to defend himself, to which Dwyer asked "what was I going to do[,] really". Maxson testified he "really paid attention to what was going on because at

⁴³ Id.

⁴⁴ Id.

⁴⁵ Testimony of Mark Maxson, Motion to Suppress ROP, June 17, 1993, A-148-A-213 (Maxson 94-1586.V2.PDF); ROP, June 22, 1993, B-2-B-47 (Maxson 94-1586.V3.PDF).

⁴⁶ Id.

⁴⁷ Testimony of Mark Maxson, Motion to Suppress ROP, June 17, 1993, A-191 (Maxson 94-1586.V2.PDF).

⁴⁸ Testimony of Mark Maxson, Motion to Suppress ROP, June 17, 1993, A-148-A-213 (Maxson 94-1586.V2.PDF); ROP, June 22, 1993, B-2-B-47 (Maxson 94-1586.V3.PDF).

⁴⁹ Id.

that – I knew where his gun was located.” Maxson thought about it and sat back down, he said. Dwyer left, locking the door.⁵⁰

48. Maxson testified that Duffy and Dwyer returned again and informed him of “certain information” that he hadn’t previously known. Maxson requested an attorney; they denied the request. After about 45 minutes of questions, they left again, locking the door.⁵¹
49. Maxson testified that another unidentified, heavysset detective, possibly named Butler, entered and asked more questions for about 45 minutes about Maxson’s previous whereabouts. The detective left, locking the door.⁵²
50. Maxson testified that Pesavento and another detective entered and questioned him for about a half hour, leaving the door open when they left.⁵³
51. Maxson testified that Duffy and Dwyer returned, telling him he was guilty and that he might as well confess. When Maxson said he didn’t know what to confess to, Duffy got angry and left, leaving Dwyer. Dwyer said he wasn’t like Duffy and that he would kick Maxson’s ass. He then kicked Maxson in the left rib cage, knocking him off his chair. He lay on the ground for five minutes. Dwyer left.⁵⁴
52. Maxson testified that Pesavento came in and said Maxson should talk to him, because none of the officers there could talk to him or get him to confess to the crime. Maxson asked how he could confess to something he did not do. Pesavento questioned him for some time; Pesavento never informed him he was under arrest.⁵⁵
53. Maxson testified that after Pesavento left, Weeden came and he answered Weeden’s questions. Joyce then came and he answered Joyce’s questions. He also spoke to both Joyce and Weeden in the presence of a court reporter.⁵⁶
54. In the court-reported confession, [EXHIBIT I] Maxson said he had gone out around 10 p.m. and purchased cocaine at 108th between Wabash and Michigan and then ran into Lindsey at 110th and Michigan and inquired as to why he was out so late. Lindsey asked him for change for chips, and Maxson bought him Fritos at Fortenberry Liquor Store on 111th and Michigan around 10:20 or 10:25 p.m. with 26 cents and then parted ways. Maxson said he first headed home, but then headed to the garage to smoke his cocaine. He described a 5-gallon pail in the garage that he sat on while smoking, and being interrupted by Lindsey, who entered the garage. He forced Lindsey to perform oral sex,

⁵⁰ Testimony of Mark Maxson, Motion to Suppress ROP, June 17, 1993, A-191-A-199 (Maxson 94-1586.V2.PDF).

⁵¹ Testimony of Mark Maxson, Motion to Suppress ROP, June 17, 1993, A-148-A-213 (Maxson 94-1586.V2.PDF); ROP, June 22, 1993, B-2-B-47 (Maxson 94-1586.V3.PDF).

⁵² Testimony of Mark Maxson, Motion to Suppress ROP, June 17, 1993, A-148-A-213 (Maxson 94-1586.V2.PDF); ROP, June 22, 1993, B-2-B-47 (Maxson 94-1586.V3.PDF).

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

hitting him in the face once or twice because he was not doing it properly. He didn't know if Lindsey had disrobed, but knew he had at least taken his shirt off. He forced Lindsey onto him again and heard him gasp before Lindsey fainted, unconscious. Before moving Lindsey, Maxson said, "I think I had anal sex with him" for about a minute, and he didn't know whether he ejaculated, but he did not think that he had. He moved the body and then poked it in the back with a stick about three times and realized Lindsey was dead. He then poked the boy's head with some glass an unknown number of times. Finally, he covered the body with debris, including a window frame, and went to his friend's house at 309 W. 111th Street, where he spent the night. The next day, he met with police at the scene around 7:00 p.m. and agreed to go to the police station. He reported that state's attorneys had treated him appropriately and that no one had threatened him or made promises to extract his confession.⁵⁷

Maxson's Family Members' Accounts at the Suppression Hearing

55. Maxson's sister, Jacquelyn Maxson, testified she became aware on August 30, 1992, that Mark Maxson was in police custody when she watched the 10 o'clock news and saw he had gone with police. She went to the police station that night, but detectives told her she could not speak with her brother, but they would let him know she had been there. She testified Maxson called the next day and said "he had been beat and that he had died that night. There was nothing else they could do to him." Although that testimony about the substance of the conversation was withdrawn as hearsay, Jacquelyn Maxson went on to testify that the conversation was cut short, as if someone had hung up the phone.⁵⁸
56. Maxson's brother, John Maxson, testified he went to the police station the evening of August 30, 1992, the morning of August 31, 1992, the evening of August 31, 1992, and the morning of September 1, 1992 but was always denied access to his brother by various police officers.⁵⁹

Maxson's Suppression Hearing and Trial

57. Judge Thomas Cawley denied Maxson's motion to suppress and the motion to quash arrest on June 22, 1993, finding that Maxson was never slapped, kicked, threatened or physically coerced and that he had been read his rights. Cawley found it was undisputed that Maxson initially went voluntarily to the police station. The length of time of the detention concerned Cawley, who noted "time is the crucial factor * * * that is the most glaring." Cawley ultimately found Maxson's repeated signing of consent forms and police testimony as evidence of voluntariness. "I don't know why he [Maxson] would believe he was in custody. Gradually I assume he came to that conclusion as the investigation * * * began to focus on him * * * but he was advised of his rights and he chose to make statements and not exercise his right to counsel." Cawley found that by the time of Maxson's arrest, 10 p.m. on September 1, 1992, he had been at the station

⁵⁷ Statement of Mark Maxson, September 2, 1992, 8:32 a.m.

⁵⁸ Testimony of Jacquelyn Maxson, Motion to Suppress ROP, June 17, 1993, A-129-A134 (Maxson 94-1586.V2.PDF).

⁵⁹ Testimony of John Maxson, Motion to Suppress ROP, June 17, 1993, A-134-A-147 (Maxson 94-1586.V2.PDF).

some 48 hours which “is certainly a long time to be in the station.” However, Cawley said, that was the time at which he made incriminating statements and probable cause existed to arrest him.⁶⁰

58. Maxson had a jury trial presided over by Judge Daniel Locallo. The jury was selected on March 21, 1994; opening statements were heard on March 22, 1994; and the trial continued daily until Maxson was found guilty on March 24, 1994. That day the jury found him eligible for the death penalty, but ruled on March 25, 1994, that there were mitigating circumstances that prevented the death penalty. On April 27, 1994, Judge Locallo sentenced Maxson to life plus 50 years in prison.
59. At trial, CPD Crime Laboratory criminologist Terese Ann Finn testified that human blood containing enzymes consistent with Lindsey Murdock’s blood was found on a glass mirror shard found in the yard outside the garage. On cross examination, she further testified that no semen was found on oral and rectal swabs of Lindsey Murdock. She found a blood stain consistent with Lindsey’s blood on Lindsey’s shirt, but also a blood stain not consistent with either Lindsey’s blood or Maxson’s blood. On Lindsey’s pants, she found a second blood stain that was consistent with the third-party blood stain on the shirt and that belonged to neither Maxson nor Lindsey. She did find a blood stain on Maxson’s clothing, but the amount was so small she could not determine whether it was even human blood.⁶¹
60. CPD Crime Laboratory analyst Robert Berk testified that the glass fragment recovered from one of the head wounds of Lindsey Murdock had a mirrored surface to it. He also testified that head and pubic hairs found on the clothing of Lindsey Murdock were dissimilar to either Maxson’s or Lindsey’s hair. Upon questioning by the prosecutor, Berk testified that trace materials could be found on clothes if they had been thrown onto such materials.⁶²
61. Maxson’s court-reported confession was entered into evidence through the testimony of Joseph Szybist, the court reporter who took down Maxson’s confession at the police station. Szybist read it to the jury. (EXHIBIT I).
62. Assistant State’s Attorney Lon Schultz entered into evidence, by way of stipulation between the parties, that the handwritten additions to Maxson’s court-reported confession to police were made by Assistant State’s Attorney Timothy Joyce at the request of Mark Maxson.⁶³ Some of the additions included Maxson’s additions that he had submitted to various requests “to clear myself.” (EXHIBIT I)

⁶⁰ Ruling of Judge Thomas Cawley, Motion to Suppress ROP, June 22, 1993, B-76-B-81 (Maxson 94-1586.V3.PDF).

⁶¹ Testimony of Terese Finn, Trial ROP H-111-H-129 (Maxson 94-1586.V6.PDF).

The transcript of Finn’s testimony shows her answering affirmatively to the question that “[t]here was a blood stain on Lindsey Murdock’s hand that apparently came from some other human being [besides Maxson]; is that right?” However, this appears to be a transcription error substituting the word “hand” for “pants” because no medical examiner or lab reports indicate there were ever any samples taken of any blood stains on Lindsey’s body.

⁶² Testimony of Robert Berk, Trial ROP H-176-H-202 (Maxson 94-1586.V6.PDF).

⁶³ Trial ROP, K-19 (Maxson 94-1586.V8.PDF).

63. Joyce Beard, an employee of Fortenberry Liquors testified that Maxson and Lindsey came into the store around 10:30 p.m. on August 29, 1992, and that Maxson had bought Lindsey chips.⁶⁴
64. Detective Pesavento testified that he had interviewed Maxson three or four times between August 30, 1992, at 10 p.m. and September 1, 1992, but didn't know how many times in total Maxson had been interviewed by police during that time.⁶⁵ On cross examination, he also testified that, at the time Maxson came to his attention, police had no leads in the murder.⁶⁶ He also acknowledged that Maxson would have had to have slept on a metal bench or on the floor while at the station.⁶⁷
65. The prosecution introduced nude photographs of Maxson (taken on September 2, 1992, after Maxson's confession) through the testimony of Detective Dwyer. On cross examination, Dwyer testified the pictures showed no injuries to Maxson, including photographs of Maxson's hands. [EXHIBIT J] He also testified that prior to September 2, 1992, he had learned the cause of death of Lindsey Murdock, and that hair and blood samples were taken from Maxson because hair had been found at the crime scene. He also testified that Maxson was not under arrest as of Dwyer's September 1, 1992, 6:30 p.m. conversation with Maxson.⁶⁸
66. Maxson did not testify at trial, nor did he testify to the jury at the death penalty hearing stage.
67. In closing arguments, Assistant State's Attorney Lon Schultz argued that the unidentified blood on Lindsey's clothes was a "red herring" and that there was "absolutely nothing in this record to show that blood was on the [boy's] clothes at any time as a result of attacks. Lindsey was naked. His clothes were laying on the ground. They might have gotten blood on the clothes as they lay there. There is nothing in this record to show that this defendant Mark Maxson was injured, cut, bleeding in any way." Schultz said the testimony that no fingerprints were found on the bloody glass shard implied Maxson must have wrapped it in something to get a better grip.⁶⁹
68. Defense Attorney Timothy Chambers argued that Maxson voluntarily coming forward demonstrated his innocence and that his confession was the result of being forced to spend three nights in a windowless room with no bed at a police station. He argued everything in the confession was known to police, and if Maxson were truly guilty, details police had not known would have emerged. He argued that a stick was incapable of going through the narrow space between the ribs and perforating the lungs without leaving debris in the wound. He argued that the glass shard used to wound Lindsey's

⁶⁴ Testimony of Joyce Beard, Trial ROP, H-45-H-49 (Maxson 94-1586.V6.PDF).

⁶⁵ Testimony of Angelo Pesavento, Trial ROP H-83 (Maxson 94-1586.V6.PDF).

⁶⁶ Testimony of Angelo Pesavento, Trial ROP H-100-101 (Maxson 94-1586.V6.PDF).

⁶⁷ Testimony of Angelo Pesavento, Trial ROP H-109 (Maxson 94-1586.V6.PDF).

⁶⁸ Testimony of John Duffy, Trial ROP I-12-I-39 (Maxson.94-1586.V7.PDF).

⁶⁹ Trial ROP, K-20-K-35 (Maxson 94-1586.V8.PDF).

head was covered in Lindsey's blood, and that the real killer would have been covered in Lindsey's blood too, but none of Lindsey's blood was found on Maxson's clothes, which he voluntarily surrendered to police. He argued that the glass would have cut Maxson's hands and that it did cut the real killer, resulting in the real killer's blood being found on Lindsey's clothes. He also argued Maxson's refusal to sign the confession was significant. "Why did they [police] forget all the physical evidence? Why is it only the statement? Why is it [the statement] not bolstered?"⁷⁰

69. In rebuttal, Assistant State's Attorney Adrienne Mebane argued the public hair and blood was trace material picked up in the garage, and defendant's arguments were "an insult to the system and an insult to this jury." She argued Maxson had come forward to police to clear his conscience.⁷¹

70. At Maxson's sentencing hearing, in aggravation, a rape victim testified that Maxson was one of the men who had gang-raped her on October 21, 1979, after her car stalled near 120th and Michigan and the men pretended to assist her and then raped her.⁷² When Maxson was arrested he was found in possession of the victim's radio and her photo ID.⁷³

71. At Maxson's sentencing hearing, Maxson's attorneys stipulated that a September 3, 1992, photograph showing him with a swollen eye and other injuries was the result of being attacked by other inmates while being held before court call.⁷⁴

72. At Maxson's sentencing hearing, psychologist William Hillman testified that Maxson had a borderline personality, meaning he was predisposed toward "meeting the needs of other people, pleasing other people and responding to other people * * * and that he responded most readily to what he believed other people wanted from him."⁷⁵ "What I found * * * is that his report of what he went through in the time he was taken to the police station and until the time he made this statement, verified an impression that I had of him. That in order to get out of the uncomfortable situation that he was in, during the questioning, he came to a point where he was willing to say anything. This is consistent with his personality."⁷⁶ Hillman also testified that a single incident of pedophilia, arising at about age 30 is unusual when there have been no previous incidents.⁷⁷

73. At his sentencing, Maxson again asserted his innocence. "I am not at fault here. The police and other officials are. They had no lead in the case and put it on the person who they thought did it. Unfortunately, it just so happened to be me."⁷⁸

⁷⁰ Trial ROP, K-35-K-44 (Maxson 94-1586.V8.PDF).

⁷¹ Trial ROP, K-44-K-57 (Maxson 94-1586.V8.PDF).

⁷² Sentencing ROP, K-150-K-159 (Maxson.94-1586.V8.PDF).

⁷³ Sentencing ROP, L-35-L-36 (Maxson 94-1586.V9.PDF).

⁷⁴ Sentencing ROP, L-31-L-32 (Maxson 94-1586.V9.PDF).

⁷⁵ Sentencing ROP, L-66-L-71 (Maxson 94-1586.V9.PDF).

⁷⁶ Sentencing ROP, M-1-L-29 (Maxson 94-1586.V10.PDF).

⁷⁷ Sentencing ROP, L-66-L-71 (Maxson 94-1586.V9.PDF).

⁷⁸ Sentencing ROP, 13-N (Maxson.94-1586.V10.PDF).

Maxson's Claims to TIRC

74. On approximately May 19, 2011, Maxson submitted a claim form to TIRC alleging that the "Area 2 Jon Burge Crew" had tortured him. [EXHIBIT K]. Specifically, he alleged that *Robert Dwyer* and *William Marley* were involved. He claimed that he "was slapped, kicked, and a hand gun was pulled and pointed at my head by Robert Dwyer to force the statement to Marley." Although Maxson had implied in his suppression testimony that he was implicitly threatened by Dwyer by the fact that he was very aware of where Dwyer's gun was located, this was the first time Maxson alleged the gun had actually been pulled and pointed at him during the interrogation.
75. On February 2, 2012, TIRC staff obtained the statutorily required waiver and briefly interviewed Maxson via videoconference about his claim. Maxson told TIRC that the details in the confession came from detectives, who had been providing him with information about the crime by way of asking him questions over and over again. He refused to sign the confession once it was typed up because it wasn't true. He was not tortured into signing it, he explained, because there were now additional non-police personnel present who would have been witnesses to that torture. Maxson said that an assistant state's attorney made the handwritten corrections to the typed statement.⁷⁹
76. On June 21, 2013, TIRC staff re-interviewed Maxson via videoconference. Maxson said ASA Timothy Joyce made the handwritten corrections, and that Joyce, rather than Maxson, had suggested the changes. TIRC staff questioned why the state's attorney would suggest a handwritten exculpatory addition of "to clear myself." Maxson responded that Maxson had actually said that phrase. Joyce made the corrections, paging through the statement as he did so, and discussing handwritten changes with Maxson. Maxson said Joyce had said there were certain areas where mistakes were made in the typing of the statement, and asked Maxson to sign the corrections. Maxson refused. Maxson said the details he supplied in the confession had been communicated to Maxson over the course of the multi-day questioning. In particular, when police asked for consent forms for blood and hair samples, they said those were necessary because blood and hair had been found on the clothes. He said detectives would give him certain clues, such as saying "so you were sitting down on the bucket," thereby informing him that there was a bucket in the garage. Maxson said the detail about buying crack and smoking it in the garage was not true, but he had been led into it by detectives who suggested that admitting to being on drugs would mitigate the crime. Maxson said police told him the only lie-detector question he had failed was the question about having been in the garage. Maxson said the truth was that he had never been in the garage in question.⁸⁰
77. In the June 21, 2013, interview with TIRC, Maxson was asked about his allegation that Det. *Robert Dwyer* had struck him, when transcripts indicated Det. *James Dwyer* was the detective in question. Maxson first responded that Dwyer went by both James and Robert. Asked why he believed that, Maxson said he drew that conclusion from

⁷⁹ Hear "Mark Maxson 02_02_2012.MP3".

⁸⁰ Hear "Mark Maxson 06_21_2013.MP3".

newspaper articles. He also cited Dwyer's business card, yet he was vague in his answers when asked why he assumed they were the same person.⁸¹

78. In the June 21, 2013, interview with TIRC, Maxson was asked about his statement on his TIRC claim form that a gun had been pointed at him, and how that differed from his suppression hearing testimony that he was just very aware of where Dwyer's gun was. Maxson replied that Dwyer had an ankle holster and during the interrogation put his leg up on a desk, showing it to Maxson. Maxson said Dwyer pointed at it and asked Maxson if he wanted him to use it. Maxson then stated that Dwyer actually pulled the gun out. He was asked why he had not stated that fact at his suppression hearing. Maxson responded that he was nervous at the hearing, and that he and his attorney had had disagreements over how much detail to get into. Asked to clarify whether Dwyer had taken out the gun when he put his leg on the desk, or if he had taken it out at a later time, Maxson said Dwyer took it out both times, the second being when they asked him to take hair samples. Maxson claimed that he initially refused to give the hair samples, and Dwyer pulled his gun and said Maxson would give the samples or Dwyer would take them. Maxson then said that Dwyer had also pulled the gun out when asking for consent to search for Maxson's clothes. Asked to clarify how many times Dwyer had pulled the gun out, Maxson responded "three," and that he had pointed it at Maxson two of those times. Asked if he had told his lawyer, Joseph Kennelly this, Maxson said he had, but not in full detail, because Kennelly had said it wasn't necessary at that time. Maxson said he had told the psychologist who had interviewed him about the pulling of the gun, and that he had had more in-depth discussions with the psychologist than with Kennelly.⁸²

TIRC Investigation and proceedings

79. On June 24, 2012, TIRC then-executive director David Thomas spoke with Joseph Kennelly, Maxson's trial attorney, who said he had not placed further emphasis on the failure to sign the confession because it would have undercut any death penalty-mitigation argument that Maxson had been remorseful.[EXHIBIT L]⁸³

80. In a follow-up interview on January 23, 2015, Kennelly said that the information in the suppression motion was the information Maxson had given him about the abuse, and noted that the case had occurred over 20 years ago. He did not think Maxson had injuries, because it had been standard procedure in the Public Defender's Office to ask clients if they had any injuries. If there were injuries, the Public Defender would photograph them. Kennelly could not recall any specifics regarding what Maxson had told him about the gun and Dwyer's threats. Kennelly said he was not aware of there being any other suspects in relation to the crime. Kennelly said it was his general practice not to call a client after trial after losing a suppression hearing. Doing so would

⁸¹ Hear "Mark Maxson 06_21_2013.MP3".

⁸² Hear "Mark Maxson 06_21_2013.MP3".

⁸³ Kennelly did, in fact, successfully argue at sentencing that prosecutors had, in the guilt-or-innocence phase of the trial, argued that Maxson came forward to get the crime off his chest. The jury apparently agreed, and found mitigating circumstances that prevented the imposition of the death penalty.

have opened the client up to cross-examination, and the state would have just called witnesses to testify the statements were voluntary. [EXHIBIT M]⁸⁴

81. On July 17, 2013, then-executive director David Thomas presented Maxson's claim to the Commission in open session and recommended the claim be referred to court for judicial review. The Commission, which did not have a full eight members at that time, voted 4-2 to refer the claim to court, less than the statutorily required five votes to refer a claim to court. The Commission then voted to defer the claim for a future vote.
82. On September 16, 2014, TIRC staff met in closed session with the Commission to determine whether Commissioners wished to pursue DNA testing of the physical evidence in the Maxson case in the event that it might either suggest his guilt, and be relevant evidence of an uncoerced confession, or suggest his innocence, and be relevant evidence of coercion. A majority of Commissioners directed the staff to pursue DNA testing.
83. Maxson, who had been proceeding on his own post-conviction motions pro se, acquired representation by private attorneys, who filed their own motion for DNA testing. On March 3, 2015, Maxson's attorneys related in a phone call to TIRC that Maxson had informed them that pictures existed demonstrating bruises to his face, reinforcing his claims of abuse.
84. On or about October 8, 2014, Assistant Illinois Attorney General Natasha Jenkins appeared at Maxson's motion hearing on behalf of the Commission before Judge Kenneth Wadas, prepared to inform the Judge that the Commission also wished to obtain DNA testing. Wadas recused himself from the case.⁸⁵
85. After a series of judicial reassignments of the case⁸⁶, Assistant Illinois Attorney General Natasha Jenkins again appeared at Maxson's motion hearing on behalf of the Commission before Judge Thaddeus Wilson, prepared to inform him that the Commission also wished to obtain DNA testing. The Cook County State's Attorney did not oppose the motion, and Judge Wilson granted Maxson's motion for DNA testing. The order for DNA testing, agreed to by both prosecutors and Maxson's counsel, was entered June 24, 2015.⁸⁷

⁸⁴ Joseph Kennelly Interview Report, January 23, 2015.

⁸⁵ Wadas did not explain the recusal, but court filings in the Anthony Jakes case indicate that Wadas has recused himself from cases in the past upon learning they involved abuse allegations against officers previously supervised by former Commander Jon Burge, because Wadas once represented Jon Burge while in private practice. See *People v. Jakes*, Brief and Argument for Petitioner-Appellant, 92-CR-5073, 38-39. (Wadas prior recusal mention.pdf).

⁸⁶ Coincidentally, One of the judges the case was transferred to was Judge Timothy Joyce, the former state's attorney who had taken the confession. Joyce immediately recused himself.

⁸⁷ See Agreed Order for Post-Conviction Forensic Testing Pursuant to 725 ILCS 5/116-3 (Agreed_Order-DNA_Testing.pdf).

86. On June 29, 2016, Maxson's counsel forwarded DNA testing results to the Commission, redacting information on a new suspect per request of the Cook County State's Attorney. The tests showed that:

- A stain on Lindsey's shirt contained blood and contained DNA which was a mixture of at least two people. One of the DNA profiles was a match for Lindsey, and additional DNA profiles were not suitable for comparison.⁸⁸
- A stain on Lindsey's underwear contained blood and contained DNA which was a mixture of at least two people. None of the DNA samples were suitable for comparison.⁸⁹
- Oral and rectal swabs (2B, 2C) of Lindsey's body contained Lindsey's DNA but not Maxson's.
- Three extracts from a tissue in the garage were tested. One extract had DNA belonging to at least three people; none were suitable for comparisons. A second extract had DNA belonging to at least two people; none were suitable for comparison. A third extract matched Lindsey's DNA profile.
- An extract from Lindsey's blue jeans (2G) contained human male DNA matching neither Lindsey nor Maxson.
- Three extracts from Lindsey's shirt were tested (2H, 2I, 2J). Extract 2H contained two human DNA profiles. One was a "major" profile matching Lindsey; the second was a "minor" profile matching neither Lindsey nor Maxson. Extract 2I contained a mixture of DNA from at least two people; one was Lindsey's DNA; additional profiles were not suitable for comparison. Extract 2J contained DNA profiles belonging to at least three people; One of the profiles matched neither Lindsey nor Maxson; additional profiles were not suitable for comparison.
- An extract from Lindsey's underwear containing DNA matched Lindsey's DNA.
- Two extracts (2L, 2M) from the blood-stained mirror fragment contained Lindsey's DNA profile.
- The human male DNA extracted in two places from Lindsey's shirt and from Lindsey's pants cuff were all consistent with coming from the same individual and all matched a profile in the state's DNA database of Osborne Wade.

87. Court records show a home address for Osborne Wade in for an unrelated arrest in November, 1991 listed as 10704 S. State Street, on the same block where Lindsey's body was found. [EXHIBIT N]

88. After verifying with the Cook County State's Attorney's Office that interviews with Assistant State's Attorneys who took Maxson's confession would not interfere with that office's investigation into the possible involvement of Wade, TIRC staff on

⁸⁸ See May 31, 2016 Illinois State Police Laboratory Report (TestResultsC15.pdf).

⁸⁹ See May 31, 2016 Illinois State Police Laboratory Report (TestResultsC15.pdf).

approximately August 22, 2016, invited former Assistant State's Attorneys Carlos Weeden and James Joyce to interview with staff.

89. On September 13, 2016, TIRC staff interviewed former Assistant State's Attorney Carlos Weeden. Weeden remembered very little of the case, including the fact that he had testified at Maxson's suppression hearing and trial. He did recall that Maxson was very calm throughout his interviews, Maxson had given a very detailed statement, and there had been no evidence of mistreatment of Maxson. Weeden said at the time of the interview, he was taking his first court-reported confession, and so he called in his supervisor, Timothy Joyce, for assistance. Weeden said that it was protocol to insert minor errors into suspects' handwritten statements in order to have the suspect correct the errors and thus affirm the suspect had read the statement and taken ownership of it. He was less certain if this was also standard for court-reported confessions, which would have had to involve the court reporter.⁹⁰ Weeden did not remember if this practice had been followed in Maxson's case. Weeden said he was not present when nude photos of Maxson were taken and found them unusual. (Exhibit O).⁹¹
90. On September 27, 2016, Judge Thaddeus Wilson granted Maxson's attorneys' motion to vacate his conviction and prosecutors dropped all charges against Maxson. Osborne Wade was charged with Lindsey's murder the same day.
91. With the vacation of the conviction, TIRC staff informed former ASA Joyce, former ASA Adrienne Mebane and former Detectives Pesavento, Duffy and Marley that TIRC likely had lost the power to subpoena them to testify, but invited them to interview for TIRC's final report.⁹²
92. On October 12, 2016, Joyce provided TIRC with a copy of the Cook County State's Attorney's report of its July 19, 2016, interview with him. The report, by Cook County State's Attorney Investigator G. Carroll, stated that Joyce had learned of the investigation on an unspecified date in a conversation with Duffy regarding a "person of interest" detectives had at Area 2 in regards to Lindsey's murder. Later called to the station, Joyce interviewed Maxson and believed Maxson seemed clear in his thoughts and gave no statements indicating detectives had made any promises to him or abused him "and in fact, Joyce requested that Maxson strip his clothes and overall photos be taken of Maxson to reflect that he had no injuries to his body." The report stated that "Joyce felt that the confession Maxson gave was the truth." (EXHIBIT P)⁹³

⁹⁰ A former assistant state's attorney in another TIRC investigation confirmed this practice. *See In re: Claim of Jerry Mahaffey*, Determination of January 20, 2016, 25; *see also* statements of Judge Thaddeus Wilson in Schmadeke, Steve, "Alvarez was 'livid,' fired prosecutor over alleged perjury in cop shooting," *Chicago Tribune*, Sept. 14, 2015.

⁹¹ William Carlos Weeden Interview Report, Sept. 13, 2016.

⁹² Certified letters were signed for at Duffy's home on October 6, 2016, and at Marley and Pesavento's homes on October 7, 2016. No response was received by TIRC. James Dwyer is deceased. Schultz could not be located.

⁹³ Carroll, G., "Office of the State's Attorney, Cook County, Illinois, Investigative Report," July 19, 2016.

93. On November 8, 2016, Joyce declined to answer follow-up questions from TIRC. Detectives never responded to TIRC's interview invitations.
94. On October 26, 2016, TIRC requested from the Cook County State's Attorney's Office other reports of recent interviews with police and former prosecutors.
95. On October 28, 2016, a representative of the Cook County State's Attorney's Office declined to share such reports, citing their possible use as evidence in Osborne Wade's trial.
96. On October 27, 2016, Judge Thaddeus Wilson issued a certificate of innocence for Maxson, finding that Maxson "is innocent of the murder of Lindsey Murdock and * * * did not voluntarily cause his conviction." [EXHIBIT Q]
97. On November 1, 2016, former Assistant State's Attorney Adrienne Mebane, who co-prosecuted Maxson, spoke with TIRC staff by telephone. She did not remember many facts regarding the prosecution, but remembered it involved the death of a young 6-year-old boy and had been a big deal in the community. In particular, she recalled that the community had been very concerned about the large number of abandoned buildings in the neighborhood and that the garage had been quickly razed, which she "couldn't believe."⁹⁴ She recalled that Maxson's confession was unsigned, she did not recall what the forensic evidence in the case was, but knew there was some. Her general memory was that she recalled thinking it was a good case. "I would not have tried it if it wasn't a good case," Mebane said. (EXHIBIT R).
98. Although Mebane did not recall the forensic evidence, she said that, in general, responsibility for evaluating evidence as it came in once charges had been lodged lied with two parties: the "preliminary" state's attorneys responsible for bringing an indictment or conducting a preliminary hearing and, after that stage, the trial attorneys. She noted that she herself, as a former Assistant Attorney in charge of Branch 66 cases had "nolle'd" (stricken charges) charges that had initially been approved. (EXHIBIT R).

PATTERN AND PRACTICE EVIDENCE

John Duffy and James Dwyer

99. Duffy began work at Area 2 as a detective on March 12, 1986. The Commander at that time was Jon Burge, who transferred to the Bomb and Arson Unit on August 11, 1986. Detective James Dwyer began work at Area 2 on March 1, 1990. Although the work history obtained by TIRC does not reflect his full assignment history, there is no indication that he worked in any unit contemporaneously with Jon Burge.

⁹⁴ A newspaper article indicates the City Building Commissioner began demolition of the abandoned garage and house on Tuesday, September 1, 1992, before Maxson was even charged. See Baldacci, Leslie, "City Razes Site Where Boy, 6, Was Found Slain," Chicago Sun-Times, Wednesday, September 2, 1992.

100. In April, 1990, Detective John Duffy and partner James Dwyer interrogated murder suspect Shawn Whirl. Whirl did not accuse the two in his TIRC claim form of inflicting any abuse upon him, or witnessing it, but Whirl did accuse fellow Detective James Pienta of torture. In 2013, TIRC referred the Whirl case to court for a hearing, and in 2015, the Illinois Appellate Court ordered a new suppression hearing for Whirl. A special prosecutor subsequently dropped charges against Whirl, who was freed from prison. *See People v. Whirl*, 2015 IL App (1st) 111483.
101. Duffy has just two complaints listed on his Complaint Register index – one alleging an improper search of a premises or car without a warrant; the other related to allegations in an unspecified civil suit in federal court. The Office of Professional Standards ruled the former complaint unsubstantiated and exonerated him of the allegations in the civil suit. A subpoena issued August 26, 2016, to the Chicago Police Department for documents underlying the complaints was due for return on September 16, 2016, but has not been answered as of this report date.
102. James Dwyer's CR index lists 11 complaints. Five stemmed from allegations made against him in state or federal civil lawsuits. Three alleged improper searches of a premises or vehicle without a warrant. One alleged his absence from the job without permission. One alleged improper conduct against an arrestee during an arrest. One alleged his vehicle was not properly licensed. With the exception of the vehicle licensing complaint, all were ruled unfounded, not substantiated or exonerated. A subpoena issued August 26, 2016, to the Chicago Police Department for documents underlying the complaints was due for return on September 16, 2016, but has not been answered as of this report date.

William Marley

103. In April, 1990, Detective William Marley was involved in the interrogation of murder suspect Shawn Whirl, and was present when an assistant state's attorney took Whirl's confession. Whirl did not accuse Marley of any abuse in his TIRC claim form, but Whirl did accuse Marley's partner, Detective James Pienta, of torturing him by repeatedly scraping a pre-existing wound with a key. In 2013, TIRC referred the Whirl case to court for a hearing. Marley indicated that, if called to testify in the hearing, he would invoke his Fifth Amendment right against self-incrimination. *People v. Whirl*, 2015 IL App (1st) 111483, ¶68 (2015). In 2015, the Illinois Appellate Court ordered a new suppression hearing for Whirl. A special prosecutor subsequently dropped charges against Whirl, who was freed from prison. *People v. Whirl*, 2015 IL App (1st) 111483.
104. Murder defendant Aaron Patterson testified that Marley was present in a police car in April, 1986, when fellow Detective James Pienta reached across and slapped defendant's friend James Hill, and Pienta commented that if he had been the officer who found Patterson, Patterson would now be dead. Patterson also alleged further abuse by Pienta (suffocation with typewriter cover) accompanied by beatings by

Marley and Det. Pedersen; Marley testified that he was present for the interviews Pienta conducted and that no torture occurred. *People v. Patterson*, 192 Ill.2d 93, 116; *People v. Patterson*, 154 Ill.2d 414, 437-438; *Patterson v. Burge*, 328 F.Supp.2d 878, 883. Marley did testify in the criminal case that he was present for an Assistant State's Attorney's interview of Patterson and that, after the interview, the ASA wanted further evidence beyond Patterson's confession. *Patterson*, 154 Ill.2d 414, 433. Patterson's co-defendant, Eric Caine, also named Marley in a civil suit as co-defendant, although Marley's exact role regarding Caine is unclear from appellate opinions, and the special prosecutor's report found Marley was not accused of abuse against Caine. *Caine v. Burge*, 2012 WL 2458640, *1 (N.D. Ill., 11-C-8996, June 27, 2012). The Cook County Special prosecutor determined that it did not have evidence beyond a reasonable doubt to indict anyone in the Patterson case, but did document that Patterson made initial outcries at his first court hearing, that at least three ASAs spoke with Patterson, that Patterson scrawled allegations of abuse into the bench and wall of his interrogation room at the Area headquarters, and that the Patterson case could likely serve as pattern and practice evidence for other cases should they go to trial. Patterson was pardoned based on innocence by Gov. George Ryan in 2003, and received a \$5 million legal settlement in 2008; Caine was released from prison in 2011 after a judge suppressed his confession and prosecutors dropped charges against him. He received a certificate of innocence in 2012, and a \$10 million settlement in 2013 based on medical evidence of a ruptured eardrum consistent with Caine's allegations that Detective Raymond Madigan cuffed him on the ear to extract a confession. See Fran Spielman, "\$10 million to another Burge Victim," Chicago Sun-Times, July 20, 2013; Jason Meisner, "Another Burge case, another \$10 million," Chicago Tribune, July 19, 2013. The special prosecutor also reported that the jail doctor who documented Caine's ear rupture told special prosecutors that the complaint that detectives would cuff the ears of suspects was very common and they frequently saw such ear ruptures in the jail.

105. On May 9, 1986, Marley and partner James Pienta traveled to Nebraska to extradite double-murder suspect Kenneth Baker. Despite being advised by Nebraska state troopers that Baker had requested an attorney, Marley and Pienta nonetheless met with Baker, advised him of his Miranda rights, and obtained a confession. The Illinois Appellate Court ruled that "the police improperly reinitiated contact with defendant after he had invoked his fifth amendment right to counsel. * * * There is no question in this case that the Chicago officers were informed that defendant had invoked his rights in this case. * * * [It was a] clear violation of defendant's fifth amendment right to counsel." *People v. Baker*, 253 Ill.App.3d 15 (1st Dist.) (1993).
106. In a case with striking similarities to the Baker interrogation, Marley and partner Michael Bosco traveled to Nebraska to extradite murder suspect Walter Wright. This time, they waited until returning to Chicago on April 7, 1990, to talk with the suspect, who had been audio recorded in Nebraska asking for an attorney. They gave Wright candy and cigarettes while they waited for an assistant state's attorney to arrive and explained that "the State's Attorney had approved the charge [of murder] against him. We explained our procedures to him," Marley testified. Thereupon,

Wright asked about the date of the murder police were investigating, and Marley answered Wright. Bosco then read Wright his rights, Marley testified. Marley testified that the “procedures” he explained to Wright were that an ASA would be coming out and would “interview him if he wanted to be interviewed.” Wright then made incriminating statements. The court ruled that Wright had initiated the conversation and the resulting confession, therefore, was not involuntary or in violation of his *Miranda* rights. *People v. Wright*, 272 Ill.App.3d 1033.

107. Marley’s complaint register index lists three complaints – two related to allegations against him in civil suits and one regarding improper licensing of his vehicle. The complaint regarding the vehicle was the only sustained charge.

Angelo Pesavento

108. Angelo Pesavento began work at Area 2 on May 1, 1986. The Commander at that time was Jon Burge, who transferred to the Bomb and Arson Unit a few months later on August 11, 1986.

109. Pesavento’s complaint register index lists three complaints: (1) “Neglect of Duty/Conduct Unbecoming – on duty,” (2) “Telephone – Attorney/Relative/Priv[i]lege” and (3) “Search of Premise/Vehicle W/O Warrant.” All were ruled unfounded or not substantiated.

ANALYSIS

Factors Supporting Further Judicial Review of Maxson’s claims of abuse

As was pointed out before, hindsight is 20/20. Yet even the evidence that existed at the time of the suppression hearing and trial raises a convincing case for judicial examination of the voluntariness of this confession and whether torture occurred.

The Commission finds incredible detectives’ testimony that Maxson was not a suspect the moment he arrived on the murder scene on August 30, 1992, to offer up that he had seen Lindsey the previous night.

Pointing to the unlikelihood of the police account is Duffy’s own testimony, which indicates that he and Dwyer read Maxson his *Miranda* rights the very first time they interviewed him, just a few hours after he had come to the station. Under the law, *Miranda* warnings are not required unless a person is in a custodial setting.

Pesavento’s own testimony acknowledges police had absolutely no leads until Maxson presented himself. Moreover, Maxson may have voluntarily stayed at the police station the first night, but it is highly doubtful he willingly spent nights two and three there, with no bed, no shower, and no in-person contact with his family.

The paucity of the evidence of a thorough canvas of the neighborhood around the crime scene may suggest police focused on Maxson at the expense of any other theory. Four residents near the crime scene were interviewed, but there is no documentation that any residents of State Street were interviewed.

Police reports do not document any convincingly incriminating statements occurring until almost exactly 48 hours after Maxson first came to the police station. At the time of Lindsey's murder, the historic *County of Riverside v. McLaughlin* decision by the U.S. Supreme Court was slightly over a year old. It ruled that 48 hours after a person's arrest, the burden shifted to police to justify continued holding of that person without a probable cause hearing before a judge. Every detective and assistant state's attorney involved in questioning Maxson undoubtedly was aware of that rule, and the court-reported confession took great pains to document that the first hours at the police station were not custodial, likely in an effort to deal with the *Riverside* rule.

The ticking 48-hour clock, combined with no known forensic evidence at the time that pointed to Maxson, also increased the need to secure a confession from Maxson, increasing the motivation to abuse a suspect in order to secure a confession.

The documentation of the sequence of interrogations shows each interrogation after the 48-hour mark added significant details supposedly admitted to by Maxson. Each added detail was a fact already known to police. Police reports documenting Maxson's first confession to murder did not address the anal injuries or the head wounds. The handwritten notes of Joyce's interview with Maxson shows Maxson adding an additional detail regarding anal sex with the victim. Finally, the subsequent court-reported confession adds further detail of how the head injuries occurred.

By their own accounts, Duffy and Dwyer shared significant crime scene evidence with Maxson. Add to the mix Maxson's own propensity to accommodate interrogators and explain evidence presented to him, and Maxson's attempts to address what he saw as increasingly hostile questions raises a distinct possibility of a false confession.

Also documented is Marley's willingness to skirt prisoners' rights. An appellate court ruled he ignored an extradition prisoner's request for an attorney, and a subsequent court decision, although not determining there had been any constitutional violation, showed he was still very willing to continue dialogue with suspects after an attorney had been requested. Marley's attorneys indicated that rather than testify at Shawn Whirl's post-conviction hearing, he would invoke his Fifth Amendment right against self-incrimination. A negative inference is drawn from that invocation.

Most convincing, the presence of blood of a third party on Lindsey's clothes suggested, even in 1992, the involvement of another person. Also somewhat concerning were discrepancies between the confession and the forensic evidence. The confession indicated Maxson poked Lindsey with a stick in the back, yet the back wound was extremely deep, penetrating the lung and diaphragm, and no stick with blood was found. Maxson told police he dropped the bloody glass shard in the garage before he left, yet that shard was found in the yard outside the garage.

Factors Detracting from Maxson's Claims of Abuse

Maxson's prior conviction in a gang-rape case is properly considered as evidence not favoring his credibility.

In addition, interviews with Maxson that TIRC conducted did not leave overwhelming impressions of credibility. Maxson went from claiming, at his suppression hearing, that he was merely "aware" of where Dwyer's gun was, to claiming in his TIRC claim form that it had been pointed at him, to claiming in a TIRC interview that the gun had been pulled out twice, to claiming in the same interview that it had been pulled out three times and pointed at him twice.

Maxson also gave unconvincing explanations for how he came to make his initial TIRC claims that *Robert Dwyer* was the detective who had abused him. At the time Maxson's claim was submitted, the TIRC Act required that the case somehow be tied to Jon Burge, and Robert Dwyer was a well-known Burge supervisee with a long list of abuse complaints. James Dwyer was not. This suggests that Maxson may have deliberately "confused" the two Dwyers in an effort to bring his case within TIRC's jurisdiction.

Maxson also relayed, through his attorneys, that photographs existed that documented his abuse by police. Yet he was likely well aware that the only photos demonstrating injuries to him were jail pictures showing a swollen face. Maxson was present in court at his sentencing hearing when his attorneys stipulated that those photos documented not injuries inflicted by police, but injuries inflicted by fellow jail inmates enraged by the rape and murder of a child.

The expanding gun claims, the claim that Detective Robert Dwyer was involved in his case, and Maxson's attempt to have the picture of his injuries (inflicted by inmates) re-interpreted as police-inflicted abuse may only demonstrate Maxson's confusion about events years after they transpired. More likely, however, these facts suggests that an increasingly desperate Maxson, imprisoned for more than two decades for what the court has now determined was not his crime, was willing to exaggerate or fabricate claims to seek relief. It is not beyond the realm of possibility then, that in 1992, faced with charges now judicially determined to be false, he would have been willing to exaggerate claims of police coercion to try and secure an acquittal.

Jurisdiction

The TIRC Act gives the Commission jurisdiction to investigate a "Claim of torture," which is narrowly defined as "a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is some credible evidence related to allegations of torture occurring within a count of more than 3,000,000 inhabitants." 775 ILCS 40/5(1).

With the conviction vacated, and Maxson issued a certificate of innocence, there is no longer a conviction in this matter. Accordingly, the Commission is without jurisdiction to refer this matter to court. Additionally, the only relief that such a referral could potentially provide

would be a hearing on the voluntariness of his confession and possible retrial or dismissal of charges, relief that the court has already granted to Maxson.

Accordingly, the Commission must dismiss Mr. Maxson's claim for a lack of jurisdiction. It notes, however, had that such relief not already been entered, there would be more than enough credible evidence justifying a referral of Maxson's claims of torture to court for further judicial review.

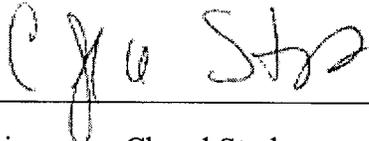
CONCLUSION

Although the Commission does not conclude that the alleged torture in this case occurred, it notes that there is more than sufficient evidence of torture that would merit referral to a judge under normal circumstances. Because there is no longer a conviction at issue, however, the Commission is without jurisdiction in this matter and dismisses the claim.

The Commission further instructs its director to notify Maxson of its decision and to inform him of his right to review under the Illinois Administrative Review Law.

The Commission also instructs its executive director to refer this determination and accompanying referral order to the State's Attorney-elect and other parties as stated in those referral orders.

Date: November 16, 2016



Chairwoman Cheryl Starks