

**BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION**

In re:

TIRC No.: 2011.107-W  
(Relates to Cook County  
Court No. 90-CR-16376

Claim of Demond Weston

CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Adm. Code 3500.385(c), it is the decision of the Commission that there is sufficient evidence of torture to merit judicial review of Demond Weston’s claim. This decision is based on the Findings of Fact and Analysis set forth below and the supporting record attached to this decision.

EXECUTIVE SUMMARY

Claimant Demond Weston’s 1992 convictions for gang-related murder and attempted murder were based in large part on a confession given hours after his arrest in 1990. Weston has maintained his initial allegations that police tortured him to induce him to confess by repeatedly slapping him in the face. In 2006, however, he began to assert a series of additional allegations. From TIRC’s investigation of Weston’s claim, his post-2006 allegations appear dubious. Therefore, the question is whether Weston’s consistent initial allegations combined with the interrogating detectives’ extensive involvement in other allegations of torture outweigh the doubts about Weston’s credibility flowing from his later exaggerations and embellishments and in turn constitute “sufficient evidence of torture” to merit judicial review.

The Commission’s standard for referral is a lower standard than determining whether torture occurred.<sup>1</sup> Whether to refer this case for judicial review is a close question. While we view Weston’s late-raised torture claims as highly dubious, we conclude that the initial allegations coupled with the extensive complaint histories of the detectives involved merit judicial review.

FINDINGS OF FACT

*I. Arrest, Interrogation, and Statement*

1. On May 29, 1990, a group affiliated with the Gangster Disciples street gang confronted members of a rival gang. That dispute resulted in the shooting of six people, one of whom died. The shootings occurred at three different locations: 5700 S. Wolcott Street, 5500 S. Justine Street, and 5759 S. Honore Street.<sup>2</sup>

<sup>1</sup> See Standard of Decision section, *infra* and *People v. Christian*, 2016 IL App (1<sup>st</sup>) 140030, ¶¶95, 98.

<sup>2</sup> See Exhibit A, Transcript of Hearing on Motions to Quash Arrest and Suppress Statement at A15.

DEMOND WESTON  
CRIMINAL DEPARTMENT  
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2. On June 9, 1990 at approximately 4 pm, Detective Michael Kill arrested Demond Weston at 5926 South Union Street on a tip from Duane Macklin, a member of the Gangster Disciples.<sup>3</sup>
3. Weston was interrogated at Area 3 Violent Crimes.<sup>4</sup> According to a supplementary police report<sup>5</sup>, Weston told the detectives that he was among the group of Gangster Disciples that confronted the rival gang.<sup>6</sup>
4. At 1:10 am<sup>7</sup> on June 10, Weston gave a court-reported statement at Area 3 Violent Crimes admitting that he arrived at 57<sup>th</sup> and Wolcott with a group of Gangster Disciples and shot toward (but not directly at) an unidentified man lying in the street. Three other individuals were present when Weston gave his statement: Detective William Moser, Assistant State's Attorney Paul Sabin, and court reporter Joseph Szybist.<sup>8</sup>
5. The statement was made in question-and-answer form, with Weston responding to questioning from ASA Paul Sabin. Sabin advised Weston of his Miranda rights. The statement reflects that Weston had been treated well by the police, that Detective Moser brought Weston McDonald's for dinner, that Weston was given the opportunity to go to the bathroom (but declined), that no threats or promises were made by the police or the state's attorney, and that no force had been used on Weston. Weston's signature appears at the end of the statement.<sup>9</sup>
6. On June 11, 1990, Weston was charged with the first-degree murder of Joseph Watson and the attempted murder of Timothy Jones, Deneen Coats, and Ronald Nesbit.

## *II. Pre-trial Motions*

7. Weston's case proceeded before Judge Edward M. Fiala. Weston's attorney, Paul Katz, filed motions to quash the arrest and suppress the written statement.<sup>10</sup> The

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<sup>3</sup> Neither Detective Kill nor any other detective prepared an arrest report discussing the circumstances leading to Weston's arrest on June 9. Exhibit A at A27-31. The details of the arrest are adapted from Kill's testimony at the hearing on Weston's motion to quash his arrest. *Id.* at A14-43.

<sup>4</sup> See Exhibit B, June 9, 1990 Arrest Report.

<sup>5</sup> Exhibit C, Supplementary Report at 11-12.

<sup>6</sup> Detective Maslanka prepared a page of handwritten notes, dated June 9, that appear to reflect at least portions of that oral statement. Exhibit D, General Progress Report, Interview of Demond Weston, June 9, 1990.

<sup>7</sup> At the hearing on Weston's motions to quash his arrest and suppress his written statement, Detective Moser testified that a court reporter was on site prior to the 1:10 a.m. statement, but was occupied with other matters. Exhibit A at A79-80. The statement of Duane Macklin was taken between 10:47 and 10:55 pm that evening. See Exhibit E, Statement of Duane Macklin ("Macklin statement").

<sup>8</sup> See Exhibit F, Court-Reported Statement of Demond Weston at 1.

<sup>9</sup> *Id.* at 15.

<sup>10</sup> Exhibit G, Motion to Suppress Statements; Exhibit H, Motion to Quash Arrest and Suppress Evidence.

motion to suppress alleged that an unnamed police officer “slapped defendant several times on the face.”<sup>11</sup>

8. At the hearings on the two motions in August 1991, Detective Kill testified that, after Weston’s arrest, he took Weston to an interrogation room, removed his handcuffs, read him his Miranda rights, and interviewed him for five to ten minutes. Kill said that he left the room at approximately 4:30 pm.<sup>12</sup> The hearing on the motion to quash, at which Weston testified about the circumstances of his arrest, directly preceded the hearing on the motion to suppress, at which Weston did not testify.
9. Detectives Anthony Maslanka and William Moser also testified. The officers described the rest of the interrogation as follows: Around 4:30 pm, they took over the interrogation from Detective Kill. After reading Weston his Miranda rights, the detectives interviewed him for 20-30 minutes. Weston admitted “that he was a participant” in the shootings. Over the next two hours, the detectives occasionally returned to check on Weston and question him further. Moser testified that he took Weston to the restroom at least once. At approximately 8 pm, ASA Paul Sabin arrived at the interrogation room. Sabin read Weston his Miranda rights and spoke to Weston for about a half-hour, with Moser present. After the statement was signed, a photograph was taken of Weston. Weston initialed the back of the photograph, and Moser and Sabin signed it. The prosecution introduced the photograph at the hearing, and there was no indication that it suggested evidence of physical abuse. TIRC investigators have been unable to locate the photo.<sup>13</sup>
10. The motion to quash the arrest was denied on August 27, 1991, and the motion to suppress the statements was denied on September 24, 1991.<sup>14</sup>

### *III. Trial*

11. The trial began on April 14, 1992 and concluded on April 21.
12. At trial, Weston testified about his police interrogation: Detective Moser “smacked [Weston] with an open fist, with his palm” in the face, about ten times. After each strike, Moser would accuse Weston of lying and ask the questions again. This continued for “a couple of hours,” at which point Weston agreed to “whatever you say,” because he was scared and tired of Moser hitting him. Weston testified that he did not have any marks on his face from the slapping, but his face was red. After Weston agreed to cooperate with Detective Moser, Moser instructed Weston on how to describe the incident to the ASA when he arrived. Weston repeated Moser’s story for the court-reported statement. On cross-examination, Weston stated that he had eaten on the night of his interrogation and that he had been allowed to go to the bathroom. Weston said that on June 11th, two days after the abuse, he received a

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<sup>11</sup> Exhibit G at 2.

<sup>12</sup> Exhibit A at A23-27.

<sup>13</sup> Exhibit A at A58-85.

<sup>14</sup> See Exhibits G, H.

physical examination at Cermak Hospital. He testified that he had no signs of physical abuse and did not inform the examining paramedic that he had been abused.<sup>15</sup>

13. The evidence pointed to Weston's involvement with the Gangster Disciples. One eye-witness identified Weston among the shooters, but her testimony did not align with the prosecution's timeline of the shootings.<sup>16</sup> Four victims viewed in-person line-ups but failed to identify Weston.<sup>17</sup> There is also evidence that the police initially mistook Weston for another suspect.<sup>18</sup>
14. On April 21, 1992, a jury convicted Weston of the murder of Joseph Watson and the attempted murders of Deneen Coats, Ronald Nesbit, and Timothy Jones. The jury deliberated for approximately three and a half hours.<sup>19</sup> Weston received concurrent sentences of 45 and 30 years.<sup>20</sup>

#### *IV. Post-Trial Proceedings*

15. Between 1992 and 1999, Weston initiated a number of post-conviction proceedings. Weston's 1992 motion for new trial claimed that the State "failed to prove by a preponderance of the evidence that [Weston's] statements were voluntary."<sup>21</sup> Weston did not raise torture as a basis for relief in his 1994 direct appeal,<sup>22</sup> but he

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<sup>15</sup> Exhibit I, Testimony of Demond Weston.

<sup>16</sup> The prosecution's timeline had the three shootings occurring in quick succession. First, Joseph Watson and Timothy Jones were shot near 5700 S. Wolcott Street. *See* Exhibit J, Testimony of Timothy Jones, at D196. Next, Deneen Coats and Ronald Nesbit were shot near 5500 S. Justine Street. *See* Exhibit K, Testimony of Deneen Coats, at E236-38. Finally, Pierre Solomon, Derrick Mason and J.D. Lee were shot at 5759 S. Honore Street. *See* Exhibit L, Testimony of J.D. Lee, at E171, E194. Deneen Coats was the only witness to identify Weston as being present at any of the shootings. Coats testified that Weston was among the individuals that shot at her near 55th and Justine. Exhibit K at E225. She also testified that these same individuals had been standing on the corner of her block for about an hour before they approached her house and began shooting. *Id.* at E246. Given the prosecution's timeline, Weston could not have participated in the first shooting if he was standing on Coats's block during that time. The prosecution never explained this inconsistency.

<sup>17</sup> Timothy Jones and Antonio Harris both viewed an in-person lineup that contained Weston on July 17, 1990, but neither could identify Weston. Exhibit J (Jones) at D235; Exhibit M (Harris). Pierre Solomon and J.D. Lee viewed an in-person lineup on July 17, 1990, but neither could identify Weston. Exhibit N (Solomon) at E168; Exhibit L (Lee) at E199. Derrick Mason also viewed that same lineup on the same day. Exhibit O, Testimony of Anthony Maslanka, at G151-53. The trial transcript reflects that Mason made a "tentative" identification of Weston, but that the judge excluded it as hearsay (Mason was dead at the time of trial). *Id.*

<sup>18</sup> Weston was implicated in the shootings by Duane Macklin, a member of the Gangster Disciples, who was arrested by Detective Kill on the morning of June 9. *See* Exhibit A at A17-20. Macklin identified five Gangster Disciples that participated in the May 29th shootings, one of which he identified as "Demond." *Id.* Weston claims that the police initially mistook him for an individual named Cortez Brown. Police interview notes show that prior to Weston's arrest, Macklin told police that Brown had driven around "pointing to various houses and showing the bullet holes" that Brown had caused. Exhibit C at 11. At that time, Macklin had not articulated Weston's role in the shootings, other than to put him among the group the confronted the rival gang.

<sup>19</sup> Exhibit P, Excerpt from Trial Transcript, at G409, 3H.

<sup>20</sup> *See* Exhibit Q, Excerpt from Transcript of Sentencing Hearing, at I22-24.

<sup>21</sup> Exhibit R, Motion for New Trial, at 45.

<sup>22</sup> Exhibit S, Brief in Support of Direct Appeal (1994).

repeated his previous torture allegations in his 1998 *pro se* post-conviction petition and his 1999 *pro se* petition for writ of habeas corpus.<sup>23</sup>

16. Weston was interviewed for the report on police abuse compiled by the Office of Special Prosecutor Edward Egan (“The Egan Report”) in April 2006, at which time he substantially expanded his allegations. Weston’s 2006 interview differed from his prior statements in several respects:

- In addition to the accusations of slapping by Detective Moser that he raised at trial, he alleged that Detective Maslanka choked him: “He was closing his arms around my neck, lifting me out of the chair. . . . I think I passed out.” Weston claimed that Katz, his attorney, did not raise the choking allegations because “it would be hard pressed to get them to believe that I was actually choked, but [Katz] believed I was hit.”
- Weston further alleged that Detective Kill “said I didn’t have no rights. I didn’t have the right to go to the bathroom. He wouldn’t care if I used the bathroom on myself. I was a criminal.” Detectives Moser and Maslanka said that “if I did what they told me to do, that they would let me use the bathroom, but if I didn’t, then I can sit in that chair all weekend.”
- With respect to the court-reported statement, Weston alleged that ASA Sabin would occasionally pause, or leave the room, after a question was asked in order to allow Detective Moser to feed Weston the correct answer. When Weston’s answers were unsatisfactory, Moser would pause the interview and berate, slap, or choke Weston to coerce him to give the correct answer.<sup>24</sup>

17. The Egan Report found that Weston’s allegation were “not adequately supported due to a lack of physical and/or medical corroboration.”<sup>25</sup>

#### *IV. TIRC Claim and Subsequent Petition for Post-Conviction Relief*

18. Weston filed a claim with TIRC on December 16, 2011. Weston’s counsel, Erin McAllister of McGuireWoods described the alleged torture as follows: “Handcuffed to a chair; hit & choked to the point of passing out; Denied bathroom/food/drink; threatened (‘no one knows where you are...’) etc.”<sup>26</sup>

19. On January 21, 2014, Weston filed another Petition for Post-Conviction Relief.<sup>27</sup> That petition provided torture allegations similar to those he alleged in 2006, including the following:

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<sup>23</sup> Exhibit T, Petition for Post-Conviction Relief (1998) at 13-15; Exhibit U, Petition for Writ of Habeas Corpus (1999) at 24-26.

<sup>24</sup> Exhibit V, Transcript of 2006 interview with OSP, at 15, 33, 36.

<sup>25</sup> Exhibit W, OSP File Memo, at 2.

<sup>26</sup> Exhibit X, TIRC Claim Form.

<sup>27</sup> Exhibit Y, Successive Petition for Post-Conviction Relief (2014).

- Detective Moser grabbed Weston by the shirt and lifted him out of his chair and slapped him across the face. He continued to occasionally smack Weston as the interrogation continued. Detective Maslanka told Weston that “niggers don’t have any rights” and that he did not care if Weston “shit [his] pants,” they were not going to let him out of the chair until he told them what they wanted to hear.
  - Maslanka strangled Weston, causing Weston to lose consciousness. Weston awoke to slaps across his face. He had defecated in his pants while being strangled. The officers then tried to make Weston stand up and sit down (as best he could while handcuffed) so that he would have to “stew in his own shit.”
  - Detectives promised Weston he could clean up, call his mother, and go home if he told them what they wanted to hear. Having been deprived of food and water for hours, fearful for his life, and exhausted from his ordeal, Weston agreed. Detective Moser told him what he should say.
  - For his court reported statement, Weston claimed that Moser would shake his head to indicate what response Weston should give to yes-or-no questions. When answers required more detail, ASA Sabin would leave the room with the court reporter for a few minutes, during which time Moser would go over the answers with Weston. Moser threatened to hit Weston several times when the ASA and court reporter were not in the room.
20. Weston’s 2014 petition also alleged that Paul Katz, Weston’s court-appointed attorney, met with Weston “only a few times for approximately 5-10 minutes.”<sup>28</sup> Weston alleged that Katz advised him to “offer only minimal details” about the abuse, because Katz thought no one would believe Weston’s word over that of the detectives. Weston asserted that, for the same reason, Katz declined to question Weston in detail about the abuse during the suppression hearing and at trial.
21. In December, 2016, Weston was granted a third-stage postconviction hearing by Judge Angela M. Petrone, citing allegations of torture against the detectives involved that were not available to Weston at the time of his suppression hearing and trial and could not have been discovered by exercise of due diligence.<sup>29</sup>

#### *IV. TIRC Investigation*

22. On April 7-8, 2015, TIRC interviewed Demond Weston. Weston’s statements closely tracked the allegations laid out in his 2014 petition. Weston stated during the TIRC interview that he was not a gang member, either at the time of the crime or later. TIRC interviewers noted that prison records indicated he had a tattoo of a heart-and-pitchfork, apparent gang insignia, on his right arm. Weston stated that he got the tattoo in 1993, after his incarceration.<sup>30</sup>

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<sup>28</sup> *Id.* at 16.

<sup>29</sup> See *People v. Weston*, Order of Judge Angela Petrone, Dec. 15, 2016.

<sup>30</sup> Audio interview with TIRC, 1:29:20-1:31:05.

23. Between 2015 and 2017, TIRC interviewed Weston's mother, sisters, girlfriend, and mentor, all of whom repeated Weston's 2014 torture allegations with some variation.<sup>31</sup> However, none of these interviewees were present at the time of the alleged torture, and because of their close relationships to Weston, TIRC does not give their testimony significant weight.
24. In 2015, TIRC interviewed Weston's defense attorney, Paul Katz.<sup>32</sup> Katz stated that he did not recall Weston telling him about being subjected to torture beyond what was alleged at the suppression hearing. Katz said that if he had, he would have put those allegations in his motion and addressed them at the hearing. Addressing Weston's claim that Katz told him to keep his responses simple to make his accusations of police misconduct more credible, Katz stated that since he had already raised allegations of slapping, there would have been no reason not to raise any other claims of abuse. Katz also denied Weston's contention that he had only 5-10 minute visits with Weston prior to court hearings. Katz's time records, submitted to court for reimbursement, indicate that he spent at least 15 hours meeting with Weston.<sup>33</sup>
25. In July 2016, TIRC interviewed ASA Paul Sabin.<sup>34</sup> Prior to the interview, Sabin reviewed Weston's court reported statement, police report excerpts, and transcripts from Weston's suppression hearing and trial. His interview statements closely tracked his testimony at trial and at the suppression hearing. In his interview, Sabin said that Weston told him that he had no complaints and that he had been well-treated. Sabin denied that he ever left the room during the court-reported statement. Sabin stated that had never received a complaint of police abuse from a suspect.
26. In April 2015, TIRC interviewed court reporter Joseph Szybist.<sup>35</sup> After reviewing Weston's statement, he confirmed that he had prepared the statement and that he had taken a photograph of Weston. He could not recall an instance in which a suspect had looked disheveled or had defecated in their pants. He stated that he had never seen a suspect beaten in his presence or received an accusation of abuse from a suspect.
27. Detective Maslanka, whom Weston has accused of choking him and causing him to pass out in his post-2006 allegations, has been accused of abuse and coercion by at least 18 individuals.<sup>36</sup> The Egan Report concluded that the evidence in one case established Maslanka guilty of physical abuse beyond a reasonable doubt.<sup>37</sup>
28. Detective Moser, who is accused of repeatedly slapping Weston in the face, has been accused of participating in abuse, coercion or misconduct by at least 19

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<sup>31</sup> Exhibit Z, Interviews of Tanisha Green, Martha McIntosh, Ken Sive, Demetris McIntosh, and Rhonda Weston.

<sup>32</sup> Exhibit AA, Interviews of Paul Katz.

<sup>33</sup> Exhibit BB, Paul Katz Petition for Attorney's Fees and Expenses.

<sup>34</sup> Exhibit CC, Interview of Paul Sabin.

<sup>35</sup> Exhibit DD, Interview of Joseph Szybist.

<sup>36</sup> Exhibit EE, Compilation of Maslanka Complaints.

<sup>37</sup> *Id.* at 1.

individuals.<sup>38</sup> Three of those individuals have been exonerated by DNA evidence of the crimes to which they confessed.<sup>39</sup> One Illinois appellate court remanded a claim of physical abuse against Moser for a third-stage evidentiary hearing to determine whether Moser, along with other detectives, “participated in systemic and methodical abuse and whether those detectives’ credibility at trial might have been impeached as a result.”<sup>40</sup>

29. Detective Kill was involved in Weston’s initial interrogation but is not alleged to have tortured Weston or to have been present when Detectives Moser and Maslanka abused Weston. However, TIRC records indicate that Detective Michael Kill has been accused of abuse and coercion by at least 17 individuals.<sup>41</sup> Kill has taken the 5th Amendment privilege against self-incrimination when questioned about physically abusing detainees. TIRC has referred three claims implicating Detective Kill for judicial review.<sup>42</sup>

### STANDARD OF DECISION

Section 40(d) of the Illinois Torture Inquiry and Relief Act permits the Commission to conduct inquiries into claims of torture. 775 ILCS 40/40(d). “‘Claim of torture’ means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is some *credible* evidence related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge. 775 ILCS 40/5 (emphasis added). If five or more Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief Judge of the Circuit Court of Cook County. If fewer than five Commissioners conclude by a preponderance of evidence that there is sufficient evidence of torture to merit judicial review, the Commission shall conclude there is insufficient evidence of torture to merit judicial review.”<sup>43</sup>

The Commission was not asked by the General Assembly to conduct full, adversarial evidentiary hearings concerning the likelihood of torture, or even to make a final finding of fact that torture likely occurred. That remains the role of the courts. Instead, the Commission has interpreted Section 45(c), through its administrative rules, as not requiring that it be more likely than not that any particular fact occurred, but rather that there is sufficient evidence of torture to merit judicial review.<sup>44</sup>

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<sup>38</sup> Exhibit FF, Compilation of Moser Complaints.

<sup>39</sup> See *Evans v. City of Chicago*, No. 04 CV 03570 (N.D. Ill.); *Hill v. City of Chicago*, No. 06 CV 06772 (N.D. Ill.).

<sup>40</sup> *People v. Tyler*, 2015 IL App (1st) 123470, ¶ 193, *appeal denied*, 48 N.E.3d 676 (Ill. 2016).

<sup>41</sup> Exhibit GG, Compilation of Kill Complaints.

<sup>42</sup> *In re Claim of George Ellis Anderson* (No. 2011.016-A), *In re Claim of Anthony Jakes* (No. 2011.035-J), and *In re Claim of Gerald Reed* (No. 2011.030-R).

<sup>43</sup> See 775 ILCS 40/45(c). To dismiss a claim, a minimum of four votes to dismiss are required. See 2 Ill. Adm. Code 3500.385(e).

<sup>44</sup> In general, the approach the Commission has taken is akin to the concept of “probable cause;” that is, there must be enough evidence that the claim should get a hearing in court. See FAQ No. 8, <https://www.illinois.gov/tirc/Pages/FAQs.aspx/>. The Illinois Appellate Court has noted that “the Commission is



## ANALYSIS

### I. Factors weighing against judicial review.

A. Weston has significantly expanded the account of his torture since 2006, and these implausible post-2006 allegations undermine the credibility of his pre-2006 allegations.

1. It was not until his 2006 interview for the Egan Report that Weston ever alleged that he had been choked by Detective Maslanka to the point of unconsciousness and that he had been denied access to the bathroom.
2. It was not until his 2011 TIRC claim form that Weston ever alleged that he had been denied food and water.
3. It was not until his 2014 post-conviction proceeding that Weston ever alleged that he had defecated on himself and been forced to stand and sit in his feces.

B. There is no medical or physical documentation of abuse.

1. The photo signed by Weston after his court reported statement and introduced by the prosecution at the suppression hearing has not been located, but it is reasonable to assume that it did not indicate any signs of abuse.
2. The medical examination conducted the day after Weston's interrogation did not indicate any signs of abuse.
3. There is no physical evidence to corroborate the story of Weston's alleged defecation, such as soiled pants.

C. Other inconsistencies also undermine Weston's credibility.

1. Weston's description of how he gave his court reported statement has changed significantly, and his most recent description is implausible. Both the court reporter and ASA Sabin deny ever leaving the room during Weston's statement, and if they had, it is unlikely that the statement would have taken only 25 minutes (as recorded by the reporter).

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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." *See People v. Christian*, 2016 IL App (1<sup>st</sup>) 140030, ¶95. The court compared the Commission to a court deciding whether a postconviction petition can advance to the third stage. *Id.* at ¶99.

Although Section 55(a) of the TIRC Act (775 ILCS 40/55(a)) makes Commission decisions subject to the Administrative Review Law, Commission decisions do not concern "contested cases" as defined in the Illinois Administrative Procedure Act (5 ILCS 100/1-30) because TIRC proceedings do not require an opportunity for a hearing. *See* 775 ILCS 40/45(a): "The determination as to whether to conduct hearings is solely in the discretion of the Commission."

2. Weston claims that he has never been a gang member, but when his mother was interviewed by TIRC, she stated that she believed he was involved in a gang at the time of the shootings. Further, prison records document, and Weston acknowledged having, a gang-related tattoo on his arm.
3. Weston claims that Paul Katz met with him only briefly and advised him not to divulge the entirety of his torture allegations at the suppression hearing and at trial. Katz's TIRC interview and time records contradict these statements. While there may be a rational basis for a defense attorney to de-emphasize more sensational allegations of torture and abuse that he fears a judge will consider outlandish, Katz has denied this was the case.

## II. Factors weighing in favor of judicial review.

- A. Despite changing and contradictory allegations as to other types of abuse, Weston has maintained since his arrest that his confession was coerced via physical abuse in the form of extended slapping in the face by Detective Moser. Consistent accusations of abuse is a factor that has supported judicial review in other TIRC cases.
- B. The police officers involved in Weston's arrest and interrogation, Detectives Kill, Maslanka, and Moser, have been the subjects of many torture allegations. "Illinois courts have consistently held that a pervasive pattern of criminal conduct by police officers is enough for courts to reconsider the voluntariness of a defendant's confession."<sup>45</sup> Although Detective Kill and Maslanka are not accused of physical abuse in Weston's pre-2006 allegations, "each of these detectives played an active role in the investigation and it is claimed that their actions in concert resulted in [Weston's] conviction."<sup>46</sup>
  1. TIRC, The Egan Report, and at least one Illinois court have either sustained torture allegations against Detectives Kill, Maslanka, and Moser or found cause for further proceedings. Multiple individuals who accused Detective Moser of torture have been exonerated by DNA evidence of the crimes to which they confessed.
  2. Many of the torture allegations against Detective Moser follow a similar a pattern – beating and striking suspects on the face and chest. Weston's allegations are consistent with this pattern.
  3. In *People v. Tyler* the First District appellate court granted a third-stage evidentiary hearing on a torture allegation against Detective Moser, the detective accused of repeatedly slapping Weston. The court based its decision primarily on Detective Moser's history of abuse allegations: "[T]he countless

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<sup>45</sup> *Tyler*, 2015 IL App (1st) at ¶ 189; see also *People v. Mitchell*, 2012 IL App (1st) 100907, ¶ 63 (citing *People v. Patterson*, 192 Ill.2d 93, 139–45 (2000)); *People v. King*, 192 Ill.2d 189, 193–99 (2000); *People v. Cannon*, 293 Ill.App.3d 634, 640 (1997).

<sup>46</sup> *Cf. Tyler*, 2015 IL App (1st) at ¶ 181.

instances of claims of police misconduct cited in defendant's petition establish a troubling pattern of systemic abuse by the same detectives that interrogated him and investigated his case that calls into question whether defendant's confession was in fact the product of physical coercion...In light of our consideration of allegations of systemic abuse as true, defendant has made a substantial showing of a longstanding pattern of police misconduct that could have resulted in his coerced confession and support his claim of actual innocence. As a result, defendant is entitled to a third-stage evidentiary hearing to determine whether a new trial is warranted.”<sup>47</sup>

### CONCLUSION

On balance, the Commission narrowly concludes that there is sufficient evidence of torture to merit judicial review. A referral for judicial review does not require a finding that any particular incident occurred or that any particular instance of conduct by police constituted torture, but the Commission must assess the credibility of the claimant. While there is significant evidence that Weston’s more recent allegations are false, which undermines his credibility, Weston’s initial allegations combined with the interrogating detectives’ extensive involvement in other allegations of torture lead us to conclude that his claim of torture is sufficiently credible to justify referring it for judicial review.

The extensive allegations of torture were not available to Weston at his initial suppression hearing, and may well have altered the balance of credibility for a judge. Several courts have found that extensive complaint histories merit an evidentiary review. Indeed, Weston has recently been granted a third-stage postconviction hearing through the normal, non-Commission postconviction avenues on this very issue due to the unavailability of these materials at his time of trial. We agree with Judge Patrone that Weston should be allowed to explore these issues in an evidentiary hearing.

The Commission finds that there is sufficient credible evidence of torture to refer this matter to the Circuit Court for further review. This determination shall be considered a final decision of an administrative agency for purposes of administrative review under the Administrative Review Law (735 ILCS 5/3-101).<sup>48</sup>

Dated: December 13, 2017



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

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<sup>47</sup> *Id.* at ¶ 189.

<sup>48</sup> See 775 ILCS 40/55(a) of the TIRC Act.

Although this determination does not concern a “contested case” as defined in Section 1-30 of the Illinois Administrative Procedures Act (5 ILCS 100/1-30) because no opportunity for a hearing is required (See 775 ILCS 40/45(a)), the Commission notes that the rules of the Commission do not require any motion or request for reconsideration before appeal under the Administrative Review Law, and notes that the service address of interested parties is listed in the Notice of Filing certificate that accompanies the filing of this determination with the Court.

