

## BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:  
Claim of Kevin Murray

TIRC Claim No. 2012.108-M  
(Relates to Cook County Circuit  
Court Case No. 88-CR-2309)

### CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Admin. Code 3500.385(b), the Commission concludes that, by a preponderance of the evidence, there is sufficient evidence of torture to merit judicial review. The Commission refers this claim to the Chief Judge of the Circuit Court of Cook County and requests assignment to a trial judge for consideration. *See* 775 ILCS 40/50. This decision is based upon the Factual Summary and Conclusions set forth below, and the supporting record attached.

### **Procedural History**

The Commission initially voted on July 17, 2013, to refer this claim to the Circuit Court, and filed the referral with the Court on July 25, 2013 (*See* Exhibit A). On November 6, 2013, the Honorable Michael B. McHale dismissed Murray's petition for a hearing, noting that Murray's case was not related to Burge and was therefore outside the TIRC's jurisdiction as defined by the TIRC Act at that time.<sup>1 2 3</sup>

In July of 2016, the Illinois Legislature and Governor Bruce Rauner amended the TIRC Act through the passage of Public Act 99-688, which removed reference to Burge and put within TIRC's jurisdiction "allegations of torture occurring within a county of more than 3,000,000 inhabitants."<sup>4</sup> In light of this amendment, the Commission in 2017 passed rules automatically reinstating with TIRC those claims that had been dismissed by the Commission or the Courts solely because of the lack of Burge's involvement.<sup>5</sup> On March 23, 2017, TIRC informed Murray's counsel that his claim had been reinstated before the Commission.

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<sup>1</sup> *See People v. Murray*, ROP of Nov. 6, 2013 (TIRC K Murray J McHale Transcript.pdf). *See also* 775 ILCS 40/5(1) (2013), defining torture as "torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge."

<sup>2</sup> In 2014, the Commission reviewed its practices and likewise concluded it did not have jurisdiction in matters unrelated to Burge. *See In re: Claim of Jaime Hauad, Order Concerning Jurisdiction* (June 18, 2014).

<sup>3</sup> In March of 2016, the Illinois Appellate Court confirmed the view that TIRC had no jurisdiction over cases unrelated to Burge. *See People v. Allen*, 2016 IL App (1<sup>st</sup>) 142125, ¶¶13-17.

<sup>4</sup> *See* P.A. 99-0688, signed into law July 29, 2016.

<sup>5</sup> *See* 2 Ill. Admin. 3500.330 (b), effective March 17, 2017. Also in light of the statutory amendment, The Illinois Supreme Court and Illinois Appellate Court vacated previous decisions dismissing a non-Burge, TIRC-referred claim from post-Commission proceedings because it had no demonstrable nexus to Burge. *See People v. Allen, No. 120777-Supervisory Order*, Illinois Supreme Court (Sept. 28, 2016); *see also People v. Allen*, 2016 IL App (1<sup>st</sup>) 142125-UB (Nov. 23, 2016).

## Introduction

Murray and co-defendant Tyrone Washington were convicted of a gang-related double murder of Brian Fowler and DeJuan Buck, which took place in November of 1987. Murray claimed that during interrogations from January 18 through January 20, 1988,<sup>6</sup> Detectives Kriston Kato and John Summerville slapped him in the head, hit him on his neck, punched and kned him in the stomach, punched him in the ribs, and kicked him in the leg, groin, and chest. Murray claims that as a direct result of this sustained abuse, he gave a coerced confession to murder. He signed a written confession that led to his conviction for murder.<sup>7</sup> He was sentenced to natural life in confinement.

While some of Kevin Murray's testimony reflects certain credibility issues, the Commission finds that, on balance, there is sufficient evidence of torture meriting judicial review.

### The factors weighing in favor of Murray's claims are:

- The trial testimony of George Zuganelis, Murray's original attorney who visited him at the Area 4 police station shortly after his arrest. Zuganelis testified that he saw bruises on Murray's torso and a footprint on Murray's sweater. Zuganelis also testified he took the sweater from Murray at Murray's first court appearance and preserved it in its original condition. The sweater was entered as a defense exhibit at Murray's trial.
- The general consistency of Murray's claims. His attorney raised the abuse allegations and sought a court order for a doctor's examination at one of Murray's first court appearances on January 21, 1988, the day after the confession. Murray unsuccessfully litigated his abuse claims through a motion to suppress and at trial, testifying generally consistently both times about the abuse claims.

The lack of any physical evidence against Murray. This lack of evidence may have provided a motive to induce a confession.

- Significant Pattern and Practice evidence of abuse allegations against Detectives Kato and Summerville.
- A subsequent conviction of Detective Summerville on sex abuse charges after he was indicted on allegations of sexually abusing women after arresting them in an unmarked squad car with flashing police lights. The conviction, at a minimum, raises serious credibility issues with Summerville's testimony.
- A subsequent bribery conviction of the trial judge in the case, Judge Thomas J. Maloney.

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<sup>6</sup> There is a discrepancy among witnesses for the defense and witnesses for the prosecution as to when Murray arrived at Area 4. The defense asserts that Murray was brought to Area 4 on January 18, and the prosecution asserts that it was the morning of the 19th.

<sup>7</sup> Case No. 88 CR 2309

Courts have at least partially acknowledged other defendants' post-conviction arguments that Maloney's acceptance of bribes may have predisposed him to rule against criminal defendants in cases where he did not receive bribes in an effort to deflect suspicion from his corruption. That raises serious issues as to whether Maloney ever gave Murray a fair hearing on the abuse claims.

The factors weighing **against** Murray's claims are:

- A Chicago paramedic testified that his examination of Murray revealed no evidence of abuse.
- Murray himself told Commission staff that pictures were taken of him by defense attorneys shortly after his arrest but that his attorneys decided not to introduce them because marks were not visible in them.
- Zuganelis's testimony and credibility are diminished by a misdemeanor conviction for failing to file a tax return.
- Murray's credibility is suspect in at least some aspects because he downplayed in his trial testimony any personal knowledge of, or affiliation with, Sam McKay, the Black Souls gang leader allegedly responsible for ordering the murder of Brian Fowler and DeJuan Buck. However, Murray admitted to TIRC that "Sam" was the one who had arranged for Zuganelis to go to Area 4 shortly after his arrest.
- Zuganelis's testimony and credibility is diminished by his misdemeanor conviction for failing to file a tax return. His credibility is additionally diminished in that his trial testimony that Murray's mother sent him to the police station to check on Murray conflicts with Murray's own admission to TIRC that "Sam" sent Zuganelis.

### Factual Summary

#### **I. Background**

Co-defendant Tyrone Washington, who pled guilty after losing his own motion to suppress, was interrogated by Detectives Kriston Kato and John Summerville on January 18, 1988 after being arrested following a traffic stop. He named Murray as an individual associated with the November 13, 1987, murders of Brian Fowler and DeJuan Buck. After implicating himself, Washington said that Murray drove the getaway car following the murders. The officers claim that after telling Murray that the results of his polygraph test showed that he was not being truthful, Murray decided to make a confession. The statement implicates Murray as the getaway driver in the Black Souls Gang shooting.

Murray alleges that he endured repeated beatings and other abuse while he was in custody, before signing a confession. Murray was then indicted and convicted of first-degree murder in Case No. 88-CR-2309.

Prior to the trial, Murray filed a motion to suppress statements and evidence and quash

his arrest, both of which were denied.

## **II. Case Proceedings, Case No. 88-CR-2309 (Judge Thomas J. Maloney)**

### **a. Initial Appearances**

At Murray's court appearance on January 21, 1988 (the day after his confession)<sup>8</sup>, his attorney George Zuganelis stated Murray had been beaten and began to describe where on Murray's body he had been hit.<sup>9</sup> Zuganelis requested, and was granted, an order to send Murray to the hospital for examination. The bond order from that date bears a large hand-written instruction atop it of "1<sup>st</sup> Hospital," indicating he should be taken to the hospital first. (See EXHIBIT B) Transcripts indicate, however, that at Murray's next court date of February 5, 1988, the examination had still not taken place, and Zuganelis again requested it, and was again granted it.<sup>10</sup> (See EXHIBIT C) It is unclear from the record whether the doctor's exam ever occurred, but Murray told TIRC it eventually occurred 21 days after his arrest.

### **b. Suppression Hearing**

Judge Maloney denied the motion to suppress on the grounds that he found the testimonies of the officers to be more reliable than Murray's testimony.

#### **i. Testimony of Detective Kato**

According to Detective Kato, on January 18 and 19, 1988, he and his partner, Detective Summerville, were investigating a double homicide. On the evening of the 18<sup>th</sup>, the detectives went to 2724 West Gladys, the home of Murray's mother, where Murray was living at the time, but Murray was not there. They left a card with Murray's mother.

Detective Kato testified that he received a call from Murray at the station; Murray agreed to be interviewed and indicated that he would need a ride. Detective Kato testified that they picked up Murray at approximately 6:00 am on the January 19. Murray was neither handcuffed nor under arrest, Kato testified.

At the station, Detective Kato read Murray his rights from his FOP book and began questioning Murray about the double homicide. Detective Kato's testimony is that Murray claimed to know of Washington's involvement in something involving machine guns (the type of weapon that killed the victims), but that he was not personally involved and that he did not know

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<sup>8</sup> This may not have been Murray's first court appearance. He testified at trial that his first court appearance was January 20, 1988, although he did not remember where that appearance was held. See *State v. Murray*, ROP of Sept. 6, 1991, 846-852. Additionally, at Murray's court appearance on January 21, 1988, transcripts indicate bond had already been set for Murray at a previous appearance, indicating he likely went to night court on January 20, 1988. Mr. Murray's attorney, Zuganelis, appeared unaware that Murray had been taken to court the night before. See *People v. Murry*, ROP of January 21, 1988, 1-2 (Supplemental Record.pdf).

<sup>9</sup> *People v. Murray*, ROP of January 21, 1988, 5-7 (Supplemental Record.pdf).

<sup>10</sup> *People v. Murray*, ROP of February 5, 1988, 2-3 (Supplemental Record.pdf).

the specifics.<sup>11</sup> Kato then told Murray that Washington had stated that Murray was the getaway driver involved in the double homicide of Fowler and Buck. Around 5:00 pm, Detective Kato asked Murray to take a polygraph. Detective Kato testified that Murray voluntarily agreed to take the test. Detective Kato testified that afterwards, around 10:30 pm, he informed Murray that the test indicated he was not being truthful. It was at this point that Murray verbally confessed to having been the getaway driver for the two shootings.

Detective Kato testified that six to seven hours later, they began the felony review process, and contacted the State Attorney's office. ASA David Lavin then came to the Area 4 station and spoke to Murray around 8:45 am on January 20, with Detective Summerville present. Later, a court reporter then took Murray's statement in the presence of ASA Lavin and Detective Summerville.

Kato denied abusing Murray during the interrogation, and stated that Murray was given food and the opportunity to use the bathroom.

### **ii. Testimony of Detective Summerville**

Detective Summerville's testimony was more limited. It instead focused on direct allegations regarding abuse, which Summerville denied.

### **iii. Testimony of ASA Lavin**

ASA Lavin testified to arriving at Area 4 around six in the morning on the 20th of January, 1988. He testified that he interviewed Kevin Murray in the presence of Detective Summerville and court reporter Janet Lupa. At no point does he corroborate Murray's claim that Murray told him he was innocent and that the officers had struck him. He claims he informed Murray of his Miranda rights, took his statement, and assisted him in making changes to it for accuracy.<sup>12</sup>

### **iv. Testimony of Edward Hamilton**

Hamilton, a paramedic who performed jail intake examinations, testified that when he examined the defendant on January 21, 1988, he found no evidence of injury and that Murray did not report any injuries. His "bruise sheet" indicated marks on Murray's arms, but it was not clear from the testimony if the marks referred to bruises or old scars.

### **v. Testimony of Kevin Murray**

Murray testified that at around 9:00 pm on January 18, 1988, he was at his aunt's house. His mother called and indicated he needed to come home in order to call the police, who had left

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<sup>11</sup> *People v. Murray*, ROP of February 28, 1989, Testimony of Detective Kato, , 28-29 (Clerk's File\_Kevin Murray\_7\_25\_2013.pdf).

<sup>12</sup> *People v. Murray*, ROP of June 28, 1989, Testimony of ASA Lavin, 301-307 (Clerk's File\_Kevin Murray\_7\_25\_2013.pdf).

a card for him. Murray and his aunt went to his mother's house, where Murray called Detective Kato. Upon reaching Detective Kato, Murray asked what the questioning was about, to which Kato replied that it was nothing serious. Murray agreed to go to the station, and did not indicate he needed a ride. Before he could get to the station, Detective Kato and other officers arrived at his mother's house.

According to Murray, he was handcuffed on the porch. He rode to the station in police custody, accompanied by his aunt. Upon arriving at Area 4 at around 10:15-10:30 pm, he was put inside a room alone with Detective Kato. Detective Kato asked Murray about the murder; Murray said that he had no knowledge of it. At that point, Detective Kato slapped him alongside his head, then came around and punched him twice in the stomach. After this, Detective Kato said that he would be back, and that if Murray did not answer the questions, the same thing would happen over and over.

Detective Kato came back 15 to 30 minutes later. The same questioning took place; Murray gave the same answers. Detective Kato then kicked him twice, once in the side, and once in the chest. Then he hit him in the head again, chopped his neck, and kicked him in the leg.<sup>13</sup>

At this point, Murray told Detective Kato to go ask Serena, his girlfriend, where he was at the time of the murders. Detective Kato told Murray that when he brought Serena to the room, Murray should only tell her, "tell the truth" and nothing more. When she asked what happened, he tried to explain what was going on, but Detective Kato took her out of the room as soon as he began to speak, before he could say anything further to her. According to Murray, "[Detective Kato] took Serena away. He came back and said Serena told him the truth. He said I was lying. He told me to stand up; and he punched me in my stomach twice. He slapped me up side my head."<sup>14</sup>

At this point, Detective Kato showed Murray another interrogation room with Washington inside, and told Murray that Washington had told him things about Murray. He then brought Washington into the room with Murray. Detective Kato asked Washington questions, to which Washington answered "yes." After this, Washington was taken back out. Murray said that Washington was lying; Detective Kato proceeded to strike Murray again. Much later—around 2:00 am—Detective Kato returned. Murray asked to talk to his aunt, but Detective Kato said that she had gone home. Murray then asked to call his mom so that she could get him a lawyer; Detective Kato said no.

According to Murray, he was left in the room all night and all day, until 4:30 pm on the 20th, without a chance to use the bathroom. He claims that another officer accidentally came into his room looking for someone else, and that he asked that officer if he could use the washroom, but was told that he had to wait until "his" officers came back. Murray had also not received food at this point. Around 4:00 p.m., Detective Kato returned and told Murray that he had to take a lie detector test. He was brought to 11<sup>th</sup> and State for the polygraph test, and was allowed to finally use the restroom there. They returned to the police station. Murray testified he was first

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<sup>13</sup> *People v. Murray*, ROP of June 22 & 26, 1989, Testimony of Kevin Murray, 188- 258 (ROP(Volume 2).pdf).

<sup>14</sup> *Id.*.

put a different room—the one in which he saw Washington the previous day. Detective Kato accused him of lying, pretended to walk away, and instead “back kicked” Murray. After the kick, he slapped Murray’s head, then left. After this, Detective Summerville came in. Detective Summerville took him back to the first room, put a chair against the door to keep it shut, then Summerville slapped his head, kicked between his legs, punched his ribs, and finally kicked him in the leg very hard with his boots. At this point, Murray agreed to do anything he wanted.

Detective Summerville got up to leave, and Murray said “wait.” Summerville said “what,” and Murray asked if he could have a lawyer. Summerville responded by saying, “sure, which lawyer do you want first, the left or the right,” and then started punching Murray again. Murray once again said he would do anything Summerville wanted. Summerville stopped, and Kato came back in. Kato said, “See, I told you, if you did what we want you to, you could have been home by now.” Then he started rehearsing the statement with Murray.

Murray testified that “[Detective Kato] kept running from room to room, I guess. And he was coming back telling me something that Washington said and he wanted me to agree to the same thing. And I was trying my best to agree because I didn’t want them beating on me again.” During this time, he was allowed to use the restroom once, but was not allowed any phone calls.

At around 8:00 p.m., ASA Lavin came in. Murray testified that he told Lavin that he did not have anything to do with the murder. After this, Lavin left the room, and Kato and Summerville returned. Kato said something about how Murray had almost messed up. Murray then agreed again, saying he would make the statement because he saw he did not have a way out. Shortly thereafter, his statement was taken, with Lavin, the court reporter, and Summerville all present. Murray testified that ASA Lavin told him that if he signed the confession, he could go home.

#### **vi. Testimony of Vanetta Brown**

Vanetta Brown, Murray’s aunt, corroborates Murray’s testimony of the arrest, including its time of occurrence: late the evening of the 18<sup>th</sup>. According to her testimony, she waited at the station until around 2:30 am. She asked about Murray frequently, but was never permitted to see him. To her knowledge, they had taken KM to the back; she saw some officers come and go, but was told nothing, except that Murray would be able to go soon.

#### **vii. Outcome of Suppression Hearing**

Judge Maloney denied the motion to suppress evidence because he believed the evidence suggested that the confession was not coerced. The judge gave great weight to the testimonies and credibility of the officers and ASA Lavin, and little to no weight to Murray’s claims.

Judge Maloney also denied Murray’s the motion to quash arrest on the grounds that there was probable cause for the arrest. The defense argued against the motion, stating that there was no evidence at that time of Murray’s arrest that he was guilty of a crime, other than Washington’s vague statements that Murray was somehow involved.

**c. Trial**

**i. Motions to Exclude**

**Defense attorneys attempted to call three other prisoners to testify about similar allegations of abuse by Kato, but Judge Maloney granted the state's motion to exclude such testimony.<sup>15</sup> (See Exhibit D)<sup>16</sup>**

**ii. Testimony of Detective Summerville**

Detective Summerville's trial testimony was generally consistent with the testimonies of the officers during the pre-trial phase. Summerville stated that he does not keep notes of the cases he is assigned to, nor does he keep notes of those cases,<sup>17</sup>.

Detective Summerville denied that Murray's aunt was present at the police station. Detective Summerville testified he placed Murray under arrest at around 8:00 a.m. on January 19<sup>th</sup>, but acknowledged the arrest report states Murray was placed under arrest at 9:00 p.m. that day.

Summerville stated that there were no handwritten notes taken whatsoever about any of the interactions with Murray, either by Summerville or by Kato.

**iii. Testimony of ASA Lavin**

ASA Lavin's trial testimony was also generally consistent with his pre-trial testimony. He again testified that he asked Murray whether the police hurt him, and KM said no. He denied Murray's claim about ever having been told otherwise. ASA Lavin testified that he had knowledge that Murray had been fed prior to taking his statement, because when ASA Lavin asked what he'd had to eat since he'd been there, Murray responded by saying, "Twinkies, pop, and bologna." During Lavin's testimony, the court-reported confession of Murray was admitted into evidence. On cross-examination, Lavin said he took no notes of his conversations with Murray, and never wrote a felony review memorandum to his supervisors.<sup>18</sup>

**iv. Testimony of Kevin Murray**

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<sup>15</sup> See *People v. Murray*, ROP of Sept. 5, 1990, 469-472 (Clerks File\_Kevin Murray\_7\_25\_2013.pdf).

<sup>16</sup> Memo from Assistant Public Defender Shields to Assistant State's Attorney Hennelly, dated August 21, 1990, outlining expected testimony of Kenneth Crawford, Gregory Lewis, and Walter Lacy. (Defense memo on abuse witnesses.pdf).

<sup>17</sup> 606 (1306/1871)

<sup>18</sup> *People v. Murray*, ROP of September 6, 1991, 675-756



Murray's trial testimony about the abuse allegations was largely consistent with his pre-trial statements. He was questioned extensively about his interaction with the prison inmate paramedics; he did not recall ever being asked by the paramedic about his body or any officer abuse, and he did not recall ever discussing it with him.

Cross-examined about his statement, Murray testified that everything in his court-reported confession was false except his name. He acknowledged that he knew Sam McKay, but only because everyone in the neighborhood knew Sam McKay. He didn't know if McKay was leader of the Black Souls gang, but knew McKay was a "big man" on the West Side of Chicago. He acknowledged that in the confession he admitted to working for McKay, but said that was because Kato had told him to say that.

#### **v. Testimony of George Zuganelis<sup>19</sup>**

George Zuganelis was Murray's attorney for the first week or two of Murray's case. He testified to having met Murray for the first time on a Wednesday evening towards the end of January. This would have been the 20<sup>th</sup> of January. Zuganelis testified that Murray's mother called at around 6:00 p.m. and asked him to go check on Murray. At 7:00 p.m. or so Zuganelis was at the police station. Zuganelis saw Murray in one of the interview rooms on the first floor of the police station. Zuganelis was separated from Murray by a glass partition with a wire mesh speaking hole.

Zuganelis testified that Murray was crying when he entered; that Murray was wearing a white shirt with what appeared to be a boot print or shoe print on it. Zuganelis was not able to testify as to what Murray told him, due to hearsay objections. Zuganelis testified that after hearing what Murray had to say, he asked Murray to pull his sweater and undershirt up. He saw red and blue marks on Murray's body. Zuganelis was unsure, but thought he also recalled seeing some marks on Murray's sides. He also saw similar marks on Murray's arms.

Zuganelis testified that the next time he saw Murray in court, Murray was wearing the same clothing, including the white sweater. He took Murray's sweater with him, and preserved its condition. He kept the sweater for approximately a year and a half in his drawer, until he turned it over to the clerk that the public defenders sent over.

Against defense objection, the state was allowed to cross-examine Zuganelis regarding a misdemeanor conviction for failing to file tax returns. Zuganelis and his attorneys represented the charge was based on negligence, not fraud. Zuganelis acknowledged he made no complaint to the Office of Professional Standards about Murray's mistreatment.<sup>20</sup>

#### **vi. Testimony of Detective Kato**

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<sup>19</sup> Prior to Murray's case, George Zuganelis was "charged with failing to file an income tax return in 1983, 1984 or 1985." John Gorman, "4 Attorneys Facing Tax Fraud Charges," *Chicago Tribune* (April 14, 1989), available at [http://articles.chicagotribune.com/1989-04-14/news/8904040017\\_1\\_income-tax-returns-file-charged](http://articles.chicagotribune.com/1989-04-14/news/8904040017_1_income-tax-returns-file-charged).

<sup>20</sup> *People v. Murray*, ROP of Sept. 7, 1990, 861-879.

Detective Kato denied that Murray's aunt rode in the police car with him, and that he handcuffed Murray at Vanetta Brown's home.

#### **vii. Testimony of Janet Lupa**

Janet Lupa, the court reporter, testified that she took the one photograph taken after the recording of the statement. The photograph shows the remains of the food Murray had been eating; the picture appears to show the Twinkies and pop mentioned earlier in ASA Lavin's testimony.

#### **viii. Testimony of Vanetta Brown**

Vanetta Brown's trial testimony is generally consistent with her pre-trial testimony.

#### **ix. Conviction**

A jury convicted Murray on September 11, 1990.

### **III. Post-Conviction Proceedings**

Murray's attorneys did not seek oral argument on his motion for a new trial. The Court denied Murray's motion without significant comment."<sup>21</sup> The Appellate Court affirmed his conviction in 1993. Among other holdings, the Court held that "defendant's confession was sufficiently corroborated;...[that] excluding testimony from other prisoners regarding alleged brutality of arresting officer was proper, given slight evidence of any physical injury to defendant."<sup>22</sup> As of 2013, Murray had never filed any petitions for post-conviction relief.

### **IV. TIRC Proceedings**

#### **a. TIRC Claim**

Murray submitted his claim form, authored by his attorney Tara Thompson, to the Commission on January 6, 2012. (See EXHIBIT E) TIRC obtained and reviewed available court files and TIRC staff interviewed Murray on June 26, 2013.

#### **b. TIRC Interview of Murray**

On June 26, 2013, David Thomas, then the executive director of the Commission, spoke with Murray via videoconference. Murray was not asked directly about the abuse claims, but about surrounding circumstances. When asked who had hired Zuganelis to come to the police station, Murray asked to speak privately with his lawyers. After the private conference, Murray told Thomas "Sam" had sent Zuganelis to the police station. This is most likely a reference to

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<sup>21</sup> *People v. Murray*, ROP of Oct. 16, 1990, 1120 (ROP (Volume 3).pdf).

<sup>22</sup> *People v. Murray*, 254 Ill.App.3d 538, 538 (1993).

Sam McKay, whom police allege ordered Murray and Washington to commit the murders.<sup>23</sup>

Murray said no one was in the lockup with him at the police station, and he could not remember clearly when Zuganelis had taken the sweater for him, but thought it was at the lockup.<sup>24</sup> Murray said he was eventually taken to Cermak hospital to see a doctor, but not until 21 days after his arrest. He believes his attorney ordered his medical records.

Murray believed that his first court appearance was at Harrison and Kedzie, and that his attorney arranged to take photographs of him at his first appearance at Branch 66 at 26<sup>th</sup> and California. He believed his attorney told him they would not be introducing those photographs because they did not demonstrate any marks.

Asked why Zuganelis only briefly represented him, Murray said that his family could not afford him. Thomas pointed out that his next attorney, Charles Lauer, was also a private attorney and asked how he was paid. Murray again requested a private conference with his attorney, and Thomas skipped ahead to other topics.

Murray said he had never filed any post-conviction motions because he didn't know the legal system, didn't trust jailhouse lawyers and couldn't get anyone to represent him.

## **V. Pattern and Practice Evidence/Credibility Considerations**

### **a. Allegations Against Detective Kato**

Kriston Kato's Complaint Register (CR) lists 37 alleged infractions, all of which were ruled not sustained, unsubstantiated or exonerated. (See EXHIBIT F) Five are categorized as arrestee complaints regarding treatment after arrest and prior to being turned over to the lockup. The Commission did not obtain the investigative files underlying the complaints.<sup>25</sup>

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<sup>23</sup> See *People v Murray*, ROP of Sept. 5, 1990, Testimony of John Summerville, 591

<sup>24</sup> Most likely, this memory is incorrect. Zuganelis testified he took it from Murray at a court appearance on January 21, 1988. He further testified there was a partition between him and Murray at the police station.

<sup>25</sup> A number of the allegations in his CR history were detailed in a 1991 article on Kato and allegations of abuse in interrogations. See *Steve Bogira*, "Good Cop, Bad Cop: What Is It About Detective Kriston Kato that Makes Murder Suspects So Eager to Confess?" *The Reader* (Dec. 12, 1991).

Other journalism portraits suggested Kato, who is of Asian descent, was a rarity in the squadroom and therefore easy for defendants to remember and make false allegations against. See Anne Keegan, "Under Siege: Kris Kato Gets Results As a Homicide Detective, and Murder Suspects Say It's Because He Brutalizes Them – But Is He Getting a Bum Rap?," *Chicago Tribune* (Feb. 4, 1993), available at [http://articles.chicagotribune.com/1993-02-04/features/9303175555\\_1\\_murder-rate-murder-case-brutality](http://articles.chicagotribune.com/1993-02-04/features/9303175555_1_murder-rate-murder-case-brutality).

A third story reported allegations that an anonymous detective submitted a complaint to OPS that Kato had beaten a rape suspect into a confession. See Steve Mills, "Police Insider Said Chicago Detective Beat Confession From Rape Suspect," *Chicago Tribune* (July 8, 2015 5:04 AM), <http://www.chicagotribune.com/news/ct-daley-center-rape-cop-whistleblower-met-20150708-story.html>.

An appellate court in 2001 reversed the murder conviction of Ezekiel McDaniel on the grounds that the confession had been given to Kato involuntarily. The case involved contentions highly similar to the Murray case, in that family members alleged they were allowed to ride with the suspect to the police station, but then not allowed to see the suspect during interrogation. McDaniel, who was 14 at the time of questioning, disputed Kato's contention that he never asked to see his mother, who was in the police station during his entire interrogation, or nearly his entire interrogation. The appellate court also found incredible Kato's contention that the mother had never asked to see her son. Although the court did not weigh in on McDaniel's contention that Kato had hit him and pointed a gun at him, it did find that "[i]t is not believable that the defendant's mother waited at the Area 4 police station for over five hours, twice calling [a police officer friend] for advice on how she could see her son, without asking to see the defendant. Moreover, if Detective Kato was not truthful regarding Ms. McDaniel's efforts \* \* \* then the rest of his testimony is suspect as to believability." Further, the court found that [h]ere \* \* \* the testimony revealed that the detectives clearly frustrated defendant's mother's attempts to confer with the defendant."<sup>26</sup>

More recently, an appellate court reversed two murder convictions on the grounds that, had Kato's and another officer's abuse allegation history been available at suppression hearings, the outcome may have been different. "We see no strategic purpose for failing to present the available evidence that Kato and his partners in other cases beat and abused suspects," the court ruled in reversing the dismissal of post-conviction proceedings by Jeremiah Wright and Elijah Threatt.<sup>27</sup> The court noted that the abuse allegations in that case primarily were against Kato's partner, Sam Cirone, but also allege Kato withheld an asthma inhaler and sweatshirt from one of the suspects so he would confess. The opinion also specifically credits as admissible a 1991 Chicago Reader article on Kato concerning allegations against him. (*See* EXHIBIT J.)<sup>28</sup>

That article revealed a similarity in methods of torture and abuse as compared to Murray's claim. Many suspects stated that they were kicked, often times in the chest, stomach, or groin; slapped; and "chopped" in the throat.<sup>29</sup>

For details of abuse allegations involving Kato, *see* Exhibit G. At least five of those allegations also involve Detective Summerville.

### **b. Allegations Against Detective Summerville**

Detective John F. Summerville's Complaint Register lists 19 complaints against him. (See Exhibit H). A December 19, 1989, complaint characterized as "Neglect of Duty/Conduct Unbecoming – On Duty" was sustained and resulted in a one-day suspension. Another complaint that his personal vehicle licensing was not in compliance with the law was sustained in 1992.

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<sup>26</sup> *People v. McDaniel*, 326 Ill. App. 3d 771 (2001).

<sup>27</sup> *People v. Wright*, 2013 IL App (1st) 103052-U

Steve Bogira, "Good Cop, Bad Cop: What Is It About Detective Kriston Kato that Makes Murder Suspects So Eager to Confess?," *The Reader* (Dec. 12, 1991).

<sup>29</sup> Steve Bogira, "Good Cop, Bad Cop: What Is It About Detective Kriston Kato that Makes Murder Suspects So Eager to Confess?," *The Reader* (Dec. 12, 1991).

Most seriously, four additional complaints relating to his arrest and conviction for sexually assaulting women while using a police car were also sustained. He was charged in 1993 with kidnapping, criminal sexual abuse and official misconduct.<sup>30</sup> In at least one instance (described below), a criminal court reheard a motion to suppress because of the effect that Summerville's criminal conduct had on his credibility. After first denying the suppression motion of defendant George Washington, the criminal court reopened the suppression hearing and reversed itself, suppressing the confession against Washington.<sup>31</sup>

For details of abuse allegations involving Summerville, see Exhibit I. At least five of the allegations also involve Detective Kato.

### c. Judge Maloney

In 1993, Judge Thomas J. Maloney was convicted for a series of judicially corrupt acts that began significantly before the Murray trial took place. He was charged with "fixing" three murder trials between May 1981 and June 1985.<sup>32</sup>

Defense attorneys postulated that Maloney may have been more favorable to the State in cases for which he did not receive bribes in order to disguise his corruption.<sup>33</sup> This "compensatory bias," courts said, if proven to actually exist in a petitioner's case, would violate the due process clause.<sup>34</sup> The Supreme Court of the United States held in a different Maloney case that if a petitioner demonstrated "good cause," a due process violation, he may be entitled to relief in the form of additional discovery that would allow the petitioner to, among other things, "a chance to search Maloney's rulings for a pattern of pro-prosecution bias."<sup>35</sup> There is evidence that Maloney was aware of federal inquiry as early as 1986.<sup>36</sup> Kevin Murray's trial took place in

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<sup>30</sup> Lou Carlozo, "Cop Facing Misconduct, Sex Counts After Standoff," *Chicago Tribune* (Aug. 21, 1993), available at, [http://articles.chicagotribune.com/1993-08-21/news/9308210091\\_1\\_police-officer-police-custody-chicago-police-department](http://articles.chicagotribune.com/1993-08-21/news/9308210091_1_police-officer-police-custody-chicago-police-department). One of his victims, a 19-year-old college student alleged in a civil suit that Summerville demanded she strip in his police vehicle and then pointed a gun at her when she refused. See "Student Sues Cop over Alleged Attack," *Chicago Tribune*, July 16, 1994 (1994 WLNR 4327146). Summerville pleaded guilty to various charges and was sentenced to four years in prison in July, 1995. See "Cop Sentenced in Sex Abuse Case," *Chicago Tribune*, July 28, 1995 (1995 WLNR 4589210).

<sup>31</sup> See *Washington v. Summerville*, 127 F.3d 552, 553 (7th Cir. 1997).

<sup>32</sup> *United States v. Maloney*, 71 F.3d 645, 650-51 (7th Cir.1995). Defendants in three murder cases paid a middleman for Maloney to "fix" their trials. In one instance, Judge Maloney excluded evidence leading to the defendant's acquittal. In another, uncharged instance, a confession was suppressed after a bribe was made, leading to a not guilty finding. See also, Matt O'Connor, "Ex-judge Gets Final Fix: 15 Years," *Chicago Tribune* (July 22, 1994), available at [http://articles.chicagotribune.com/1994-07-22/news/9407220086\\_1\\_district-court-fix-judge-thomas-maloney](http://articles.chicagotribune.com/1994-07-22/news/9407220086_1_district-court-fix-judge-thomas-maloney).

<sup>33</sup> *Bracy v. Schomig*, 286 F.3d 406, 436 (7th Cir. 2002) ("The temptation for Maloney to favor the State as a means of hiding and promoting his corruption was present in this case as we know it was in other cases...")

<sup>34</sup> *Bracy v. Gramley*, 520 U.S. 899, 908 (1997).

<sup>35</sup> *Bracy v. Gramley*, supra note 40 at 899-900, 902. Here, there was evidence that Maloney had a relationship with the defendant's attorney, that the attorney took little time to prepare during sentencing, and that the defendant's case was "sandwiched" between cases that Maloney had fixed. *Id.*

<sup>36</sup> *United States v. Maloney*, 71 F.3d, at 651. In 1986, it is asserted that Maloney backed out of a bribe because he had become aware that he was under suspicion. *Id.*

1988. Maloney was indicted 1993.

Maloney passed away shortly after serving more than ten years in prison.<sup>37</sup> The effects of Maloney's corruption lingered for at least 15 more years.<sup>38</sup> Nathan Fields' 1986 death row conviction was overturned in 2009 because of its connection to judicial bribery by Maloney.<sup>39</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. *See* 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 the evidence that there is sufficient evidence of torture to merit judicial review, the Commission shall conclude there is insufficient evidence of torture to merit judicial review.<sup>40</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>41</sup>

### **Conclusions**

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<sup>37</sup> *Matthew Walberg*, “Judge’s injustice is righted—23 years later,” *Chicago Tribune* (Apr. 9, 2009), available at [http://articles.chicagotribune.com/2009-04-09/news/0904080850\\_1\\_el-rukn-bribe-fields-first](http://articles.chicagotribune.com/2009-04-09/news/0904080850_1_el-rukn-bribe-fields-first).

<sup>38</sup> *Bracy v. Schomig*, *supra* note 39, at 406, 436.

<sup>39</sup> *Walberg*, *supra* note 38.

<sup>40</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>41</sup> *See* 2 Ill. Adm. Code 3500.385(b)(1). In general, the approach the Commission has taken is akin to the concept of “probable cause.” That is, there must be enough evidence that the claim should get a hearing in court. *See* FAQ No. 8, <https://www.illinois.gov/tirc/Pages/FAQs.aspx/>. Note that the Commission is free under its rules, where it chooses, to find that any fact occurred, more likely than not. 2 Ill. Adm. Code 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 did was analogous to finding that a postconviction petition could advance to the third stage.” *People v. Christian*, 2016 IL App (1<sup>st</sup>) 140030, ¶95, 98.

This case is remarkable in that one of the chief detectives, the presiding judge and the attorney who briefly represented Murray (and testified on his behalf) all were found guilty of misdemeanor or felony crimes, casting doubt on their credibility.

The defense attorney's conviction was for a misdemeanor that he and defense attorneys represented did not involve misrepresentation, only negligence. Nonetheless, his testimony that Murray's mother sent him to the police station, when Murray acknowledges it was "Sam," is troubling. But credibility is equally as suspect on the state's side, and on the bench. Summerville's conviction was for a violent felony, and the judge's felony bribery conviction calls into question whether Murray ever received a fair consideration of his motion to suppress.

While the jail paramedic testified he saw no bruises, and Murray stated photos taken of him shortly after the abuse did not demonstrate any marks, any opportunity Murray might have had to counter this evidence was lost when a judge's order to take him to a doctor was ignored for weeks by jail authorities.

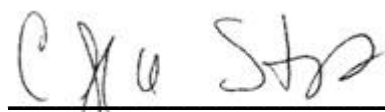
Murray certainly has credibility issues, particularly given his trial testimony that distanced himself from Sam McKay, the alleged mastermind behind the shootings. As Murray admitted to TIRC, it was McKay who sent Zuganelis to Area 4, demonstrating that Murray was less than truthful at trial.

Nonetheless, given the early complaint to his attorney, the early outcry by that attorney on the record to the judge the day after the confession, and the consistency of Murray's claims, there is Credible evidence for a court to consider.

In addition, the lack of any notes by police officers and the lack of a felony review memo by the State's Attorney who took the confession are troubling. Combine those irregularities with the lengthy abuse allegation histories of Detectives Summerville and Kato, the various authorities' convictions, and there is no question as to the sufficiency of evidence meriting judicial review in this case.

The Commission therefore concludes that there is sufficient evidence of torture to conclude by a preponderance of the evidence that the Claim merits judicial review and instructs its Executive Director to refer the claim to the Chief Judge of Cook County for further review.

Dated: May 17, 2017

  
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Cheryl Starks, Chair