BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Claim of Javan Deloney

TIRC Claim No. 2011.045-D
(Relates to Cook County Circuit Court Case 91-CR-21147)

CASE DISPOSITION

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

I. EXECUTIVE SUMMARY

Javan Deloney (herein, "Deloney") alleges he was beaten by three detectives in order to secure his confession to a triple homicide on Chicago's South Side. The alleged torture occurred in the Area Three Violent Crimes unit at 39th and California in Chicago on August 8 and 9, 1991.[1] Deloney alleges that detectives repeatedly threatened and physically struck him over the course of several hours in custody until he agreed to sign a statement. In the presence of Assistant State's Attorney (ASA) James McKay, Detective James O'Brien, and Detective Daniel McWeeny, Deloney signed a four-page statement admitting to participation in the crimes (Exhibit A).[2]

There is little direct evidence that Deloney was tortured, but circumstantial evidence supports his claim:

- The detectives who allegedly interrogated Deloney or were present for his confession have histories of complaints alleging abuse to secure confessions.
- There is some evidence that other suspects were abused during their respective interrogations, including a jail guard's testimony that one of Deloney's co-defendants arrived at jail bruised and limping.
- Deloney also identified from a blind photo array as his alleged abuser, Detective William Foley. Anther detective testified Foley was involved in Deloney's interrogation, but he never appeared at Deloney's trial or pre-trial proceedings.

While Deloney's credibility problems detract from his claim, there is enough evidence to refer this claim for judicial review.

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[1] Commander Jon Burge supervised detectives at Area Three at the time.

[2] Exhibit A, Deloney August 9, 1991 Confession.

II. BACKGROUND

Deloney's claim arises from two August 7, 1991 drive-by shootings on the South Side of Chicago that ended with three people dead and three injured. Deloney was convicted of three counts of murder and three counts of attempted murder for his role in the shootings. He received a life sentence. Two of his co-defendants, Ivan Smith and Terrance Brooks, were also convicted. Two others, Curtis Milsap and Deloney's cousin, Maurice Deloney ("Maurice"), were acquitted.

A. Witness Testimony

Several witnesses testified to the shootings at trial, including George Cruthard , Marcus (Jerome) Taylor, Brenda Hall, and Allen Epton (a.k.a Epstein, or Lacking). The first shooting took place at around 65th and Peoria. Cruthard and Taylor were injured and Renhardo Bussle was shot fatally.

Cruthard, a Gangster Disciple, testified that on the evening of August 7, 1991, he was in front of 6556 Peoria with Taylor and Bussle. The Gangster Disciples sold drugs out of the building. At around 10:00 or 11:00 p.m., three cars came down the street. The middle car was a taxi. Cruthard testified he saw Smith driving the taxi with Brooks also inside. Cruthard knew Smith to be a member of a rival gang, the Black Disciples. Cruthard heard shooting and saw lights coming from the taxi, and he himself was shot. Cruthard also testified that earlier that same day, shots were fired at Smith's car in the same location, such that the later shooting might have been retaliatory.[3]

Taylor testified that he was also at 65th and Peoria on the evening of August 7. He saw two cars approach: a red LeBaron, followed by a taxi. He saw the nose of a gun emerge through the taxi's window and start shooting. He laid on the ground until the shooting ended. When he got up, he saw Brooks in the car, and noticed that the driver had a hairstyle similar to Smith's. Taylor was grazed by a bullet.[4]

The second shooting took place minutes later at 516 W. 71st Street and was reportedly carried out by the same taxi. Epton was injured and John Coleman and Gregory Archibald were shot fatally.[5]

Epton, also a Gangster Disciple, testified that he was shot in the foot by gunfire coming from a cab. He did not see who was firing the gun, and did not see a red LeBaron. This was a

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[3] ROP of May 6, 1994 (00019202.pdf), 523-98 (testimony of Cruthard). Records of proceedings from *People v. Brooks* appellate record unless otherwise noted.

[4] ROP of May 9, 1994 (00019203.pdf), 627-70 (testimony of Taylor).

[5] ROP of May 9, 1994 (00019203.pdf), 670-85 (testimony of Officer Clarence Longley), 696-721 (testimony of O'Brien).

recantation of earlier statements to police in which he identified Maurice, Brooks, Deloney, "Tojo" (Smith), Ollie Bays and a red LeBaron as possibly being involved.[6]

Hall testified that at that time of the shooting she was on 71st street talking to Epton. She heard the sound of fireworks, turned, and saw a taxicab. She identified Deloney and Brooks as two men shooting from the taxi cab. She did not see any other cars. She saw two men shot, and her car was also shot.[7]

B. Police Investigation

The officers assigned to investigate the shootings included Detectives O'Brien, Patrick Doyle, Joseph Stehlik, Thomas Ptak, Michael Kill, Foley, and McWeeny. Officers at 65th and Peoria were told by witnesses that a red and white taxi was involved in the shooting.[8]

O'Brien testified that on August 7, 1991, on his way to the scene of the second shooting, he saw and investigated an abandoned red and yellow taxi in a vacant lot matching descriptions provided by witnesses. The abandoned taxi contained shell casings and appeared to have been hotwired using a screwdriver. The next day, O'Brien testified, he found a gray Chevy Chevette parked nearby with bullet holes in it, and a temporary license plate that identified Smith as the owner. O'Brien also believed that a red LeBaron convertible was also connected to the shootings.

An evidence technician found no fingerprints inside the taxi.[9] The Chevette was not examined by an evidence technician at the time O'Brien testified he initially found it[10]

McWeeny testified that on August 8, 1991, he visited St. Bernard's Hospital to speak with Epton. Epton told McWeeny that the shooting was conducted from a taxi, that a LeBaron was involved, and that "Tojo," "Pete" Deloney, and Bays were involved. Epton also gave McWeeny the Deloneys' address.[11]

On August 8, 1991, detectives arrested Deloney together with his cousins, Maurice and Shelby Deloney ("Shelby"), and Deloney's friends Ronnell Hudson (a/k/a Anthony Franklin), John Rucker, and Isaiah (Pooh) Crowley. Deloney's claim is based on his treatment in custody following the arrest and the confession that he signed on the morning of August 9, 1991.

Several of the witnesses changed their story in a manner favorable to the prosecution between the time of their initial interview and the trial:

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[6] ROP of May 17, 1994 (00019206.pdf), 1154-74 (testimony of Epton).
[7] ROP of May 17, 1994 (00019206.pdf), 1103-48 (testimony of Hall).
[8] ROP of May 6, 1994 (00019202.pdf), 495-515 (testimony of Doyle).
[9] ROP of May 9, 1994 (00019203.pdf), 696-721 (testimony of O'Brien).
[10] ROP of May 9, 1994 (00019203.pdf), 721-58 (testimony of Evidence Technician Patrick Moran).
[11] ROP of February 28, 1994 (00019200.pdf), 113-74 (testimony of McWeeny).

- Cruthard did not identify any shooters when he was questioned by police at the hospital immediately following the shooting. Cruthard first identified Smith and Brooks almost two years later, just before his sentencing in a drug trafficking case. In exchange for this identification, Cruthard may have received a recommendation for sentencing to a medium-security prison, rather than maximum-security, as well as a minimum sentence.[12] Cruthard recanted this identification in a September 28, 2013, affidavit.
- Taylor also did not immediately identify any shooters, including when he went to the police station the day after the shooting. Taylor first implicated Smith and Brooks in April 1993, under pressure to testify from his aunt, Bussle's mother.[13] Taylor later recanted this identification in post-trial proceedings.
- Hall did not describe the shootings, identify Deloney, or indicate that she could provide an identification until the fourth time she spoke with ASA Mike Smith, on April 1, 1993, at which point she identified Deloney in a photograph array.[14] Hall recanted this identification in a 1998 statement.[15]

C. Procedural History of Trial, Appeal, and Post-Conviction Petitions

On September 13, 1993 and March 21, 1994, Deloney filed a motion to suppress and a supplement, alleging that he was tortured into signing his confession.[16] On May 6, 1994, Judge Earl Strayhorn denied motions to suppress filed by Deloney's co-defendants, Smith and Milsap.[17]

Deloney was tried simultaneously with his co-defendants before Judge Earl Strayhorn. Smith elected to be tried by a jury. Deloney and the remaining co-defendants proceeded with bench trials. On May 12, 1994, the jury found Smith guilty.[18] On May 17, 1994, Judge Strayhorn acquitted Milsap and Maurice.[19]

Deloney's motion to suppress was heard together with his bench trial. On May 18, 1994, Judge Strayhorn denied Deloney's motion to suppress his confession. He found Deloney and Brooks guilty of four counts of first degree murder.[20]

Judge Strayhorn denied Delaney's motion for a new trial on September 30, 1994. The request for a new trial was based on: (1) flaws in Brenda Hall's testimony and its inconsistency

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[12] ROP of May 6, 1994 (00019202.pdf), 523-98 (testimony of Cruthard).
[13] ROP of May 9, 1994 (00019203.pdf), 627-70 (testimony of Taylor).
[14] ROP of May 3, 1994 (00020153.pdf), 408-20 (testimony of Hall); ROP of May 17, 1994 (00019206.pdf), 1103-48 (testimony of Hall).
[15] *See* Section F.1, below, and Exhibit 27.
[16] Exhibit 3.
[17] ROP of May 6, 1994 (00019202.pdf), 464-75.
[18] ROP of May 12, 1994 (00020157.pdf, *People v. Smith*), 3P-4P.
[19] It appears that both were acquitted due to a lack of corroborating evidence. *See* ROP of May 17, 1994 (00019206.pdf), 1175-79.
[20] ROP of May 18, 1994 (00019206.pdf), 1276-77.

with Deloney's statement; (2) the Court's failure to properly recall evidence as it was presented pertaining to Deloney and his motion to suppress; and (3) that the State failed to put forth Foley, a material witness.[21] On October 6, 1994, Deloney was sentenced to life in prison.[22]

Deloney appealed his conviction on November 3, 1994, arguing, among other things that his confession was involuntary.[23] The conviction was affirmed by the Appellate Court on March 21, 1997..[24]

On November 21, 1997, Deloney filed a post-conviction petition and petition for relief from judgment, asserting, *inter alia*, police brutality. The trial court dismissed the petition as untimely, and Deloney appealed, supplementing the record with an affidavit from Hall recanting her trial testimony. The appellate court ordered reconsideration of the trial court's earlier dismissal, and on January 7, 2000, the trial court again dismissed based on untimeliness and frivolousness. Deloney appealed the second dismissal on February 2, 2000, and the appellate court affirmed on July 26, 2002 based on untimeliness. On December 5, 2002, the Illinois Supreme Court directed the appellate court to vacate and reconsider whether Deloney's claims were frivolous and without merit.[25] On June 30, 2003, the appellate court affirmed, finding—among other holdings—that Deloney's claim of police abuse was barred by *res judicata*.[26]

On April 18, 2007, the Seventh Circuit affirmed Judge Matthew Kennelly's denial of Deloney's habeas petition on the grounds that it was submitted too late.[27]

Additional filings in Deloney's court file indicate a subsequent post-conviction petition was filed, but the actual petition was not among the documents available to the commission.

III. FINDINGS OF FACT

A. Javan Deloney's Testimony

1) June 2014 Interview

On June 19, 2014, Deloney was interviewed via videoconference by Barry Miller of the TIRC and Charles Kalil of Kirkland & Ellis LLP (the "June 2014 Interview").[28] Also present

[21] ROP of Sept. 30, 1994 (00019207.pdf), 1381-85.

[22] ROP of Oct. 6, 1994 (00019207.pdf), 1515.

[23] Appeal No. 1-95-0199, Brief and Argument for Defendant-Appellant (November 3, 1994).

[24] Appeal No. 1-95-0199, Modified Order on Denial of Petition for Rehearing (March 21, 1997).

[25] *People v. Deloney*, No. 94557, 202 Ill. 2d 626 (Dec. 5, 2002)

[26] *People v. Deloney*, No. 1-98-1413, 1-00-0914, 341 Ill. App. 3d 621 (June 30, 2003).

[27] *See Deloney v. McCann*, 229 Fed. Appx. 419 (7th Cir. 2007).

[28] The June 2014 Interview is summarized in detail herein. *See* June 2014 Interview Audio ("2014.6.19 Deloney.waiv&interview.TIRC.record.MP3"), starting at 13:30.

were Deloney's attorneys, Larry Dreyfus and Elliot Zinger, and various staff. Deloney stated the following:

a. The Day of the Shooting[29]

On August 7, 1991, as it was getting dark, at around 6:30 p.m., Deloney was at Hudson's apartment.[30] Hudson left the apartment, Deloney took Hudson's keys, and at about 6:45 p.m. Deloney and Maurice took Hudson's car. Deloney returned the car at about 9:30 p.m. in the same condition as it had been in when he borrowed it

b. Deloney's Arrest and Alleged Abuse[31]

Deloney was arrested on August 8, 1991. He was brought to 39th and California in a squad car by two detectives, Kill and another whose name and appearance Deloney could not remember. Maurice, Shelby, Hudson, and John Hopper ("Hopper") were all also arrested and brought to 39th and California at the same time.[32]

Upon arrival, Deloney was brought upstairs to the third floor into an area that was similar to a holding cage with bars and fence. He was brought through a hallway which led to three or four rooms, placed in a room, and handcuffed to a chair. . The room was small and had a desk, some chairs, a barred window, and a file cabinet. Deloney did not remember any handcuff rings on the wall.

The First Visit. He sat in the room for a short time before three detectives entered. One was about 5'8", medium build with gray-silver hair; another was about 6' or 6'1", stocky with a clean shaven face; and another was about 5'9", heavy-set with brown hair. Deloney did not know their names. The silver-haired detective remained standing and spoke while the other two detectives sat on either side of Deloney. The silver-haired detective asked Deloney his name, what school he went to, and where he lived, and Deloney provided this information. The silver-haired detective continued to ask questions and stated that an eyewitness had identified Deloney as involved in a crime. Deloney denied any involvement. The silver-haired detective called Deloney a liar and reiterated the accusation, which Deloney repeatedly denied. At some point, the silver-haired detective reached over and slapped Deloney in the face and punched him in the chest. Around the same time, as the questioning continued, the officers on either side of Deloney were elbowing Deloney in side, hitting Deloney in his chest, and "cussing out" Deloney, making

[29] *See* June 2014 Interview Audio, starting at 2:09:17.

[30] In 1991, Deloney was 18, about 5'7", 164 pounds. At the time he was a junior, a year behind in school, with elementary level reading ability. He was enrolled in school, but he was a delinquent who would skip classes. As of the June 2014 Interview, he was 41, about 5'10", 225 pounds. Maurice was 16, about 5'8", 150 pounds in 1991.

[31] *See* June 2014 Interview Audio, starting at 13:15, 1:43:33, 2:06:23, 2:16:45.

[32] It is unclear if "Hopper" is mistakenly identified, rather than John Rucker. Both names appear separately in the police reports. *See* Exhibit 10.

threats and calling him a "motherfucker." At certain points the silver-haired detective slapped his hand on the table in frustration. Throughout the questioning, Deloney continued to deny the accusations. Deloney also expressed confusion as to why the situation was taking place. This first visit by detectives lasted 30 to 45 minutes, during which time Deloney was hit about six or seven times. The officers then left the room, stating that Deloney would sit in the room all day until he told them what they wanted to hear.

The Second Visit. Eventually, the silver-haired detective and the 5'9" heavy-set detective returned for a second visit. Deloney was asked further questions about the crime. Again, the silver-haired detective reached over and slapped Deloney in the face, and the other officer, sitting on Deloney's right side, elbowed Deloney in the side and hit Deloney in the chest. This second visit lasted about 10 to 15 minutes, during which Deloney was hit about three to four times. The detectives then took Deloney out of the room and took a polaroid picture of Deloney Deloney's face from the shoulders up. Deloney saw a copy of the picture. His face was somewhat swollen and bruised on the left side.[33] After the picture was taken, Deloney was brought back into the room and handcuffed to the chair. Deloney then sat in the room for a long time.

The Third Visit. The two detectives returned and continued questioning Deloney about the crime. They asked if Deloney was ready to talk or if he had anything to say. Deloney continued to deny any involvement.

During this session, several detectives brought Maurice to the hallway outside the door to Deloney's room. Deloney did not know the detectives' names and could not describe them. The silver-haired detective opened the door and asked Deloney if the individual was Deloney's cousin. Deloney did not respond. The silver-haired detective asked Deloney again and flinched at Deloney as if to slap him. Deloney jumped back, and the other detective elbowed Deloney in the side. The silver-haired detective asked again, and Deloney responded that the individual was indeed his cousin. The detectives in the hallway then punched Maurice in the face, which knocked Maurice to the floor, and continued to hit Maurice on the floor, before the silver-haired detective slammed the door. Deloney could only see a small portion of the hallway and could not see if anyone else would have witnessed Maurice being beaten. The door to Deloney's room was only open for a couple of minutes. Deloney was unsure whether Maruice would have seen any of Deloney's own abuse. After slamming the door, the silver-haired detective walked around the back of the desk, slapped Deloney in the back of the head, slapped Deloney in the face, and hit Deloney in the chest. The detective beside Deloney was simultaneously elbowing Deloney in the side and hitting Deloney's leg.

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[33] Deloney does not have a copy of the picture, and he does not know if one exists. The picture was identified as Deloney Exhibit B at trial. *See* ROP of May 18, 1994 (00019206.pdf), 1202. TIRC staff were not able to locate a copy of the picture. *See* Section F.3, below.

This third visit lasted about 1 to 1.25 hours, during which time Deloney was hit three or four times. As the detectives were leaving, they reiterated that Deloney would remain in the room until he told them what happened. Deloney continued to say that he did not know what happened and did not know what was going on. The silver-haired detective added, "just tell them what happened, if you didn't shoot anybody then you have nothing to worry about."

The Fourth Visit. About two to three hours later (possibly longer as Deloney was losing track of time) the two detectives returned. They continued to ask Deloney questions, make allegations, slap Deloney, and hit Deloney in the side. Deloney continued to deny any involvement, stating that he was at his grandma's house and that he was willing to take a lie detector test. The silver-haired detective restated (an estimated 20 times), "everything will be alright; if you didn't shoot anybody then you have nothing to worry about." In response, Deloney asked, "if I didn't shoot anybody then I have nothing to worry about?" The detective responded, "that is what I have been telling your ass all night," and slapped Deloney in the head. Deloney then agreed to sign a statement. This fourth visit lasted about 1.5 to 1.75 hours, during which time Deloney was hit about six or seven times. Deloney estimates it was around 2:00 a.m.

No notes or statements were written by the detectives during any of these interactions. The first interaction was the most abusive. During each interaction, Deloney stated that he wanted a lawyer and wanted to take a lie detector test.

The Visits by Other Detectives. Deloney was additionally visited on two occasions by a total of three officers during times when Deloney was otherwise alone in the room. The first was a black detective, about 5'8" or 5'9" with a mustache, beard, and glasses. At Deloney's request the detective escorted him to a washroom. On the other occasion, two detectives came in and stayed about 10 minutes. None of these three detectives saw any beatings. Deloney told all of them that he was being beaten but none seemed concerned. **The Confession.** After the fourth visit, Deloney was left alone for 15 to 20 minutes, after which the same two detectives returned. They moved Deloney to a large back office room on the same floor with many desks and work areas. There were many people in the room, including detectives and an ASA. The detectives seated Deloney next to the ASA, who identified himself to Deloney as McKay. Deloney told McKay his name and asked why the detectives were hitting him. McKay stated to one of the detectives, "I thought he was ready to sign." The detective said to Deloney, "remember what we talked about in the room." Javan responded, "if I didn't do anything then I don't have anything to worry about." At the beginning of his interaction with McKay, Deloney stated that he wanted a lawyer and that he wanted to take a lie detector test. Deloney also repeatedly told McKay that he was not involved and did not shoot anyone.

McKay had a multiple-page statement with him that was already written. McKay went over the Miranda Rights at the top of the statement and had Deloney sign that portion. This was the first time Deloney saw or heard his Miranda Rights throughout his arrest. McKay then

reviewed the rest of the statement with Deloney. Some of the statement was with regard to things the detectives had discussed with Deloney, some of it was not. McKay made corrections to certain parts of the statement based on his review with Deloney and Deloney's answers to McKay's questions.

After the portion of the statement stating that Deloney was free of drugs and alcohol, Deloney had a conversation with McKay. McKay asked if Deloney had anything to add. Deloney insisted that they add that he did not shoot anybody. Deloney refused to sign without this addition. McKay added the sentence that Deloney requested after at least a short delay during which the silver-haired detective was looking at Deloney "crazy." Deloney has since had opportunities to review this statement.

Deloney did not remember specifically which detectives were present when he signed the statement. Other than himself and McKay, there were eight to ten others in the room, including O'Brien, McWeeny, Kill (about 5'8" or 5'9", clean shaven, somewhat built), and each of his three abusers. He did not recognize any others that were in the room.

Other points. Deloney told TIRC he did not commit the murders. He said he never shot a weapon, and was never in a vehicle where automatic weapons were shot out of cars. Deloney said he was scared and confused throughout this ordeal, including when he signed the statement. He said he was afraid of the accusations, which included three murders. He said the detectives' abuse of Maurice made him particularly scared for his own safety. He understood that he had been reassured that he had nothing to worry about.

Throughout the interrogation, the silver-haired detective stated that the eyewitness saw Deloney in a taxi cab shooting at people. This fact was reiterated 20 to 25 times total. The silver-haired detective never identified the eyewitness to Deloney, nor did Deloney ask who the eyewitness was. Deloney was never accused of shooting out of any other type of vehicle (specifically, not a red LeBaron), nor was Deloney ever accused of driving around a car out of which other people were shooting.

When the police made these allegations, Deloney responded that he was at his grandma's house all day, sitting on the front porch. He described how he went upstairs and ate pizza, how he went back downstairs to talk to his cousin and friend, and how they heard gunshots. Deloney does not know whether the detectives ever followed-up with his family to corroborate his story.

Upon arrival at 39th and California, Deloney, Maurice, Shelby, Hudson, and Hopper were each brought up to the third floor one-by-one. Deloney did not see them on the third floor, but he heard each of them "howling" and screaming in the adjacent rooms while they were being interrogated, as though they were also being "whooped." Deloney specifically recognized Hudson as being in the room next door to him. Hudson was requesting a lawyer and telling Deloney to also ask for a lawyer.

c. Deloney's Booking and Hospital Visit[34]

Following his confession, Deloney was transferred from 39th and California for booking at 61st and Racine. While there, Deloney told the booking officer that he had been beaten. The officer did not seem concerned. Deloney did not know the officer's name, and Deloney cannot remember his appearance other than that the officer was white.

From 61st and Racine, Deloney was taken out of his cell to go to a hospital. He believes that this was on August 10. Deloney never asked to go to a hospital. As Deloney was being brought to the hospital, while he was still in the station, he saw his Aunt Eva ("Eva"). Deloney told her what had happened to him and that he was hit. Eva responded by "making a scene." Deloney cannot recall how many officers were present.

Deloney learned in that interaction that he was going to the hospital because Eva had already filed a complaint with the Office of Professional Standards (OPS), which Eva informed Deloney was based on Deloney being beaten up. Deloney did not receive further details about Evas's complaint nor did he ask her further about her complaint.[35] Deloney assumes that one of his cousins had informed Eva of the abuse. Shelby, Maurice, Hopper, and Hudson, had been released while Deloney was still being interrogated.

Deloney was brought to the hospital in a squad car by two uniformed officers.[36] These officers were present when Deloney spoke with Eva. The hospital was located at a different location out West, perhaps at St. Maries.[37]

Deloney went to the hospital for chest pains and pain while swallowing. When he arrived, he was led to a place to be examined. Deloney said that he was hit in the chest and that it hurt to swallow. He did not describe the beatings or who hit him. A doctor subsequently arrived and examined him. He was examined with his shirt off while his face was still bruised and swollen and his chest was hurting. Deloney does not remember being asked who hit him in the chest or how, and he never told anyone that he was beat up. He was not sure how to handle the situation and did not think it would help him to tell the doctors anything about his ordeal. The detectives who brought him to the hospital were in the examination room with him.

Deloney was subsequently sent to the Cook County Jail. With regard to Deloney's trial testimony that he stated to intake people that police officers had beaten him, Deloney clarified

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[34] *See* June 2014 Interview Audio, starting at 57:45, 2:15:45.

[35] Deloney claims that the only follow-up regarding the complaint from the OPS that Deloney ever received was a letter stating that the OPS had contacted Deloney regarding the situation but could not get in touch with him in order to follow-up on the complaint. *But see* Exhibit 17, regarding CR # 186408, records stating that Deloney was visited at Cook County Jail by investigators but declined to provide a statement.

[36] In this same interview Deloney later identified the officers as plainclothes. *Compare* June 2014 Interview Audio starting at 58:03, *with id.*, starting at 1:40:24.

[37] *See* Section E, below. The TIRC was unable to locate copies of any corresponding hospital records.

that he was speaking to the intake people during booking at the intake center at the Cook County Jail, after the trip to the outside hospital. Deloney noted that intake at Cook County Jail Deloney is in Division 5, and that Cermak is a separate location within Cook County Jail.[38] He claimed that his statement that his health was fair and that his chest was hurting because police were hitting him was made to the technician that reviews individuals entering the Cook County Jail intake center.[39] He described this person as a medical technician that is seen before individuals are sent to their housing units. He is not sure why he told some people about the police abuse and not others, but says it was perhaps because he was scared and because of police standing there with him.

d. Proceedings and Identification of Deloney's Alleged Abusers[40]

Deloney told TIRC that he had described to his trial attorney everything described in the June 2014 Interview. Deloney believed that he remembers the details of his case better today than in 1994, saying that he had spent time reviewing paperwork and working on remembering things.

Deloney did not know the names of the three detectives who abused him. He had never seen them since the abuse, nor had he seen their pictures. Deloney was 100% certain that he could identify the silver-haired detective if he saw that detective, saying he saw that detective's face extremely well during his interrogation. Deloney also believed, but was less certain, that he could identify each of his other two abusers if he saw them. Deloney was unsure how well he saw the face of the detective who was about 6"1'.

Deloney said he had reviewed his testimony from trial. He believes that he accurately described his abusers in that transcript. None of his abusers ever identified themselves by name. They were in plainclothes, not in uniform, and none was wearing an ID tag or other form of identification.

Deloney's abusers were not any of the detectives that testified at his trial. Deloney remembered being asked at trial whether anyone who testified at trial was involved in the beatings. If the people who beat him had been at trial, he would have identified them.

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[38] *See* June 2014 Interview Audio, starting at 1:35:45

[39] As discussed below, this testimony is potentially inconsistent with Deloney's statements at trial. *See* ROP of May 18, 1994 (00019206.pdf), 1224:19 – 1225:12: "Q. Now, Mr. Deloney, after you left the police station you came into Cermak Hospital into the intake center, correct? A. Yes, sir. Q. And you talked to an EMT there or you talked to a paramedic there when you came in and he asked you if you had any complaints, correct? A. Yes, sir. Q. You didn't tell him anything that the police had beaten you, did you? A. Yes. Q. Pardon me? A. Yes, sir. Q. Did you tell the person at intake that the police officers had beaten you? A. Yes. Q. And that was the person over at Cermak? A. Yes, sir."

[40] *See* June 2014 Interview Audio, starting at 51:00, 2:01:25, 2:11:33, 2:21:40.

When Deloney wrote his claim form to the TIRC, he listed all detectives involved in his case of whom he was aware, including O'Brien and McWeeny. Deloney claimed that while it was possible that O'Brien or McWeeny was one of the abusers who sat on either side of him, whom he did not see as well,he did not believe that they were. Deloney saw O'Brien testify at trial for about an hour and had ample time to see O'Brien. Deloney was 100% certain that neither O'Brien nor McWeeny nor Ptak was the silver-haired detective that was facing Deloney during his interrogation. Kill was also not one of the abusers.

Deloney believed that O'Brien and McWeeny testified falsely at his trial when they claimed not to have had any knowledge of Deloney's abuse. They were present at the station at the time. Deloney believed that they would have heard his abuse taking place, and would have known of the abuse through their involvement in his case.

Deloney did not know if it was Detective Foley who abused him because he has never had anyone identified to him as Detective Foley. Deloney identified Foley's name because McWeeny testified at trial that Foley was present with McWeeny at Deloney's interrogation and that Foley had a conversation with Deloney.[41] Deloney also heard Foley's name mentioned by Milsap at some point during the three years in which were in county jail together. Foley was one of the officers who arrested Milsap.

e. Discussion of the possibility of collusion among the defendants.

Deloney said he was acquainted with the other co-defendants, Brooks, Smith, and Milsap, after their respective arrests (which he estimates to have been August 19 for Milsap and sometime in November for Smith). While the co-defendants were generally housed in different areas, they appeared in court together.[42]

Maurice and Brooks were with Deloney at his first court date (in or around August or September). Milsap first joined Deloney at the next court date (in or around September). Smith first joined Deloney at a following court date in November or December (which would have been the first court date for which all co-defendants were together). In a series of conversations in the bullpen of the courtroom (primarily in their first meetings together), Deloney, Maurice,

[41] Deloney's trial counsel raised the issue in Deloney's Motion for New Trial that Foley was a non-produced material witness. *See* FN 21; ROP of May 18, 1994 (00019206.pdf), 1276-77; Exhibit 29, Group Exhibit E, (Motion for New Trial).

[42] Deloney knew Milsap before they were arrested based on having gone to school together. Deloney was placed in Division 6 with Smith, and Milsap was likely in Division 1. The co-defendants were not around each other often, given that they had multiple continuances, spread three or six months apart.

Milsap, and Smith described to each other how they were treated by police. Deloney said he described what happened to him consistent with his allegations herein.[43]

In their first conversation, Milsap said that he was hit, punched, slapped, and kicked in the groin, and Deloney saw that Milsap was limping. During that conversation, Milsap identified the detectives who arrested him as including Foley and O'Brien. Milsap also identified Foley as one of his own interrogators and one of the officers who struck Milsap in some way.[44] Milsap also mentioned going to Cermak to have his injuries treated. Deloney does not know how long Milsap suffered from these injuries.

When Maurice and Deloney first discussed their interrogations, Maurice told Deloney that Maurice had heard Deloney screaming and crying at the station. Deloney did not have a chance to speak to Maurice during the abuse. Deloney does not know where Maurice was while Deloney was being abused. Maurice said, "I heard you crying and hollering." Deloney said he had not reviewed Maurice's recent affidavit.

Deloney did not know Smith prior to his arrest. When they first discussed their interrogations, Smith described how O'Brien and ASAs Smith and Burns went to Tennessee to question and arrest him. Smith stated that he "had his ass whooped" before being brought back to Cook County. Deloney knew that Smith was identifying the same O'Brien who was at the station when Deloney was interrogated. Both Smith and Deloney were present when O'Brien testified at trial.

Deloney first had a lawyer in this matter at his arraignment and first court appearance. The lawyer was named Steven Yonover ("Yonover") and was a private lawyer hired by a friend of Deloney's family. Deloney's first interview with Yonover was after the initial court appearance, about three to four days later in a county jail interview room. Deloney described to Yonover the facts alleged herein, consistent with Deloney's trial testimony. Yonover represented Deloney at trial and put forth evidence in support of Deloney's motion to suppress during trial. Deloney said he had been able to review his trial testimony, which was consistent with what Deloney first told Yonover about his ordeal.

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[43] Deloney's testimony regarding the co-defendants' conversations is somewhat confusing, as he describes it as being primarily at their first time making a court appearance together, but he later notes that their respective first court appearances were spread out over the span of a few months. *See* June 2014 Interview Audio, starting at 2:11:30.

[44] During this same interview, Deloney previously, possibly contradictorily, stated that Milsap never identified who kicked him in the groin, and that Milsap only identified the detectives that arrested him. *Compare* June 2014 Interview Audio, starting at 1:29:38, *with id.*, starting at 1:32:07.

2) Deloney's Trial Testimony (Exhibit 1)

Deloney testified at trial on May 18, 1994 (Deloney's "Trial Testimony").[45] His Trial Testimony is generally consistent with his June 2014 Interview testimony. Certain inconsistencies and additional information are summarized below.

On direct examination, Deloney described the following regarding the events leading up to his arrest. On August 7, 1991, at approximately 6:30 p.m., he was at Hudson's house located around 72nd and Union. At approximately 7:30 p.m., he and Maurice drove Hudson's red LeBaron to pick up Ollie Bays ("Bays") and visit some girls at a project building located around 62nd and Calumet. After a couple of hours, Deloney returned to another cousin's house at 72nd and Union. Deloney heard gunshots while he was there. He subsequently spent time on the house's porch with Kenyett Deloney ("Kenyett"), Theresa Patterson, his Aunt Cynthia Deloney ("Cynthia"), and Maurice. Deloney then spent the night next door at Hudson's house with Maurice and Shelby. At about 9:30 a.m., Deloney woke up. Police were at the house. Deloney and others were handcuffed, asked their names, brought outside, and driven to 39th and California.

Deloney also described his interrogation on direct. Contrary to Deloney's June 2014 Interview statement, Deloney testified at trial that the silver-haired detective accused him of being involved in a "drive-by shooting in a red LeBaron" while following a red and yellow taxi cab,[46] and that only one officer was present when he was with the ASA.[47] Deloney alleged that he was hit a greater number of times in the third visit by detectives (the visit in which he saw detectives hit Maurice) than he described in his June 2014 Interview.

Deloney additionally testified that the six-foot tall detective who interrogated him had black hair; and that he was left in the room for about 1.5 hours after the detectives left after their first visit. He added that before he signed the confession he was provided with coffee and snacks, and that after he signed the confession he was returned to the interrogation room where he remained until morning.

On cross examination, Deloney confirmed that none of the detectives that testified at trial were the detectives that hit him, specifically not O'Brien, McWeeny, or Ptak.[48] Deloney stated that he did not have any marks on him, nor could he recall having marks from his handcuffs.[49]

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[45] Exhibit 1, Deloney Trial Testimony (ROP of May 1994 (00019206.pdf)) at 1183-1229.

[46] Exhibit 1 at 1198:20–1199:3, 1206:21–1207:2, 1210:3-11, 1211:9-10. Deloney explicitly stated otherwise June 2014, that he was only accused of shooting out of a taxi.

[47] Exhibit 1 at 1213:17-19. The Statement itself lists O'Brien and McWeeny as the detectives present. *See* Exhibit A.

[48] Exhibit 1 at 1220:5-18.

[49] Exhibit 1 at 1220:19–1221:4. In June 2014, Deloney indicated that when he went to the hospital his face was still bruised and swollen, consistent with his appearance in the photograph taken by the detectives.

He denied that he ever added to the confession anything along the lines of a statement regarding "extra clips" next to which his initials appeared. And he testified that McKay added the last paragraph of the confession while Deloney was present, unlike the rest of the confession which was generally already written.

Deloney also described his visit to Cermak Hospital on cross.[50] He said he went to the Cermak Hospital intake center after he left the police station, where he was interviewed regarding his health by an EMT or paramedic, whom he told that his chest hurt, that it hurt to swallow, and that police had beaten him.[51] Deloney said his face was swollen during this intake.[52] Additionally, a photograph was taken of Deloney after he arrived at Cermak Hospital. Deloney confirmed on redirect that this photograph was taken on August 10, 2016.[53]

3) Deloney's Written Motion to Suppress (Exhibit 3)

Deloney filed a Motion to Suppress on September 14, 1993, and a Supplemental Motion to Suppress on March 21, 1994.[54] Deloney's motions are generally consistent with his Trial Testimony.

4) Deloney's October 1997 Affidavit (Exhibit 2)

On October 2, 1997, Deloney provided an affidavit in the Terrance Brooks case (Deloney's "October 1997 Affidavit").[55] As summarized below, Deloney's October 1997 Affidavit differs from his Trial Testimony and June 2014 Interview on several points:

- On August 7, 1991, Deloney was with Theresa and Kenyette when they heard gunshots. Cynthia heard the gunshots and came outside to ask if they knew where Maurice and Shelby were. Shelby and Maurice subsequently joined them.
- When the detectives, including Kill, arrived the next morning, they knocked on the door and eventually broke through the door with their guns drawn. A detective had a piece of paper with the names of Deloney, Shelby, and Maurice on it. The detective told Deloney, Maurice, Shelby, Hudson, and Pooh (Isiah Crowley) that they were wanted for questioning, and they

[50] See FN 36, above.

[51] Exhibit 1 at 1224:19–1225:12, 1225:23–1226:16.

[52] Deloney's August 10, 1991 health survey was marked as People's Exhibit No. 85 for identification. Exhibit 1 at 1227. TIRC attorneys were not able to locate a copy of the health survey. *See* Section E, below.

[53] The photograph was marked as People's Exhibit No. 86 for identification. Exhibit 1 at 1228. TIRC attorneys were not able to locate a copy of this photograph. *See* Section F.3, below.

[54] Exhibit 3, Deloney Motion to Suppress and Supplemental Motion to Suppress. Copies obtained from clerks files (Clerks Files_ Javan Deloney.pdf), Exhibits A and B to January 6, 2011, Response to Petitioner's Motion for the Appointment of a Special Prosecutor.

[55] Exhibit 2, Deloney October 1997 Affidavit. Deloney confirmed in his June 2014 Interview that the lawyers working Brooks' case interviewed Deloney and drafted this affidavit based on those answers. Deloney read the affidavit line-by-before signing. He agreed with everything therein which information was true to the best of his knowledge.

were brought to the station in handcuffs without having their rights read and without any mention of an arrest or search warrant.

- Deloney's interaction with the three abusive detectives began as soon as he was brought to the interrogation room.[56] Deloney was not physically struck until the second visit by detectives.[57] And all three detectives returned for the second visit.[58]
- Deloney heard Hudson during the first visit, but not after the start of the second visit. During the second visit, the silver-haired detective stated that an eyewitness had identified Deloney as a driver of the car.[59] After the third visit, after a detective allowed Deloney to use the restroom, Deloney was left un-handcuffed until the abusive detectives returned.[60] During the third visit, Deloney did not admit that Maurice was his cousin until after Maurice had fallen to the floor, and after Deloney identified Maurice, the officers stopped hitting Maurice.[61]
- After the third visit, the silver-haired detective returned alone and brought Deloney to the room with the State's Attorney.[62] After Deloney signed the statement, the silver-haired detective told Deloney to tell people that he was treated well and that no one would believe him if he told them what happened.
- After Deloney was booked at 61st and Racine, Eva came to 61st and Racine and made sure that he was brought to a hospital. At the (unnamed) hospital, the doctor "did not seem to care that [he] had been beaten" and only looked him over quickly. The doctor incorrectly recorded that Deloney was brought to the hospital for a venereal disease.[63]

Deloney's October 1997 Affidavit states that this was the first time that he was ever asked to identify the police who beat him or asked to describe at this level of detail what happened to him during his interrogation.

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[56] Exhibit 2, Deloney October 1997 Affidavit, ¶¶ 17-20. Compare to Deloney's June 2014 Interview and Trial Testimony, where he indicated that he waited some time before the detectives arrived. *See* Exhibit 1, Deloney Trial Testimony at 1196:9-11.

[57] Exhibit 2, Deloney October 1997 Affidavit, ¶ 30. Compare to Deloney's June 2014 Interview and Trial Testimony, where he indicated that he was abused extensively during the first visit. *See* Exhibit 1, Deloney Trial Testimony at 1199:10-21.

[58] Exhibit 2, Deloney October 1997 Affidavit, ¶ 27. Compare to Deloney's June 2014 Interview and Trial Testimony, where he indicated that only two detectives returned. *See* Exhibit 1, Deloney Trial Testimony at 1200:3-5.

[59] Exhibit 2, Deloney October 1997 Affidavit, ¶ 34. Compare to Deloney's June 2014 Interview, where he indicated that he was never accused of being a driver.

[60] Exhibit 2, Deloney October 1997 Affidavit, ¶¶ 38-39. Compare to Deloney's June 2014 Interview and Trial Testimony, where he indicated that he was handcuffed to the chair by the detective whom let him use the restroom . *See* Exhibit 1, Deloney Trial Testimony at 1205:15-17.

[61] Exhibit 2, Deloney October 1997 Affidavit, ¶¶ 40-43. Compare to Deloney's June 2014 Interview and Trial Testimony, where he indicated that he admitted that Maurice was his cousin before officers began beating Maurice . *See* Exhibit 1, Deloney Trial Testimony at 1208:10-24.

[62] Exhibit 2, Deloney October 1997 Affidavit, ¶¶ 48-51. Compare to Deloney's June 2014 Interview and Trial Testimony, where he indicated that the two detectives returned for a fourth visit before both brought Deloney to the State's Attorney on the fifth visit. *See* Exhibit 1, Deloney Trial Testimony, 1210:17– 1212:20.

[63] Exhibit 2, Deloney October 1997 Affidavit, ¶ 64. Compare to Deloney's June 2014 Interview, where he indicated that he told the doctor that he was hit but did not elaborate because detectives were present.

B. Other Corroborating Statements

1) Maurice Deloney's February 2014 Affidavit (Exhibit 4)

On August 8, 1991, Maurice was at his family's house at 9:00 a.m. when police knocked on the door and then kicked the door in. He was taken to the police station along with Shelby, Deloney, a "John John Deloney," Hudson, Rucker, and Crowley (Pooh). After three to four hours, he heard Deloney screaming in an adjacent room. Around that time, two detectives entered and asked Maurice questions which he refused to answer. The detectives put a phone book on top of his head and hit the phone book with a billy club seven to eight times. The detectives repeatedly hit him with the billy club in the stomach and ribs. The detectives had a signed statement that Maurice refused to sign.

2) The next day, Maurice was finally allowed to use a restroom. He saw Deloney in an adjacent room. Deloney was crying, and Maurice told Deloney not to sign any statement. The detective hit Maurice in front of Deloney. Maurice was also pushed through the restroom door. Inside the restroom, he saw two detectives beating Hudson, and Maurice himself was pulled out of a stall, thrown to the ground, and hit repeatedly. Maurice was held until a third day, repeatedly beaten further, and told to sign a statement. Deloney was still at the police station on this third day, but the other suspects had been released. Maurice Deloney's October 2010 Affidavit (Exhibit 5)

This affidavit is generally consistent with Maurice's February 2014 affidavit, though it provides less detail regarding Maurice's own interrogation. It adds that Maurice was denied food and access to a phone while Maurice was in custody for three days.

3) Maurice Deloney's September 2005 Interview (Exhibit 6)

On September 1, 2005, Maurice was interviewed by the Office of Special Prosecutor OSP. He described screaming from other suspects and at one point saw Deloney with his head down crying. Maurice was beaten, but he did not sign a confession.

4) Ronnell Hudson's August 7, 2014 Affidavit (Exhibit 7)

Hudson was taken to the police station along with Deloney, Maurice, Shelby, Crowley (Pooh), and Rucker. He was beaten by at least three different detectives, including being beaten in a bathroom. He was forced to sign a statement. While at the station, he was located next to Deloney's interrogation room. He heard Deloney being beaten and crying out for "quite some time." The detectives never contacted Hudson to look at his LeBaron.

5) Shelby Deloney's August 2014 Affidavit (Exhibit 8)

Shelby was taken to the police station along with Deloney, Maurice, Hudson, and possibly a few others. He was located next to the room where Deloney was being held, and he heard Deloney being beaten and screaming for several hours.

6) John Rucker's 2014 Affidavit (Exhibit 9)

Rucker was taken to the police station along with Deloney, Shelby, Maurice, and Crowley. At the station, Rucker was hit five to six times, and he saw police hit Deloney, Maurice, and Hudson. He was next door to Deloney and could hear Deloney screaming.

C. Illinois Authorities' Contentions

1) Deloney's Confession

Deloney's signed Confession (Exhibit A) was taken at 2:50 a.m. on August 9, 1991 with McKay, O'Brien, and McWeeny present. It states that Deloney was advised of his constitutional rights and, in summary, states that:

On August 7, 1991, around dusk, Deloney and his cousin Maurice drove Hudson's red Chrysler LeBaron to pick up Bays. The three of them were members of the Black Disciples. Maurice was seated in the passenger seat, and Bays was in the back. They drove to 68th and Union and where they met with Milsap, Brooks, Tojo (Smith), and another unnamed individual. Tojo described that some Gangster Disciples (a rival gang) had shot at his grey Chevette. In response, the group decided to search for and shoot Gangster Disciples. Tojo drove a cab that he had stolen with Brooks, Milsap, and the other individual in the cab. The cars stopped at 66th and Peoria, where Maurice, Bays, and all passengers in the cab shot at boys standing on the street corner. Next, the cars sped off to 71st and Parnell, where, again, the cars stopped and the same individuals shot at boys standing on the street corner. Next, Deloney drove to 72nd and Union and the cab drove off in another direction.

Deloney was treated well by the police and ASA in providing this statement, no promises were made to him in exchange for the statement, nor was he threatened in any way.

2) Police Reports (Exhibit 10)

Deloney was arrested by McWeeny and Ptak on August 8. The reporting officers were McWeeny, Foley, Ptak, O'Brien, Meier, and Detective Joseph Stehlik ("Stehlik").

Upon their arrest, Deloney and Maurice were advised of their constitutional rights. Both admitted to being members of the Black Disciples, but denied involvement in the homicides. The detectives took photos of all suspects which they showed to Epton. Epton identified Deloney and Maurice, stating that both were armed and shooting at him. Epton recalled Deloney

being in the front seat passenger side of the LeBaron, and Maurice being in the rear seat passenger side of the cab.

Upon further interview with Deloney, Deloney described his involvement substantially the same as he described in his confession. The police report describes the LeBaron as following the cab in the drive-by shootings. McKay was summoned to Area Three after this interview with Deloney. McKay re-interviewed all persons involved, reviewed the case, and confirmed the charges against Deloney.

3) ASA McKay's Testimony

a. McKay's Testimony at a May 3, 1994 Suppression Hearing (Exhibit 11)

On August 8, 1991, McKay was assigned to the Area Three Violent Crimes Unit at 39th and California. He arrived there at about 9:10 p.m. and was briefed by McWeeny and O'Brien. At about 10:15 p.m., he interviewed Deloney in a roll call office area near the youth office. At first, Detectives McWeeny and O'Brien were with McKay, and Deloney was not handcuffed. McKay introduced himself to Deloney as a lawyer working with the police, and he advised Deloney of his Miranda rights. McKay asked if Deloney was willing to discuss the shootings, and Deloney responded that he was ready to do so.

McKay and Deloney had a conversation regarding the shootings which lasted approximately one hour and fifteen minutes. McKay then asked if Deloney was willing to have a statement recorded, explaining the differences between handwritten and court-reported statements. Deloney indicated that he would prefer a handwritten statement. McKay then left the room and interviewed other witnesses. McKay did not take any notes of this meeting.

At around 1:45 a.m., in the same office area, McKay took Deloney's statement. McWeeney and O'Brien were present. McKay wrote on blank forms that he had brought with him. McKay filled out the heading (except for the time) and asked Deloney to read the Miranda rights paragraph, which Deloney did, after which Deloney signed below his rights at McKay's request. McKay then wrote a summary of Deloney's statements. At around 2:50 a.m., McKay reviewed the statement in its entirety with Deloney. He had Deloney read the first paragraph out loud and McKay read the rest. Certain corrections were made and initialed by McKay, Deloney, and the detectives.

At the end of the interview, McKay spoke to Deloney alone. He asked if Deloney had any complaints with how he was treated. Deloney stated that he was treated fine and that he had not been threatened nor promised anything. Deloney was allowed to use the bathroom and was given things to eat and drink, including soda, crackers, peanuts, and other snacks while with McKay. McKay did not take a photograph of Deloney after the statement was taken, nor does he know when one was taken.

McKay never saw any evidence of Deloney being struck; Deloney never complained about any threats or abuse. The statement was entirely prepared in Deloney's presence, and Deloney was never told that he must sign it. Deloney was never told by McKay or in McKay's presence that "he shouldn't have to worry about signing the statement because he wasn't the shooter."

McKay did not know what time Deloney was taken into custody, nor how many police officers had contact with Deloney before McKay met with Deloney.

McKay spoke with a couple witnesses that night, but he cannot remember who they were or if they were arrested. He did not remember seeing or speaking with Maurice. McKay never saw Maurice brought in to confront Deloney.

McKay further testified that he took Curtis Milsap's statement on August 19, 1991. On that day, he arrived at Area Three about 9:30 p.m. and met with Foley, Tristano, and McWeeny for about fifteen minutes. At about 9:50 p.m., McKay met with Milsap with Foley and Tristano present. McKay indicated that either Foley or Tristano had gray or silver hair.[64] McKay's description of his interview with Milsap was nearly verbatim the same as he described his meeting with Javan.[65] McKay's Testimony at Trial (Exhibit 12)

McKay also testified at Deloney's bench trial on May 17, 1994. His testimony was largely identical to his testimony on the motion to suppress. He added:

McKay did not at any point record or memorialize his first conversation with Deloney. After the statement was taken, when they made corrections, McKay believed that Deloney suggested the grammatical change on the second page regarding "had shot at his car." McKay did not ask for physical descriptions of the other individuals named in Deloney's statement.

4) <u>Detective Ptak's February 28, 1994 Testimony (Exhibit 13)</u>

Ptak testified that on August 8, 1991, at approximately 11:00 a.m., Ptak went to 7232 South Union. He was with McWeeny looking for the Deloney brothers. An individual at 7232 suggested that they try next door at 7230 South Union. At 7230 South Union, Ptak went up a flight of stairs and knocked on the door. Maurice, Shelby, Deloney, Franklin, and Crowley came down the flight of stairs and were stopped on the landing by Ptak. Ptak advised them of their

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[64] *See* Exhibit 11, 375:24–76:7: "Q. And who else was present? A. Besides myself and Mr. Milsaps, it was Detectives Foley and Tristano. Q. And could you describe Detective at all? Does he have a mustache at all? A. No. Q. Does he have black hair at all? A. No. He's gray or silver hair."

[65] *Compare* Exhibit 11, 360–368 with 375–382.

rights on the landing which the individuals indicated that they understood. They were placed under arrest and taken to Area Three.[66]

5) Detective McWeeny's February 28, 1994 Testimony

a. McWeeny's Testimony at the Motion to Quash (Exhibit 14)

Det. McWeeny testified that on August 7, 1991 he was assigned to investigate the shootings. On August 8, 1991, at approximately 11:00 a.m. at St. Bernard's Hospital, he spoke with a witness, Epton, who identified the Deloneys as involved in the shooting. That same day, at about 1:15 p.m., based on the information gathered in the investigation, he went to the Deloneys' house at 7232 South Union with Detectives Ptak, Evans, and Vukovich. He was redirected to 7230 South Union, where Ptak had already located Maurice, Shelby, Deloney, Isaac Crowley, and Anthony Frank. The suspects were placed under arrest and transported to Area Three.

At Area Three, McWeeny took photos of all of the suspects. At around 4:30 p.m., McWeeny returned to St. Bernard's Hospital and showed the pictures to Epton, who identified Maurice and Deloney as among the shooters in the crime.

At around 5:30 or 6:00 p.m., McWeeny returned to Area Three to speak with Deloney. This was McWeeny's first conversation with Deloney. They spoke in an office in the rear of McWeeny's office. Foley was present.[67] McWeeny advised Deloney of his rights and told Deloney that he had been identified. Deloney then made statements implicating himself in the homicides, though he clarified that he was a driver, not a shooter. Deloney also named Brooks, Milsap, Bays, Tojo (Smith), and Maurice as being involved. After speaking with Deloney, McWeeny took additional photos of other suspects and returned to St. Bernard's Hospital at about 8:00 p.m.

b. McWeeny Trial Testimony on March 21, 1994 (Exhibit 16)

McWeeny did not have contact with Deloney between when Deloney was arrested and 4:00 p.m. At 4:00 p.m., he had a very short conversation with Deloney.[68] McWeeny next had a conversation with Deloney at 5:30 p.m., which lasted about one hour and for which Foley was present. McWeeny also had another conversation with Javan sometime after 10:00 p.m., at which McKay and Detective O'Brien (who McWeeny described as a white male officer about 6'1", 200 pounds) were present.

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[66] That same day at around 4:00 pm, Ptak also allegedly met with Deloney in an interview room. *See* Exhibit 15 (Appeal No. 95-0199, Brief and Argument for Plaintiff-Appellee) at 4. TIRC was unable to locate trial testimony stating that.

[67] Exhibit 14, McWeeny Trial Testimony at 127:19-20.

[68] Exhibit 16, at 35:1-12. Compare to McWeeny's February 28 testimony, where he stated that his 5:30 p.m. conversation was his first conversation with Deloney. Exhibit 14, at 150:11-22.

6) Detective O'Brien's Testimony

Detective O'Brien testified that he spoke with Deloney at about 10:15 p.m. on August 8, 1991, along with McKay and McWeeny. The conversation lasted about one hour and fifteen minutes. Neither he nor McWeeny struck or threatened Deloney.[69]

D. OPS Complaint Record (Exhibit 17)

Eva filed a complaint with the Chicago Police Department on Deloney's behalf on August 9, 1991 at 5:55 p.m., approximately 15 hours after his Deloney signed his written confession. The complaint was registered as Investigation No. 186408. It was not sustained.[70]

Eva alleged that, when she visited Deloney at Cook County Jail, Deloney claimed that unidentified officers had beaten a confession out of him, that his handcuffs were too tight, and that he was beaten in the chest with fists. On September 6, 1991, the investigator attempted to interview Deloney at Cook County Jail, but Deloney declined to provide a statement on the advice of his attorney. On August 13 and September 6, 1991, the investigator contacted Eva via telephone regarding the complaint, and during both calls Eva confirmed that she did not herself observe Deloney's injuries. Witness reports provided by Deloney's arresting officers (based on the relevant police reports) John Bloore, Robert Schaefer, Ptak, Mcweeny, Jude Evans, and F. Vukonich denied any knowledge of complaints by, physical mistreatment of, or injuries to Deloney. All officers denied any knowledge of Deloney being taken to a hospital August 9, 1991.[71]

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[69] Exhibit 15, Brief and Argument for Plaintiff-Appellee, at 4. TIRC was unable to locate copies of this transcript or other relevant testimony by O'Brien. *See* Clerks File, (00019635.pdf) page 6 of 35 (it appears that both McWeeny and O'Brien testified on March 21, for which testimony TIRC does not have transcripts aside from the Exhibit 16 excerpt).

[70] Exhibit 17 (Complaint Register Investigation No. 186408); Exhibit 18 (August 13, 1991 Letter Regarding C.R.# 186408).

Unfortunately, TIRC has had difficulty in receiving accurate complaint files from the City. On November 10, 2014, the TIRC subpoenaed the CPD for complaints filed by Deloney. *See* Subpoena 2014-043. On January 13, 2015, the CPD responded that a search for Deloney's complaint generated no results. The response was the same that CPD gave to the OSP during its investigation. *See* Exhibit 20 (OSP Record 00019851). TIRC later found a letter in a court file from the Office of Professional Standards regarding CR# 186408 filed by Deloney. On December 20, 2016, pursuant to Subpoena 2014-043, the TIRC requested from the CPD all files associated with C.R.# 186408. *See* Exhibit 19. The CPD provided the files in Exhibit 17 on December 21, 2016. The CPD also failed to find this complaint record in response to a June 2005 OSP subpoena. *See* Exhibit 20 (OSP Record 00019851).

[71] It is unclear based on the complaint register files why any investigation was made into whether Deloney went to a hospital on August 9, 1991. The summary of the complaint and witness interview records do not mention a hospital visit. Evan's and Vukonich's witness reports state, "I have no knowledge why Mr. Deloney was transported to the hospital on 09 Aug. 91" (noting that Vukonich, but not Evan, clarified, "I was not present on 09 Aug. 91"). *See* Exhibit 17.

E. Hospital Records and OSP Investigation

1) Hospital EMT (Exhibit 21)

On May 18, 1994, the prosecution in Deloney's trial stipulated (apparently in agreement with Deloney's attorney) that if an EMT "Cap" were called to testify, he would testify that on August 10, 1991 he conducted an interview and examination of Deloney and prepared Deloney's intake form.[72] The EMT was prepared to testify that Deloney stated only that his health was fair and that it hurt when he swallowed, and that Deloney did not say that he had been beaten by police. The EMT was further prepared to testify that he did not note any bruising or swelling.[73] TIRC attempted to locate the form by requesting impounded evidence in the Deloney and Smith cases, and reviewed impounded evidence relevant to Smith. However, the Cook County Circuit Court Clerk's Office could not locate impounded evidence relevant to Deloney.OSP Investigation (Exhibit 22)

The Office of the Special Prosecutor (OSP) investigated Deloney's claim in 2005. The OSP closed this investigation on October 26, 2005 (Exhibit 22, OSP Closing Memo), finding Deloney's allegations unsupported due to lack of physical or medical corroboration and inconsistent with more credible witnesses and documentation. The OSP based its finding on interviews with various of Deloney's family members and the EMT who examined Deloney at Cermak Health Center on August 10, 1991. The technician was not a male named "Cap," (as was stipulated at trial) but a woman--Monica McAplin ("McAlpin"). McAlpin was rated by the OSP as a "very credible" witness.[74]

a. Monica McAlpin Interview on August 22, 2005 (Exhibit 23)

On August 10, 1991, McAlpin was employed at the Cermak Health Center. She did not recognize Deloney by photograph, and at no point did she remember his specific case. However, she reviewed and verified her signature on the August 10, 1991 Cermak Health Services History and Physical Examination Form No. 1, pages 1 and 2, indicating that she examined Deloney on this date. She claimed that she would have recorded any physical signs of abuse or if Deloney had indicated that he was abused.[75]

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[72] Exhibit 21, ROP of May 18, 1994 (00019206.pdf), 1231:10–1232:4.

[73] The TIRC was unable to locate a copy of any associated hospital intake form.

[74] In the course of its investigation, the OSP investigated whether certain hospitals—namely, St. James Hospital at Olympia Fields, St. Bernards, and Chicago Osteopathic Medical Center—possessed records regarding treatment of Deloney in 1991. No such records were found. St. James Hospital indicated that it generally kept records for no longer than 10 years. And Chicago Osteopathic Medical Center had gone out of business and could not be subpoenaed *See* OSP Records 00019564, 00019565, 00019773, 19807.

[75] McAlpin would appear to be the same EMT that the parties stipulated found Deloney's health to be fair upon intake at Cermak, noting that in the court records the State's attorney used the pronoun "he" when referencing the EMT.

b. Curtistine Deloney May 23, 2005 Interview (Exhibit 24)

After Deloney was arrested, she and other family members went to various police stations in order to find Deloney. She saw Deloney at either a police station at 61st and Racine or a station on California Avenue. Deloney's face was swollen, and Deloney told her that he had chest pains and had been struck by the police. She convinced police officers to take Deloney to a hospital, and she believes that he was taken to St. Bernard's Hospital. When he returned, officers informed her that he had venereal disease.

c. Eva Deloney May 23, 2005 Interview (Exhibit 25)

After Deloney was arrested, she and her sister Curtistine went to various police stations in order to find Deloney. When Shelby was released, he advised Curtistine that Deloney was at 39th and California. Eva went with one of her sisters to 39th and California, where she could hear Deloney "hollering and crying." She believes that Deloney was taken to Chicago Osteopathic Hospital near 53rd and Woodlawn.

She also saw Deloney at the station at 61st and Racine, where she spoke with Deloney in a prison cell. Deloney stated that "his nuts had been placed in a vice grip and squeezed," and that he had signed a confession due to his treatment. His face was swollen at the time. She was informed also that that the hospital had determined that Deloney had a venereal disease, and that she stated to a detective that that was not the reason why Deloney was taken to the hospital.

d. Cynthia Deloney September 8, 2005 Interview (Exhibit 26)

Cynthia, another sister of Curistine, said that the family had visited Deloney at a hospital on the west side after his arrest, but none of the family members could remember what hospital they visited.

F. Other TIRC Investigation

1) Deloney's Attorneys' Contentions

Deloney's current attorneys' submitted letters on behalf of their client. In a letter dated August 11, 2014 (Exhibit 27), Deloney's attorneys point out that almost all of the witnesses in this case, including wounded victims, have recanted their identifications.[76] They also pointed to a number of conflicts between confessions as evidence of their unreliability and coerced nature. For instance, Smith's confession places himself as the driver of the taxi, Brooks as the front seat passenger, Deloney as the rear, center-seat passenger, Milsap as the rear, driver's-side passenger, and an unnamed individual as the rear, passenger's-side occupant. Smith did not identify anyone

[76] The Illinois Supreme Court in *People v. Brooks* noted that the recantations were suspect because they occurred during a truce between the two warring gangs, and that one of the recanting witnesses, Taylor, denied he was accompanied to court by another man, but then left court with that same man. 187 Ill.2d 91, 133 (1999).

in a LeBaron that followed the taxi. Milsap's confession, conversely, puts Smith in the taxi driver's seat, a man named Ronald McKenzie next to Smith, and Deloney next to McKenzie in the front seat. Milsap said he sat behind Smith while Maurice sat in the rear passenger's-side seat. Milsap does not mention a LeBaron. Finally, Deloney's confession states that he was driving the LeBaron with Maurice in the front and Bays, in the back, while Smith drove the taxi containing Brooks, Milsap and another man.[77]

2) Deloney's Photo Array

On March 16, 2015, a third-party presented Deloney with a photo array of 86 photographs originating from the special prosecutor's office and bearing no identifications other than a number.[78] The third-party had no details of TIRC's investigation or familiarity with the photographs.

Deloney was asked to identify whether any of the pictures appeared to depict any of the individuals who participated in or observed his torture. Deloney requested further review of eight photographs (Nos. 24, 28, 29, 10, 11, 81, 78, and 79) but quickly discarded Nos. 28 and 78. Deloney identified Foley's photograph, 24, as being identical to the silver-haired detective who abused him. Deloney also identified photograph 29, Det. Francis Gutrich, as possibly depicting an aged version of the same individual, though Deloney felt more certain about photograph 24. Photographs 11, 79, and 81 (Officers Thomas Byron, John Robertson and Robert Skahill, respectively) looked familiar to Deloney as possibly among the eight to ten detectives in the in the room with McKay. None of those officers are listed on police reports or known to have participated in the investigation. Deloney recognized photograph 10 as Jon Burge from having seen Burge on television, but said Burge was not part of his interrogation. (*See* Exhibit 42.) Deloney did not ask to review or identify photograph No. 65, believed to be that of Daniel McWeeny, who testified at Deloney's trial – although technically he was only asked to identify those involved in or witnessed his abuse.[79]

3) Photographs of Deloney

As noted above, a photograph of Deloney was taken by McWeeny on August 8, 1991, after the alleged abuse had begun. Deloney's attorney introduced this photograph on direct and subsequently entered it into evidence.[80] A second photograph was taken of Deloney during his intake at Cermak Hospital on August 10, 1991, which the state introduced on cross and

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[77] *See* Statements of Ivan Smith and Curtis Milsap, November 22, 1991 and August 9, 1991 and August 19, 1991, respectively.

[78] *See* Video File ("itrc-031615.mp4").

[79] The identities of Photograph Nos. 11, 24, 28, 29, 79, 79 and 81 were confirmed by the Office of the Special Prosecutor pursuant to TIRC subpoenas 2015-039 and 2016-040 on June 18, 2015 and August 22, 2016, respectively. McWeeny's photograph was identified by private attorney's familiar with him.

[80] Exhibit 1 at 1202; ROP of (00019206.pdf), 1232.

subsequently entered it into evidence.[81] Such photographs are ordinarily retained among impounded trial evidence at the Cook County Circuit Court Clerk's Office. Pursuant to a court order obtained by TIRC on August 5, 2014, the clerk's office found and made available to TIRC impounded evidence related to Deloney's co-defendant, Smith, but could not locate evidence related to Deloney.[82]

Portions of the record suggest but are not dispositive of Deloney's face having been swollen in the pictures. Deloney claimed in his June 2014 Interview that his face was bruised and swollen in the pictures. On closing, Deloney's attorney stated with regard to the photograph; "[i]t shows a young man who has a bruised face. ... it shows a young man whose eyes are watery, it shows a young man whose left cheek is swollen[...] And I challenge the State to give you some reasonable explanation for why that photograph looks like it looks."[83] The State introduced the second photograph, allegedly taken at Cermak Hospital two days later, but only Deloney's attorney addressed that photograph on closing, stating "if you look at the left side of his face and if you look at the under part of his eye, and keep in mind that's a black and white photograph, judge, that's been blown up from a small identification photo at the jail, you can see that in fact his lower eyelid is puffy."[84]

The state did not address the photographs in their closing arguments, nor did the judge in his ruling that the statement was voluntary and that Deloney was guilty. Instead, the judge cited the extreme lack of credibility in Deloney's testimony that directly contradicted ASA McKay's testimony when Deloney claimed that McKay had not written out the confession in front of him, but rather handed him a prepared statement.

"To have anyone believe that a lawyer whose license is on the line [...] would write up a statement and then tell a defendant to sign this statement without that being the defendant's statement is absolutely incredible[. ...] And because I didn't believe Mr. Deloney in that context then, therefore, he lied so greatly in that[,] I have no reason to believe that he was ever touched or punched or slapped or threatened or abused verbally in any way," Judge Earl Strayhorn said.[85]

4) <u>Pattern and Practice Evidence (Exhibits 30 through 35)</u>

TIRC subpoenaed the Chicago Police Department (CPD) and the Independent Police Review Authority (IPRA) for records related to complaints against O'Brien, McWeeny, Foley, and Ptak, the officers who allegedly interacted with Deloney during his interrogation.

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[81] Exhibit 1 at 1228

[82] *See* Order 2014-Misc 17 (2014.8.05 Biebel Impound Access Order_Redacted.pdf). Smith's files were made available and copied September 12, 2014. On or about November 3, 2014, TIRC staff orally confirmed with the clerk's office that no Deloney impounded evidence had been located.

[83] ROP of May 18, 1994 (00019206.pdf), 1243:22-1244:12.

[84] ROP of May 18, 1994 (00019206.pdf), 1244:13-22.

[85] ROP of May 18, 1994 (00019206.pdf) 1276-1277.

a. Detective O'Brien Complaint Records

The CPD provided a list of 33 complaints against O'Brien. (*See* Exhibit 30.) IPRA supplied five additional complaints against O'Brien. Of the 38 complaints against O'Brien, two were sustained, 21 were not sustained, O'Brien was exonerated in four instances, and seven were deemed unfounded. The final findings for the four remaining complaints were either not listed on O'Brien's complaint registry, or were listed as "N/A." The CPD and IPRA supplied files on 19 of the 38 complaints. Of those 19 complaints, 12 alleged use of physical force to obtain or attempt to obtain a confession. (*See* Exhibit 31, summary of complaints against O'Brien.)

In the first of two complaints against O'Brien sustained by the Office of Professional Standards (OPS), the OPS determined that O'Brien had violated a policy of interrogating minors outside the presence of their parents. In that same incident, the complainant alleged that O'Brien had also physically abused him until he confessed to involvement in a murder, but the OPS determined these particular allegations were "not sustained." However, the criminal court suppressed the confession in the resulting trial, and the complainant later settled a civil suit based on the coerced confession with O'Brien and other detectives for $95,000. Neither the CPD nor IPRA provided a file for the other complaint that was sustained against O'Brien.

In two criminal cases not cited in the CPD files, defendants specifically named O'Brien as using physical force to obtain a confession. The defendants in both of those cases were convicted and sought post-conviction relief, but the status of the cases is unclear.

A report compiled by the Office of the Special Prosecutor noted two other criminal defendants had accused O'Brien of using physical force to obtain their confessions. One complaint was not sustained, and the other complaint was found to not have involved any physical abuse.

In two civil court actions not related to the above complaints, plaintiffs alleged that O'Brien used physical force to coerce their confessions. Those cases are pending or their status is currently unclear.

b. Detective McWeeny Complaint Records

The CPD provided a list of four complaints against McWeeny. (*See* Exhibit 32.) McWeeny was exonerated in two complaints, and two complaints were deemed unfounded. (*See* Exhibit 33, summary of complaints against McWeeny.) One of those four complaints alleged the use of physical force to obtain a confession.

In two criminal cases not cited in the CPD files, defendants specifically named McWeeny as using physical force to obtain a confession. The defendants in both of those cases were convicted, and one sought post-conviction relief on the basis of the physical abuse. The status of that claim remains unclear as of November 2016.

A report compiled by the OSP noted three other criminal defendants had accused McWeeny of using physical force to prompt confession. The OSP determined there was inadequate evidence to open an investigation in two of those cases, and it determined the third case fell outside its jurisdiction.

Further, in five civil court actions not related to the above complaints, plaintiffs alleged that McWeeny used physical force to coerce their confessions. Two of those civil cases were settled by McWeeny, and in three instances courts ruled in McWeeny's favor.

Finally, the Chicago Reporter lists a civil lawsuit in which $6,150,000 was awarded against the Chicago Police Department, which lawsuit named John Burge, McWeeny, Foley, and Ptak.[86] Certain detectives involved in the case allegedly beat a suspect over several hours in 1988 until he falsely implicated himself and the named plaintiff, Reeves. Reeves was convicted, but later released after 21 years in prison and granted a certificate of innocence.

c. Detective Foley Complaint Records

The CPD provided a list of six complaints against Foley. (*See* Exhibit 34.) IPRA supplied two additional complaints against Foley. Of the eight complaints against Foley investigated, none were sustained, three were not sustained, two instances were unfounded and Foley was exonerated in one investigation. (*See* Exhibit 35, summary of complaints against Foley.) The final findings of the two remaining complaints were either not listed on Foley's complaint registry or listed as "no disciplinary action- case to be filed" or "closed- no conversion." Of the eight complaints, four alleged the use of physical force to obtain or attempt to obtain a confession (although two complaints addressed the same incident), and another complaint alleged coercion to obtain or attempt to obtain a confession.

In a criminal case not cited in the CPD files, the defendant alleged that Foley and several other detectives used physical force to coerce a murder confession. Foley was also mentioned in another criminal case not cited in the CPD files where physical abuse and coerced statements were alleged, but the allegations were more directed at another detective working together with Foley.

A report compiled by the OSP identified one other criminal defendant who accused Foley of physically abusing him during the course of an investigation. The OSP decided not to pursue the investigation since the conduct occurred after Commander Jon Burge's tenure.

Finally, Foley was implicated in two civil cases not related to the above complaints. In the first case, the plaintiff alleged that Foley, along with several detectives, engaged in physical abuse and coercive tactics in order to help obtain a confession. The case settled for $5,000. In the second case (in which Foley was not implicated specifically other than being named as a

[86] Case No. 11-L-5069. http://projects.chicagoreporter.com/settlements/case/11-l-5069/.

defendant), the plaintiff was exonerated after twenty-four years in prison and is now suing the CPD for his wrongful conviction.

f. Detective Ptak Complaint Records

The CPD supplied one complaint against Ptak.[87] The complaint alleged that Ptak and another detective contributed to the false imprisonment of an individual by signing and obtaining false witness statements. The finding of the investigation was "closed- no conversion" based on failure of the reporting party to cooperate in the investigation. A related civil lawsuit is ongoing (in which Foley is a named defendant).[88]

Ptak is also a defendant in an ongoing civil lawsuit filed against Jon Burge and several CPD members alleging manipulation of evidence and physical abuse in order to obtain a confession.[89] In the original criminal trial, the court suppressed the complaining party's confession, stating that the physical abuse was "obvious." The plaintiff was exonerated after twenty-four years in prison.

5) Possible Abuse of Deloney's Co-Defendants

Deloney's co-defendants, Milsap, Smith, and Maurice, all alleged that they were abused by detectives investigating the August 7, 1991 shootings.

Milsap testified as follows on May 3, 1994 in support of his motion to suppress. (*See* Exhibit 36).[90] Milsap was arrested on August 19, 1991 and taken to 51st and Wentworth and then to 39th and California. He was brought to a room on the third floor, handcuffed to a file cabinet, and interrogated by two officers. During the interrogation, he was hit, slapped, and kicked in the testicles. He eventually signed a confession with McKay. Also present were the officers who abused Milsap, plus two others. Milsap did not see his abusers testify at trial.[91] Milsap's statement was signed by McKay, Foley, and Detective Nicholas Tristano. (*See* Exhibit 37.)[92]

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[87] C.R.# 1060434, filed March 7, 2013.

[88] *Patrick Hampton v. City of Chicago et al.*, 12-cv-05650 (N.D. Ill.)

[89] *James Kluppelberg v. Jon Burge et al.*, 13-cv-03963 (N.D. Ill.). Ptak is not specifically mentioned in court records other than as a named defendant.

[90] ROP of May 3, 1994 (00019201), 389-408.

[91] Nor did Milsap identify the detectives who interrogated him in his January 12, 1994 written Motion to Suppress. ("C. Milsap mot.to.suppress..pdf").

[92] *See* Milsap, August 19, 1991 Confession. Milsap's testimony is ambiguous but suggests that the officers who signed his statement were not the ones who abused him. *See* ROP, May 3, 1994, O-48 ("Q. And who were these detectives that you said were hitting you? ... Q. Were they the same officers that were in the room with you when you gave the statement? A. yes, in there, yes, plus two more. Q. So I get this straight, the officers that signed your statement are not the ones you say beat you? A. I don't know their names. I know them by face, not by name. First

At trial, Milsap also described his subsequent hospital visits. After his stay at 39th and California, he was taken to receiving at Cermak Hospital. He told the first paramedic who examined him that his testicles hurt. He was subsequently brought to A-3 in Cook County Jail, where he told Officer Allen that he had been kicked in the testicles.[93] He then received medical treatment two to three weeks later. At some point later still, he went to Cermak Hospital and his testicles were examined.

At Milsap's motion to suppress, Salvador Martinez, the EMT who first examined Milsap, testified that he observed no swelling or discharge, but some tenderness to the left testicle area. (Exhibit 38.)[94] In making his closing argument on his client's motion to suppress, Milsap's lawyer summarized his evidence and noted that he had called a Cook County jail guard, Roland Allen, who testified he would not accept Milsap into his wing of the jail because of bruises on Milsap's face and a noticeable limp. (Exhibit 39.) Judge Strayhorn nonetheless denied Milsap's motion to suppress.[95]

Milsap's claim was also investigated by the OSP, which closed Milsap's case, finding the evidence in support not sufficiently corroborative of abuse. According to the OSP's Closing Memo: "In his statement to OSP [Milsap] thinks that one of the two abusers might have been O'Brien but he clears from allegation the three people that took his confession: Detective William Foley, Detective Nick Tristano, and ASA James McKay." (Exhibit 40).[96] Milsap's medical records corroborate some degree of testicular swelling (though trauma versus infection remains disputable).[97]

Smith also claims that detectives, including O'Brien, abused him in order to secure his confession to the August 7, 1991 shootings. He alleges that O'Brien hit him in the head, punched him in the chest, and held a phonebook over his chest and beat it with a wooden stick until he agreed to confess during an interrogation at Tipton County Jail in Covington, Tennessee in November 1991. On January 20, 2016, Smith's case was recommended for further judicial review by the TIRC.[98] Smith's case is currently before the Cook County Court.

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time I have seen them."). *See* also OSP Milsap closing report ("but he clears from allegation the three people that took his confession: Detective William Foley, Detective Nick Tristano and ASA James McKay.").

[93] Exhibit 37, ROP of May 3, 1994 (00019201), 405-06.

[94] ROP of April 14, 1994 (00019201), 253-261

[95] ROP of May 6, 1994 (00019202.pdf), 466-70. Allen's testimony was not contained in records available to TIRC. Nor did the prosecution's summary rebuttal any mention Allen's testimony. However, what appear to be handwritten prosecutors' trial notes do show a Roland Allen being called to testify by the defense on either March 21, 1994 or April 5, 1994. *See* (00019635.pdf) page 6 of 35.

[96] OSP Document 00020972

[97] *See* Milsap Medical Records ("Medical records- Milsap03072014.pdf").

[98] *See* January 20, 2016 Ivan Smith Case Disposition, TIRC Claim No. 2011.001-S.

As noted above, Maurice and Deloney also allege that Maurice was physically abused during his interrogation.

IV. STANDARD OF PROOF

The Commission was created by the General Assembly following the report of Special Prosecutor Egan and the subsequent federal indictment of Jon Burge in order to address the evidence that had been developed of widespread torture of suspects by officers who had served under Burge. The General Assembly noted the procedural rules of courts that, under normal circumstances, limit the ability of convicted persons to re-examine old convictions.[99] It created this body in 2009 because of a special need to review convictions related to Burge and the officers who had worked under him, based on the evidence that had already been developed that the law enforcement and judicial systems had failed to address adequately the consequences of the demonstrated pattern of torture.[100]

The Commission was not tasked by the General Assembly to conduct full, adversarial, evidentiary hearings concerning the likelihood of torture, or even to make a final finding of fact that torture likely occurred. That remains the role of the courts. Instead, 775 ILCS 40/45(c) provides a lower burden for claimants:

> If 5 or more of the 8 voting members of the Commission conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief Judge of the Circuit Court of Cook County. [Emphasis added.]

Because of the Commission's role as a gatekeeper for a new hearing in Court, it has interpreted this language, by rule, as not requiring that it be more likely than not that any particular fact occurred but rather that there is sufficient evidence to merit judicial review. 2 IAC 3500.385(b)(1).[101]

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[99] *See, e.g., People v. Edwards*, 2012 IL 111711, 969 N.E.2d 829 (2012).

[100] Later, in 2016, the legislature expanded the scope of the Commission to examining claims of police torture throughout all Cook County police agencies.

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

The Illinois Appellate Court has similarly framed the Commission's duties: "[T]he Commission is asked to determine whether there is enough evidence of torture to merit judicial review, the circuit court is asked to determine whether defendant has been tortured. These are two different issues determined by two different entities * * * What the Commission [does is] analogous to [determining whether] a postconviction petition [can] advance to the third stage." *People v. Christian*, 2016 IL App (1st) 140030, ¶95, 98.

V. ANALYSIS

A. Facts Supporting Javan's Torture Claim

1) Photo Identification

Deloney identified Foley as his primary abuser in the March 2015 blind photo array. The identification appears to credibly identify the silver-haired detective Deloney has consistently referred to, given that there were at least 10 silver or white-haired detectives among the 86 photographs presented to Deloney, Deloney identified Foley's picture as "identical" to the silver-haired detective, and Deloney is not known to have seen photographs of Foley prior to the blind array.[102] Additionally, McWeeny confirmed in testimony that Foley joined in at least one interview of Deloney, police reports indicate that Foley was integrally involved in the investigation, Deloney testified that his abuser was not among those who testified at his suppression hearing and trial, and Deloney's attorney's noted Foley's absence at the suppression hearing, even objecting that the state's failure to produce Foley was grounds for error. It is therefore at least plausible that Foley is the silver-haired detective referred to by Deloney, and it is notable that Foley was not presented by the state at the suppression hearing.

On the other hand, one would expect Deloney to recognize McWeeny, who testified at his trial, particularly when Deloney commented on Burge's photo, who was not even part of his interrogation. Again, however, Deloney was only asked to identify those who witnessed or committed abuse, and at trial, he said McWeeny had not abused him. In all, however, the selection of Foley from a blind photo array would explain his inability to identify his alleged abuser at his suppression hearing/trial. Deloney's identification of Foley in the photo array weighs in favor of Deloney's claim.

2) Pattern and Practice

Records document 38 complaints lodged with either the Office of Professional Standards or the Independent Police Review Authority against O'Brien, at least twelve of which alleged the use of physical force to obtain a confession. O'Brien was also accused of using physical force to obtain confessions in an additional four criminal cases and two civil cases on record.

Chicago Police Complaint Register history records document four complaints lodged against McWeeny, one of which alleged the use of physical force during an arrest. McWeeny was also accused of using physical force to obtain confessions in an additional five criminal cases and five civil cases on record.

[102] Deloney's attorney confirmed in writing that they had not shown Deloney any photographs of detectives prior to TIRC's photo array.

Records document eight complaints lodged against Foley with the Office of Professional Standards or the Independent Police Review Authority, at least four of which alleged the use of physical force to obtain a confession. Foley was also implicated as having used physical force in at least one other civil lawsuit.

Records document one complaint lodged against Ptak, which alleged the use of physical force to obtain a confession.

Though few of the complaints against the detectives were sustained, the number and type of allegations against the detectives weights in Deloney's favor.

3) Possible Abuse of Javan's Co-defendants

There is strong evidence that at least one of Deloney's co-defendants, Milsap, was abused during the investigation of the August 7, 1991 shootings. Milsap's lawyer summarized the testimony of Cook County jail guard, Allen, who testified that he would not accept Milsap into his wing of the jail because of bruises on his face and a noticeable limp. Assuming that Milsap's attorney's summation of Allen's testimony is accurate, this is credible testimony by a third party evidencing that Milsap was abused. Milsap's own testimony and medical records, though disputed, corroborate the summary of Allen's testimony. Milsap alleged that he was slapped in the face and kicked in the testicles during his interrogation.

It is also noteworthy that Milsap's confession was obtained by McKay and Foley, two of the primary individuals implicated by Deloney.[103] However, the record is not strongly corroborative of Milsap having identified Foley specifically as one of his abusers.[104] Deloney claimed in his June 2014 Interview that Milsap had done so in their conversations. But the OSP interpreted the record as showing that Milsap disclaimed any wrongdoing specifically by the detectives who were present for his confession (including Foley).

On January 20, 2016, the TIRC also recommended the reopening of Smith's claim in Cook County. Therefore, there was at least a preponderance of the evidence that his claim demonstrated sufficient evidence of torture to merit judicial review.

Finally, Maurice alleged that he was abused during his interrogation, as summarized in his various statements. He also filed a claim with the OSP, which was closed based on lack of evidence. As noted, Maurice was acquitted at trial.

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[103] And it is interesting that McKay's testimony regarding his interviews with Milsap and Deloney are in many respects verbatim identical.

[104] *See* FN 89.

4) The State's Credibility

Taking McWeeny's and McKay's testimonies as true, certain inconsistencies and weaknesses in the Illinois Authorities' case weigh against the State's credibility and in favor of Deloney's claim.

McKay claimed that he first interviewed Deloney at about 10:15 p.m. on August 8, 1991, in which interview Deloney described the shootings and his involvement for one hour and fifteen minutes. It is unusual that McKay did not take any notes of this meeting, and that McKay did not then take Deloney's statement until around 1:45 a.m., over two hours after the first interview was complete. It is also unusual that McKay did not take Deloney's picture around this time and was not sure when one might have been taken.

The failure to have Foley testify at trial also weighs against the State. McWeeny stated unambiguously that Foley was present for an interview with Deloney.[105]

6) Corroborating Statements

Deloney's cousins and friends, Maurice, Shelby, Hudson, Rucker all claim to have firsthand heard or seen Deloney being beaten. Deloney's mother, Curtistine, and his aunt, Eva, both claim to have seen his face swollen when they visited him in booking. And Eva, Curtistine, and Cynthia, another aunt, all support his claim to have indeed visited a non-Cermak hospital. The statements provided by these individuals are all generally corroborative of Deloney's claim, though they are not consistent with one another.

These corroborating statements weigh slightly in support of Deloney's claim, understanding that all of these affiants are individuals related to or with other ties to Deloney.

7) Failure of the State or Court to Address Photographic Evidence

It is unfortunate that the clerk's office could not locate the photographs of DeloneyNonetheless, it is significant that in his closing, Deloney's attorney specifically challenged the state to explain away what Deloney's attorney characterized as bruising and swelling. In other such suppression motion, courts have explicitly stated they saw nothing unusual in the photo. Both the state and the judge were mute here, a factor that weighs in Deloney's favor.

8) Early Outcry by Deloney and Family

Javan's Aunt Eva's complaint to OPS was logged just 15 hours after he gave his written statement to police and the ASA. Although Deloney himself did not speak to investigators, OPS

[105] *See* ROP of May 17, 1994 (00019206.pdf), 1230-1231 (the State claiming it had called all material witnesses; Deloney's attorney only later raised the issue of Foley's absence)

records reflect it was upon advice of counsel, which was not an unusual advice for those whose trial was still pending. The early outcry contrasts with other claimants who have sometimes waited years to file with OPS.[106]

D. Facts Casting Doubt on Javan's Torture Claim

1) Medical Examinations and Records

Deloney' descriptions of his visits to hospitals following his interrogation are confusing and contradictory. The chronology that most comports with Deloney's June 2014 Interview, Trial Testimony, and October 1997 Affidavit would be the following: after Deloney's interrogation, he was brought to 61st and Racine where he told an officer that he was beaten by police; Deloney subsequently went to a hospital (one out west, not Cermak) at Eva's request where he told a nurse or EMT that he was hit in the chest, and where he was also examined by a doctor with two officers present; Deloney did not describe the beatings to the EMT or doctor; Deloney was then brought to Cook County Jail for booking, where he told an EMT intake person that he had been beaten; and Deloney was subsequently brought to Cermak Hospital, separately located within Cook County Jail, where he did not tell the examining medical personnel about the beatings.

Deloney's first visit to the non-Cermak hospital was not mentioned in his Trial Testimony and no medical records evidence any such hospital visit having taken place. In his October 1997 Affidavit, he claims that at this visit, "the doctor did not seem to care that I had been beaten and only looked me over quickly."[107] This appears to contradict his statement in his June 2014 Interview that he told the medical personnel that he was hit but provided no further detail regarding the beatings. Finally, his October 1997 Affidavit mentions a medical report stating that he had a venereal disease, suggesting that this affidavit may be conflating this visit with the Cermak Hosptial visit (which is not mentioned in the October 1997 Affidavit).

As noted, the OSP was unable to locate any relevant hospital records pertaining to any such non-Cermak hospital.

Additionally, Deloney's distinction between his visits to Cook County Jail intake and Cermak Hospital is confusing. At trial, on cross, Deloney was asked specifically about his trip to "Cermak Hospital into the intake center." He confirmed that he talked to an EMT or paramedic who he told that police officers had beaten him.[108] In his June 2014 Interview, Deloney explicitly clarified that he said this in reference to his intake at Cook County Jail, not his subsequent visit to Cermak Hospital. Deloney's explanation clarifies the apparent contradiction, but having made such a mistake on cross is unusual given the clear questioning regarding

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[106] *See* Exhibit 17.

[107] Exhibit 2 at ¶ 64.

[108] Exhibit 1 at 1224-28.

"Cermak Hospital." On the other hand, it is very plausible that Deloney has a better understanding of these different facilities and their names now than he did when he was much younger testifying at trial.

Further, on cross, Deloney appears to confirm that this medical examination (claimed in June 2014 to have been at Cook County Jail intake) gave rise to the physical evaluation form where his only listed complaint was that it hurt when he swallowed.[109] However, other testimony suggests that this examination form (a copy of which the TIRC was unable to obtain) was the one prepared at Cermak Hospital by McAlpin, the EMT that examined Deloney at Cermak Health Center on August 10, 1991. On the other hand, at trial on cross, the prosecuting attorney appeared to be confused and surprised that Deloney was claiming to have told the Cermak medical personnel that he was beaten by police.[110] This comports with Deloney's claim that he was simply confused and misstated the events on cross.

Regardless, the confusion surrounding Deloney's hospital visits itself weighs against Deloney, as does the lack of medical evidence corroborating Deloney's claim. At some point he was evaluated at Cermak by McAlpin, a credible third party witness, with no record made of any signs or statements of abuse. Nor is there any record of a prior hospital visit (during which officers remained in the room with him while he was examined). And taking his most recent recounting of events as true, he told at least one medical technician, a Cook County Jail intake EMT, that he was beaten by police. This weakens his claim as it suggests that a person outside of the circle of allegedly abusive detectives (albeit an individual still associated with the Cook County Jail) was aware of the abuse but did nothing in response. On the other hand, Milsap, whom a jail guard testified was bruised and limping, also has nothing in his medical evaluation forms dated August 20, 1991, about bruises or limping that would specifically point to abuse. The two forms, filled out the day after Milsap's arrest, mention only asthma and tattoos – a possible indication that jail intake procedures were either not the most thorough or not predisposed to documenting alleged police brutality.[111] Nonetheless, the lack of medical documentation weighs slightly against Deloney.

Overall, the available evidence and testimony surrounding Deloney's medical examinations weighs against his claim.

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[109] Exhibit 1 at 1227:6-11.

[110] Consistent with Deloney's explanation in his June 2014 Interview that he was confused at trial 1225:3-25 ("Q. You didn't tell him anything that the police had beaten you, did you? A. Yes. Q. Pardon me? A. Yes, sir. Q. Did you tell the person at intake that the police officers had beaten you? A. Yes. Q. And that was the person over at Cermak? A. Yes, sir.").

[111] *See* "Medical Records- Milsap03072014.pdf", pages 17 and 51 of the .pdf.

2) Other Inconsistencies in Deloney's Statements

Deloney's testimony regarding his hospital visits aside, his Trial Testimony, October 1997 Affidavit, and June 2014 Interview testimony have inconsistencies that weigh against his claim.

Deloney's October 1997 Affidavit is most out-of-sync with his other testimony. The affidavit was drafted by lawyers working on Brooks' case, which may explain some of the inconsistencies, despite Deloney's confirmation in the June 2014 Interview that the affidavit is accurate. (See FN 53.) The October 1997 Affidavit contradicts Deloney's other statements on a number of memorable points, including: stating that his interaction began as soon as he was brought to the interrogation room; he was not struck until the second visit; and that all three detectives returned for the second visit.

His Trial Testimony and June 2014 Interview are more consistent. The minor details deviating between those accounts relate more to specific facts that would be difficult to remember, especially after so many years, such as the exact statements of the silver-haired detective and exactly how many times he was hit.

Overall, the inconsistencies among Deloney's statements weigh against his claim. No internal implausibilities are noted, however, that would eliminate his credibility about his claim (including the confusing nature of his accounts of his hospital visits noted above).

3. Opportunity for Coordinating Statements. Deloney acknowledged that he discussed the interrogations and alleged beatings with his co-defendants during the criminal process. Although it is unclear from Deloney's interview when he first had opportunity to consult his co-defendants, and the transcripts available do not include an initial appearance transcript to gauge when this might have occurred, this opportunity for coordination is a factor that weighs against the credibility of the statements.

E. Other Factors Considered

- Deloney's juvenile criminal history is unknown. Prior to his August 8, 1991, arrest, he had been charged in two separate incidents with unlawful use of a weapon and armed robbery, which was downgraded to simple battery. Both charges were eventually dropped.[112]

- Deloney alleges that he was abused in an interrogation room at 39th and California. That is a plausible environment within which abuse might take place.

[112] *See* Response to Subpoena 2014-037 regarding Deloney's prior criminal history.

- Nor is the alleged circle of knowledge and participation, which extends beyond Deloney's three abusers, so significant as to weigh against Deloney's claim. Deloney claims that Maurice was beaten in an open hallway by other officers, and that he himself complained of the abuse to three additional officers while interrogation room. He could hear his arrested cousins and friends across their respective rooms, suggesting that sounds of their abuse were traveling throughout the station. And he alleges he told ASA McKay, in a room with eight to ten officers inside, that he was being hit by detectives. But no other individuals (other than detectives and an allegedly culpable ASA) would have had firsthand knowledge of the abuse, and the only individuals other than Deloney's family members and friends who were informed of the abuse, were a guard at 61st and Racine booking and an EMT a Cook County Jail intake.

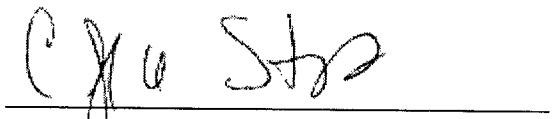
- Finally, though the records and Deloney's attorneys suggest potential weaknesses in the detectives' investigation of the shootings and conflicts and recantations among the witness statements and confessions, these issues are not deemed significantly dispositive of Deloney's claim. Witness recantations are often unreliable, and other noted conflicts do not seem so extreme as to outweigh the other evidence summarized bearing on whether Deloney was tortured.

VI. CONCLUSION

The Commission recognizes that Deloney's allegations over time are not fully consistent, that his discussions of his medical care following his arrest are confusing (at best), and that the defendants had the opportunity to coordinate their claims of beatings.

Nevertheless, on balance, the Commission concludes that the relative consistency of Deloney's key allegations, the claims of co-defendants, the evidence of abuse of Milsap, Deloney's identification of Detective Foley from a photo array, the absence of Foley from trial, the descriptions of the lost photographs, the contemporaneous complaint by Eva to OPS, and the complaint history of the Burge-supervised officers involved provide sufficient grounds to merit judicial review under the standards of the TIRC Act. The Commission finds that the cumulative weight of the evidence favors further review by the court.

Dated: January 18, 2017



Cheryl Starks, Chair
Illinois Torture Inquiry and Relief Commission

ADDENDUM: Commissioners Baldwin, Miller, Loeb, Mullenix and Thurston voted at the January 18, 2017 Commission proceedings that they find by a preponderance of evidence that torture more likely than not occurred.