

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:

Claim of Reginald Bocclair

TIRC No.: 2011.106-B
**Relates to Circuit Court
No. 90-CR-25621**

CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Adm. Code 3500.385(c), it is the decision of the Commission that there is not sufficient evidence of torture to merit judicial review. This decision is based upon the Findings of Fact and Conclusions set forth below, as well as the supporting record attached hereto.

Findings of Fact

I. Arrest and Confession

1. On August 1, 1990, 12:01 a.m., four friends who were riding in a station wagon to the lakefront stopped for gasoline at a station on the northwest corner of Princeton Avenue and Garfield Boulevard. A passenger in the station wagon, Andre Ball, approached two men (Reginald Bocclair and Anthony Holmes) using the gas station payphones and swindled one of them out of five dollars. Shouting ensued and one of the two men who had been standing at the payphones began shooting a handgun into the car, hitting and killing Walter Deramus in the front passenger seat. Driver LaJuana Ruth and rear-seat passengers Felicia Landon and Ball were unharmed.¹
2. According to police reports dated that evening, Ball told police “he asked the offender for change and ... [the] offender then pulled out a gun and fired several shots.” Landon told police she “heard the offender yelling ‘Give me my five dollar’ several times ... [and] observed the offender shot [sic] once in the air and again in the ground before shooting at the automobile. She further [sic] she heard another youth who apparently knew the offender look northbound down Princeton [sic] and yell ‘M.C.’s’ several times.” Police reported Ruth² told them that “[w]hen Ball got the five dollars he did not give up the five dollar bill and offender got mad, pulled out a pistol and attempted to force Ball to return the five dollars ... [and] offender attempted to shoot Ball” but hit Deramus. *See* Exhibit A, CPD Supplementary Report of August 1, 1990.

¹ *People v. Bocclair* [sic], No. 1-93-0342, (1 Dist., April 15, 1996), Exhibit Q; *see also* August 1, 1990 CPD Supplementary Report, Exhibit A.

² Ruth is sometimes referred to in police reports by her maiden name, LaJuana Smith.

3. Also that night, Ball “tentatively” identified from a mug shot photo album a Terry McClinton as a suspect. *See* Exhibit B, August 1, 1990 CPD memo. Police quickly determined McClinton was incarcerated at the time of the shooting.³
4. On August 28, 1990, claimant Bocclair⁴ was arrested and charged with battery, based on a complaint by Holmes. Holmes told police that he and Bocclair were members of the Mickey Cobras (M.C.) street gang and Bocclair had recently beaten him severely as punishment for violating gang rules. Holmes also volunteered that Bocclair had been involved in the August 1, 1990 homicide, which was unrelated to Holmes’ beating. Bocclair and Holmes were both taken to Area 3 Violent Crimes to be interviewed and to participate in a line-up relating to that homicide. *See* Exhibit D, Aug. 30, 1990 CPD report.
5. At approximately 3:30AM on August 29, 1990, a line-up of suspects including Holmes and Bocclair was held for two of the passengers who had witnessed the homicide, Andre Ball and Felicia Landon. *See* Exhibit C, lineup report. While both identified Holmes and Bocclair as being present at the scene of the August 1 shooting, only one witness was able to positively identify the shooter. That witness, Andre Ball, identified Holmes as the shooter.⁵
6. At approximately 4:00AM on August 29, 1990, Bocclair was interviewed by Officer Roy Kwilos and Detective Daniel McWeeny of the Chicago Police Department. In this first interview with police, Bocclair made an oral statement confessing to the homicide. The August 30, 1990, police report documenting that statement is attached as Exhibit D. Bocclair stated that a man (Andre Ball) approached him and Holmes, asking for change for a five-dollar bill, that the man swindled Holmes, and that Holmes subsequently chased after the man’s vehicle. Bocclair stated that because the vehicle almost ran Bocclair over, he pulled out a gun and shot at the vehicle. In a second interview later that morning, with Assistant State’s Attorney Jennifer Borowitz present, police report that he again claimed responsibility for the murder, relaying “the same set of facts.”
7. Authorities attempted to locate witness LaJuana Ruth for the August 29, 1990 lineup but were unsuccessful. *Id.*
8. It is unclear why, but Bocclair met a second time with Assistant State’s Attorney Borowitz approximately 24 hours later at 3:00AM on August 30, 1990.⁶ In a 1999 affidavit, Bocclair

³ Aug. 3, 1990 CPD report, Exhibit R.

⁴ Mr. Bocclair’s name was spelled “Boclaire” in initial police reports and the information filed by the State’s Attorney on October 9, 1990.

⁵ Landon’s identification was less clear. The lineup report stated Landon “tentatively identified both suspects, stating that she could not be positive.”

⁶ The second meeting a day later may have been due to the conflict between Bocclair’s confession and Ball’s ID of Holmes as the shooter. Police wrote that “[d]ue to the identifications of the eye-witnesses to the case it was decided to re-interview both Reginald BOCLAIRE and Anthony HOLMES.” CPD Supplementary Report dated August 30, 1990. (Exhibit D)

stated that, at this interview, Borowitz informed Bocclair that he had not been identified as the shooter. *See* Exhibit E, 1999 Bocclair affidavit excerpt. During this interview, Bocclair retracted his prior oral confession and gave an exculpatory statement that ASA Borowitz wrote down in her handwriting. *See* Exhibit F. Bocclair signed the statement. ASA Borowitz and Det. Daniel McWeeny witnessed it. In that statement, he denied committing the homicide and instead implicated Holmes. The signed statement explained that he initially confessed to the shooting when questioned by the detectives because he “knew that the police knew he was at the scene of the shooting” and because of the “Golden Silence law” in his gang, which “says that you never tell on another gang member because if you break the circle of silence you’ll be killed.” No court reporter was present for his oral statements on August 29th or his written statement on August 30th.

9. Bocclair’s August 30th statement does not include any allegations of torture or mistreatment by police. It states:

“Reginald Boclaire [sic] stated that he was treated well by the police and the assistant state’s attorney. He was not made any promises in return for his statement, nor was he threatened in any way.”

10. Based on Bocclair’s signed statement implicating Holmes and the August 29th line-up identifications, ASA Borowitz approved a First Degree Murder charge against Anthony Holmes.
11. A few days later, the situation changed dramatically when LaJuana Ruth was located and re-interviewed. She clarified that the man who Andre Ball swindled the \$5 from had approached the station wagon on the passenger side, where Ball was seated, while the shooter had fired from the driver’s side of the car. Ruth then identified Bocclair as the shooter in a photographic lineup. *See* Exhibit G, Oct. 11, 1990, police report.
12. In light of this evidence, police re-interviewed a bystander witness, David Doudek, who confirmed the configuration of the shooter on the driver’s side and the other man standing on the passenger side (although Doudek could not identify either man). This configuration also matched Holmes’ original story to police. The two prior lineup witnesses, Ball and Landon, were re-interviewed and “told of the developments in the investigation” by police. Both changed their stories to also name Bocclair as the shooter. Holmes was then re-interviewed and reiterated that Bocclair was the shooter, not him. He also told detectives that, while they were in jail awaiting hearings on the various charges against them, Bocclair told Holmes he “had to take the rap” or he “will be dealt with.” *See* Exhibit G. Ruth and Ball reiterated their identification of Bocclair as the shooter before the grand jury on September 7, 1990.⁷
13. Bocclair was subsequently charged with the murder of Deramus in an Information filed on October 9, 1990. The charges were approved by a different Assistant State’s Attorney,

⁷ May 13, 1992 trial testimony of LaJuana Ruth, p. B-23 to B-25; May 18, 1992 trial testimony of Andre Ball, p. D-14.

Charles Burns.⁸ The murder charge against Holmes was dropped, and the State paid to relocate Holmes to a different city.

II. Trial

14. Bocclair's homicide case was tried to the bench in May of 1992 before Judge Michael B. Bolan.⁹ Bocclair was represented at trial by Assistant Public Defender Charles Buchholz. (At the pretrial stage, Bocclair was represented by two other attorneys. Initially, he was represented by a public defender at the preliminary hearing and then by a private attorney, Akim Gursel, who was replaced by Mr. Buchholz.)
15. None of Bocclair's attorneys made any motion before trial to suppress his oral statements confessing to the murder as involuntary.
16. Officer Kwilos and Detective McWeeny each testified at trial about Bocclair's oral confession to the homicide.
17. Three eyewitnesses testified against Bocclair at trial and named him as the shooter: 1) fellow gang member Anthony Holmes, who had initially been charged with the homicide; 2) LaJuana Ruth, the eyewitness who had identified Bocclair as the shooter in a photographic lineup around September 7, 1990; and 3) eyewitness Andre Ball (who had initially identified Holmes as the shooter but later changed his statement after Ruth identified Bocclair). These witnesses were all cross-examined regarding their identifications of Bocclair. Holmes was also cross-examined regarding his involvement at the scene of the crime and the fact that he was initially charged with the homicide as well as the State providing him travel money to leave Chicago.
18. After the State introduced testimony from Kwilos and McWeeny about his oral confession, Bocclair testified at trial and denied that he was the shooter, but he made no mention of physical coercion by the officers in obtaining the confession. Rather, his defense was that he did not commit the murder and that he had only confessed to police because of his gang's "code of silence." No argument of physical abuse or coercion was made. *See* Exhibit H, Bocclair trial testimony transcript.
19. The judge at trial refused to admit Bocclair's signed exculpatory statement, in which he denied committing the homicide, into evidence. His trial counsel had unsuccessfully argued to the court that the statement was admissible under the "rule of completeness" or as a "prior consistent statement" to rebut a claim of recent fabrication.
20. Assistant State's Attorney Borowitz did not testify at trial. The trial record indicates that Assistant Public Defender Buchholz attempted to serve Borowitz (Exhibit I) and certain

⁸ ASA Charles Burns was involved in taking the confession in another TIRC case that was referred for judicial review, *In re Claim of Ivan Smith*, TIRC Claim No. 2011.001-S (Jan. 20, 2016). Burns also tried the case against Bocclair.

⁹ The trial was conducted piecemeal over several days: May 12, May 13, May 18 and May 21.

detectives with subpoenas by serving them at their place of work. In court transcripts, Buchholz stated that this was “pursuant to an agreement” between the Public Defender’s Office and the Police Department: “. . . because they won’t take them any other place and you can’t find them. That is all we have to do.” See Exhibit J, transcript of Buchholz-Burns exchange. ASA Burns objected that this did not constitute personal service. Argument between Burns and Buchholz grew heated, and Buchholz filed the subpoenas with the court on May 13, 1992, at the end of the second day of trial, and implied he might seek sanctions against the state. Nonetheless, Borowitz never testified.

21. Boclair was found guilty of the homicide and sentenced to natural life in prison.

III. Post-Trial Proceedings

22. Between 1992 and 2006, Boclair filed an appeal and several post-conviction motions, including a motion to set aside the verdict of guilty and four petitions for post-conviction relief. In those proceedings, Boclair did not raise any claim that physical abuse, torture, or mistreatment led to the confession that was used to convict him at trial.
23. In his April 2003, post-conviction petition and the February 2006, supplement to that petition, Boclair did raise an ineffective assistance of counsel claim based in part on his trial counsel’s failure to file a pre-trial motion to suppress his confession and other evidence. He alleged the confession was “unconstitutionally seized.” Boclair also alleged that, although he was advised of his rights, the state did not meet its burden of showing that his confession was made knowingly, intelligently, and voluntarily. In those petitions, Boclair did not specify why his statements were involuntary or “unconstitutionally seized,” and made no mention of physical abuse.

IV. TIRC Claim and Investigation

24. In his TIRC Claim form, filed in 2011, Boclair raised for the first time a claim of physical abuse. Exhibit K. This was more than 20 years after the alleged occurrence.
25. Claimant Reginald Boclair alleges in his TIRC Claim Form that in late August of 1990, at the Chicago Police Station at 39th and California (Area 3), Detectives Roy Kwilos and Daniel McWeeny questioned him about the homicide. Boclair alleges that, when he did not answer their questions, he was left alone for 20 to 30 minutes. Detective McWeeny then allegedly returned, wearing black leather gloves, and punched him in various places on his body while he was cuffed. Boclair claims that he confessed to the homicide as a result of these actions.
26. TIRC’s investigation with respect to Boclair’s claim included substantial evidence-gathering and review. The Commission subpoenaed records from the Chicago Police Department, the Clerk of the Circuit Court of Cook County, the Office of the Cook County Public Defender¹⁰, and the Independent Police Review Authority (IPRA). TIRC

¹⁰ The Public Defender’s Office reported it was unable to find its file on Boclair’s trial. On July 20, 2016, the Commission discussed Mr. BoClair’s claim. Commissioners instructed staff to re-check with the Public Defender’s

obtained investigative files, court records, post-conviction relief petitions, and appellate briefs and opinions. TIRC investigators interviewed or deposed various witnesses. None of the documents yielded from this investigation or the oral interviews or depositions reflected abuse or corroborated Boclair's abuse claims.

27. Boclair admits that he did not seek medical attention or inform jail intake officers of the alleged abuse. There are no police, medical or hospital reports substantiating any physical abuse of Boclair while in police custody.
28. After he submitted his TIRC Claim form to the Commission, Boclair waived his 5th Amendment rights and was interviewed by TIRC staff on October 14, 2015. Boclair's explanation for his initial silence regarding the abuse, and his failure to seek medical attention or inform jail intake officers, was that he considered the abuse to be "normal protocol" and "you expect that" and that one does not inform officers or other personnel because "it's a pride or ego thing." Boclair stated that he told ASA Borowitz about the abuse during their second interview, but fabricated the "code of silence" story as the reason for his initial confession after Borowitz told him they could not use police abuse as a reason for his initial confession. He also claimed he told his private lawyer, Akim Gursel, and his subsequent public defender, Charles Buchholz, about the abuse. Boclair maintains that Burns arranged the flip-flop on charges because Burns was also prosecuting Boclair on a separate aggravated battery charge at the time and was out to get Boclair.¹¹
29. The former Assistant State's Attorney who heard Boclair's oral confession and later his recantation of it, Jennifer Borowitz, was interviewed by TIRC on December 8, 2015, and deposed on February 8, 2016. *See* Exhibit L, Borowitz deposition. She testified that she had no present recollection of interviewing Boclair. She said that she did not recall any prisoner telling her that he had been abused by police (except one instance in a North side police station, and she was certain that this person was not Boclair). She indicated that it was her practice to ask suspects if they were treated well by police and that, if any prisoner had told her he had been abused by the police, she would have reported it to her supervisor. (This is what she did in the one instance that she did remember.¹²) Borowitz left the Assistant State's Attorney's office in 1996, and is now an Assistant Chief in the Appeals Division of the Illinois Department of Employment Security.

Office in an effort to locate this file. TIRC personnel subsequently conferred with Michael Morrissey and Jose Diaz of the Public Defender's Office, who attempted again to find Mr. Boclair's file without success.

¹¹ *See* Audio recording: 2015.10.14 Boclair Waiver & Interview Part I.MP3, Video Teleconference Interview by TIRC Staff with Reginald Boclair, TIRC Claimant (Oct. 14, 2015) (on file with TIRC); Audio recording: 2015.10.14 Boclair Waiver & Interview Part II.MP3, Video Teleconference Interview by TIRC Staff with Reginald Boclair, TIRC Claimant (Oct. 14, 2015) (on file with TIRC).

¹² Although Borowitz remembered the one complaint, she did not remember where it occurred, but vaguely remembered the complainant being taken to the hospital.

30. Bocclair's original private lawyer, Akim Gursel, died in 2014 and therefore was unavailable to be interviewed. Gursel's Social Security Death Index report is attached as Exhibit M.
31. Bocclair was represented at trial by Assistant Public Defender Charles Buchholz. Buchholz was interviewed by telephone on March 7, 2016, and again on April 7, 2016, after having been provided documents to refresh his memory of the case. *See* Exhibit N, Buchholz reports. He remembered the case, but did not remember Bocclair telling him anything about being coerced by the police; rather, he recalled that Bocclair had told him that he confessed to the shooting because he was covering for someone else "or something like that." Buchholz stated that, if Bocclair had informed him at or prior to trial of mistreatment by the police during his interrogation, he would have filed a motion to suppress.
32. It should be noted that, according to TIRC and IPRA records, Chicago Police Detective Daniel McWeeny has been accused of abuse and coercion by several individuals. McWeeny was a subordinate to Jon Burge; this gives TIRC jurisdiction over Bocclair's claim. In total, TIRC records identify 18 separate accusations of misconduct against McWeeny. *See* Exhibit O, Summary of complaints against Dets. McWeeny and Kwilos. McWeeny initially asserted his Fifth Amendment privilege against self-incrimination in responding to a lawsuit concerning physical coercion by Aaron Patterson, but later affirmatively denied the charges. Twelve of the 18 accusations allege McWeeny either participated in or was complicit in physical coercion designed to elicit a confession.
33. In addition, TIRC referred one claim of torture against McWeeny for judicial review (*In re Claim of Robert Smith*, TIRC Claim No. 2011.024-S). In *Robert Smith*, the claimant was questioned for 18 consecutive hours by Det. McWeeny and others, during which time he maintained he was "beaten, kicked in the head, . . . choked" and "threatened with further violence." The claimant "finally agreed to give a statement," but refused to sign it. The confession was cursory and inconsistent with the physical evidence in the case. The Commission concluded that "[t]he prosecution's case [against Smith] without the confession was almost nil."
34. Records from the Chicago Police Department's Office of Professional Standards indicate that former Chicago Police Officer Roy Kwilos was accused of abuse in one other case. The Department's records indicate that the accusation was "not sustained."

Analysis

- A. Bocclair's claim is undermined by the fact that he only raised the issue of torture in December 2011, some 21 years after the alleged beating occurred. Bocclair offers unpersuasive explanations for this delay:
 - i. that Assistant State's Attorney Borowitz convinced him not to allege torture because the story would not be credible (Borowitz denied ever giving this unusual advice to anyone); and

- ii. that he raised the issue implicitly through his ineffective assistance of counsel claims.
- B. Bocclair claims to have told ASA Borowitz at the time (and later his own attorney, Buchholz) about the abuse. His claim is further undermined because neither attorney recalled being told this and each affirmatively stated that they would have taken action if Bocclair had reported such abuse. Buchholz's statements in particular undermine Bocclair's claim.
- C. There is no record or mention of any physical abuse at trial or in any post-trial relief petition filed by Bocclair prior to his TIRC claim, nor is there physical corroboration of any kind from jail, hospital or medical records. All weigh against Bocclair's claim.
- D. The prosecution's case was not based solely on Bocclair's confession; rather, there were three eyewitnesses to Bocclair's shooting of the victim, one of whom added that Bocclair had tried to threaten him into "tak[ing] the rap." However, the process that led to Bocclair being charged was unusual.
 - i. Initially, witness Andre Ball first identified an incarcerated man in a photo book as a suspect, and then Holmes as the shooter in a police lineup. It was after this lineup that Bocclair made his allegedly tainted oral confession to Detectives McWeeny and Kwilos (and repeated it to ASA Borowitz). When he was re-interviewed by Borowitz, Bocclair gave an exculpatory written statement in which he named Holmes as the shooter and also denied any abuse or coercion. On these facts, Borowitz approved the decision to prosecute Holmes, not Bocclair, for first degree murder.
 - ii. Only later did the witnesses begin to line up against Bocclair. Witness LaJuana Ruth, who did not participate in the initial lineup, identified Bocclair as the shooter. Then, the two other eyewitnesses added new or different information: Witnesses Ball and Landon changed their stories to inculcate Bocclair, and Holmes told detectives that Bocclair had asked him to confess to the murder.
 - iii. A key witness to the state's initial decision to charge Holmes rather than Bocclair was ASA Borowitz. Bocclair's attorney attempted to subpoena her for trial, and even brought her failure to appear to the judge's attention. The judge remarked that arguments between the State and Bocclair's attorney over the appearance of Borowitz and several detectives were growing heated, and Bocclair's attorney indicated he might file for sanctions. The Assistant State's Attorney trying the case, Burns, seemed to raise overly technical objections to her subpoena service, and one could infer that the state preferred to keep her off the stand. If that was their goal, they were successful; Borowitz never testified.
- E. Although unusual, the above issues relating to witnesses' shifting identifications and the reversal of charges by the state's attorney largely center around proof of guilt rather than

coercion, and were presented to the trier of fact in some form. For instance, when Andre Ball took the stand on cross-examination, the court heard that Ball had initially identified Holmes as the shooter in his August 1 interview with police, but later changed his mind as to who shot the victim and gave an explanation for that change. LaJuana Ruth likewise was extensively cross-examined about her initial statements to police.

- F. Bocclair's claim is distinguishable from the *Robert Smith* case. In *Robert Smith*, the claimant was questioned for 18 hours, and his unsigned confession was cursory and inconsistent with the physical evidence. The claimant maintained his allegations of torture from the beginning. None of those factors are present here. Bocclair's claim of coercion was not raised at the time of trial, and the physical evidence (bullet holes in the car) and a neutral bystander's testimony (Doudek) reinforced Bocclair's original confession that he, rather than Holmes, was the shooter.
- G. One factor weighing in favor of judicial review here is that the officer principally implicated in Bocclair's claim, Det. Daniel McWeeny, has been the subject of frequent accusations of torture.

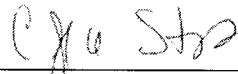
Conclusion

The Commission concludes that there is not sufficient evidence of torture to merit judicial review in this instance. Allegations of torture raised two decades after the fact, not corroborated by the claimant's own trial attorney, raise significant issues of claimant credibility.

While the flip-flop in charging Bocclair gave TIRC staff pause, as did McWeeny's complaint history, the former was addressed, albeit somewhat unsatisfactorily, at trial, and the latter alone does not constitute enough to merit judicial review. This is decidedly so in light of the statements by Buchholz, Bocclair's trial attorney, that had Bocclair mentioned such abuse, he would have filed a motion to suppress. Combined with Bocclair's 20-year delay in raising these claims, the record does not justify the Commission acting to recommend this case for judicial review.¹³

The Commission concludes that there is insufficient evidence of torture to merit judicial review of Mr. Bocclair's claim. 775 ILCS 40/45(c). The Commission instructs its executive director to notify Bocclair of its decision and of his right to judicial review under the Illinois Administrative Review Law.

Dated: Nov. 16, 2016



Hon. Cheryl Starks, Chair
Illinois Torture Inquiry and
Relief Commission

¹³ Citing the extended delay in raising torture claims, The Independent Third Party in charge of judging reparations claims for the City of Chicago, Daniel T. Coyne, also determined on October 18, 2015 that Bocclair was not eligible for any share of the City of Chicago's \$5.5 million torture reparations fund. See Exhibit P.