

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Claim of Michael Bryant

TIRC No. 2013.184-B
(Relates to Cook County Circuit
Court Case No. 86-CR-4528)

CASE DISPOSITION

Pursuant to section 40/45(c) of the Illinois Torture Inquiry and Relief Act (TIRC Act, 775 ILCS 40/1 et seq.), the Commission concludes that there is insufficient evidence of torture to merit judicial review for the reasons that follow.

I. EXECUTIVE SUMMARY

- On February 7, 1986, Lee and Imogene Cavanaugh were stabbed in their home by two men on Chicago's South Side. On March 19, 1986, police separately interrogated Donald Elam and Michael Bryant regarding their involvement in the Cavanaugh crime, and received oral and court-reported confessions from both Mr. Elam and Mr. Bryant. Mr. Bryant was thereafter convicted of murder and related charges on May 12, 1987.
- Mr. Bryant alleges before this Commission that on March 19, 1986, interrogating detectives repeatedly hit him in the head with what appeared to be a duct-taped book or stack of papers until he agreed to confess.
- The record before the Commission contains no contemporaneous corroborating evidence of Mr. Bryant's allegations because Mr. Bryant did not raise his claims of torture at any time prior to April 2013. Further, Mr. Bryant's claims contradict the factual record in dispositive aspects, which undermines the Commission's ability to credit their veracity.
- Mr. Bryant's confession was, however, the primary evidence used to obtain his conviction. Further, in interviews with Commission staff, the Cavaughns' daughter and grand-daughter expressed reservations regarding the guilt of Mr. Elam and Mr. Bryant.
- After evaluating the record and weighing the facts before it, the Commission is constrained to conclude there is insufficient evidence of torture to merit judicial review. The Commission therefore dismisses Mr. Bryant's claim.

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II. FINDINGS OF FACT

A. Crime and Investigation

1. On February 7, 1986, Imogene Cavanaugh was stabbed to death in her third-floor apartment located at 929 W. 95th Street on Chicago's South Side. Her husband, Lee Cavanaugh, was severely beaten and stabbed multiple times, but survived the attack.¹
2. Police officers were called to the Cavanaugh's apartment building at approximately 7:30 p.m. on February 7, 1986, in response to a neighbor's discovery of Mr. Cavanaugh bleeding in the third-floor hallway floor.² Mr. Cavanaugh informed responding officers that two black males had entered his apartment holding a knife to the throat of Ms. Cavanaugh, who was returning from work.³ Mr. Cavanaugh, who had a telephone cord wrapped around his right wrist, further stated that the perpetrators had asked him for guns, money, and jewelry, and thereafter stabbed him and his wife.⁴ Officers entered the Cavanaugh's apartment and found Ms. Cavanaugh lying on the floor in a bedroom.⁵ Ms. Cavanaugh was handcuffed, clothed only in a long black coat, and had a two-pronged kitchen knife protruding from her rectum.⁶ Officers noted the apartment had been ransacked and there was blood throughout.⁷
3. Officers proceeded to interview the Cavanaugh's neighbors. The only other apartment on the third floor was occupied by teenager Dia Rowls, who told police that Mr. Cavanaugh had knocked on his door at approximately 7:55 p.m. and asked him to call the police.⁸ Mr. Rowls then called his uncle, Ronald Simpson, who instructed him to call the police and also came to the apartment.⁹ Upon arrival, Mr. Simpson found Mr. Cavanaugh sitting on the third-floor landing with his hands tied behind his back.¹⁰ Mr. Simpson retrieved a knife and freed Mr. Cavanaugh.¹¹ Two downstairs neighbors informed police they heard "things being thrown to the floor of the 3rd floor north apartment" and "heard people running up and down the stairs," but added nothing further.¹²
4. Police reports reflect that officers thereafter investigated similar crimes occurring in the same area, and found records relating to an armed robbery in which a tile cutter had been placed to the victim's throat.¹³ Police had arrested Larry McKinley in connection with that incident, but found "there was insufficient evidence to prosecute him for that

¹ *People v. Elam*, Appellate Court of Illinois (No. 1-87-2187, March 31, 1992); *People v. Bryant*, 202 Ill. App. 3d 290 (1990).

² Ex. 1, Feb. 7, 1986 Rep. from A. Schultz and P. Kelly.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Ex. 2, Feb. 16, 1986 Rep. from G. Karl. at p. 6

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at pp. 6-7.

¹³ Ex. 3, March 20, 1986 Supp. Rep. from P. Mokry and K. Glynn at pp. 3-4. This report also identifies the supervisor as "Lt. Jon Burge." *Id.* at 2.

crime.”¹⁴ Investigating officers learned, however, that Larry McKinley was also known as Larry Elam, and had a brother named Donald Elam.¹⁵ Both had been previously arrested for armed robbery, leading officers to request a comparison of their fingerprints to those found at the Cavanaugh crime scene.¹⁶

5. On February 13, 1986, Donald Elam¹⁷ was arrested in connection with an unrelated armed robbery.¹⁸ A search of Mr. Elam uncovered a pager later traced as belonging to Imogene Cavanaugh.¹⁹ On February 24, 1986, investigating detectives were notified that a latent print comparison had identified Mr. Elam’s fingerprints on an object inside the Cavanaugh’s apartment.²⁰

B. Interrogation of Elam and Bryant

6. Area Two detectives thereafter obtained a court order permitting them to retrieve Mr. Elam from the Cook County Jail.²¹ Mr. Elam was picked up by Detectives Patrick Mokry, George Karl, and Kevin Glynn on the morning of March 19, 1986, and transported to Area 2 for questioning.²² Detective Karl later testified that Mr. Elam was picked up around 10:00-10:15 a.m. and arrived at Area 2 around 10:45 a.m. Detectives then spoke with Mr. Elam in an interrogation room.²³ During that initial conversation, detectives informed Mr. Elam that the pager found in Mr. Elam’s possession had been traced to Ms. Cavanaugh, and that Mr. Elam’s fingerprint had been found in the Cavanaugh’s apartment.²⁴ Police reports reflect that in response to this information, Mr. Elam admitted to being present in the Cavanaugh’s apartment and stabbing both victims.²⁵
7. According to police reports, between approximately 10:50 a.m. and 11:20 a.m., Mr. Elam relayed to detectives that he was with his cousin, Michael Bryant, on the evening of February 7, 1986, when they saw a woman walking down the street and decided to rob her.²⁶ According to Mr. Elam, he and Mr. Bryant followed the woman to her building, and Mr. Bryant put a knife to her throat after she entered the doorway of her building.²⁷ They emptied the woman’s purse on the floor, and she was handcuffed by Mr. Elam and taken to her apartment—where her husband was home.²⁸ Mr. Bryant tied the man’s hands and feet with a telephone cord.²⁹ Mr. Elam and Mr. Bryant then demanded guns and

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.* (the request was placed on February 9, 1986.)

¹⁷ All subsequent references to Mr. Elam herein are to Donald Elam, unless otherwise noted.

¹⁸ *Id.* at 4.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*; *see also* Ex. 4, Court Order dated March 17, 1986.

²² *Id.*

²³ Ex. 5, Tr. of May 4, 1987 Testimony of Det. Karl, at Tr. 45-50.

²⁴ Ex. 3 at p. 3.

²⁵ *See, e.g.*, Ex. 3 at 4.

²⁶ *Id.* at 5.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

money.³⁰ Money was found in a dresser in the bedroom, and Mr. Elam was directed to the man's car for a gun—where he found a pistol under the car's dashboard.³¹ Mr. Elam informed detectives he then had to force his way back into the apartment because the chain latch had been engaged.³² After doing so, he saw Mr. Bryant having sex with the woman in one of the bedrooms, but declined to participate.³³ Mr. Elam then saw Mr. Bryant begin to stab the husband, who had been placed in another bedroom.³⁴ Mr. Elam retrieved two knives from the kitchen, and then stabbed the woman in the neck and rectum in a separate bedroom.³⁵ He then joined Bryant in stabbing the man.³⁶ Elam and Bryant then took money, a stereo, calculators, and the gun, and left the apartment.³⁷

8. Detectives thereafter notified the States Attorney's Office, which sent Assistant State's Attorney Patrick McNerney to Area 2.³⁸ Mr. McNerney arrived around 11:45 a.m., and Detectives Karl and Mokry—along with ASA McNerney—spoke to Elam again beginning at approximately 12:45 p.m.³⁹ Contemporaneous notes taken by Detective Mokry during this interview reflect Mr. Elam relayed a similar narrative during this interview.⁴⁰ Mr. Elam then gave a court-reported statement to Mr. McNerney from 2:05 to 2:25 p.m. This statement reiterated Mr. Elam's involvement in the murder/home invasion.⁴¹
9. Area Two detectives did not learn of Michael Bryant's potential involvement in the Cavanaugh crime until they interviewed Mr. Elam.⁴² At the time, Mr. Bryant was in the Cook County Jail on an unrelated charge.⁴³ Detectives therefore obtained a court order from Judge Bailey to retrieve Mr. Bryant.⁴⁴ Detective Madigan picked up Mr. Bryant and drove him to Area Two.⁴⁵ Detectives Madigan and Karl began to interrogate him at approximately 1:45 p.m. on March 19, 1986.⁴⁶ Mr. Bryant initially told officers he was with his uncle, Roger Bryant, at the time of the Cavanaugh crime.⁴⁷ After learning of Elam's confession, however, Mr. Bryant admitted that he was involved in the Cavanaugh crime.⁴⁸ Mr. Bryant was thereafter questioned by ASA McNerney beginning at 2:30

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Ex. 6, Tr. of May 4, 1987 Testimony of P. McNerney, at pp. 105-107

⁴⁰ Ex. 7, Mar. 19, 1986 Rep. by G. Karl and P. Mokry, at pp. 4-6.

⁴¹ Ex. 8, Statement of Donald Elam, March 19, 1986, 2:05 p.m.

⁴² Ex. 3 at p. 6.

⁴³ *Id.*

⁴⁴ Ex. 9, Court Order dated March 19, 1986.

⁴⁵ Ex. 10, Tr. of May 10, 1987, Testimony of R. Madigan, at pp. 100-105.

⁴⁶ Ex. 7 at p. 2.

⁴⁷ Ex. 3 at p. 6.

⁴⁸ *Id.*

p.m.⁴⁹ ASA McNerney then elicited a court-reported confession from Mr. Bryant from 4:00-4:15 p.m.⁵⁰

10. After receiving *Miranda* warnings, Mr. Bryant first stated in his court-reported confession that on the evening of February 7, 1986, he and Mr. Elam were walking to Mr. Bryant's sister's home.⁵¹ According to Mr. Bryant, Mr. Elam observed a woman getting off a bus and carrying a purse.⁵² Mr. Elam indicated an intent to snatch the woman's purse, and Mr. Bryant then followed the woman with Mr. Elam.⁵³ Mr. Elam pursued the woman into the vestibule of her apartment building, and dumped the contents of her black purse on the floor.⁵⁴ Mr. Bryant then entered the vestibule and observed Mr. Elam holding a knife and inquiring as to whether the woman had money elsewhere.⁵⁵ Mr. Bryant then observed Mr. Elam handcuff the woman with a pair of his own handcuffs, and walk her upstairs to her third-floor apartment.⁵⁶ According to Mr. Bryant, Mr. Elam and the woman entered the apartment first.⁵⁷ The woman's husband was in the kitchen, and Mr. Elam tied the husband's hands behind his back with a telephone cord handed to him by Mr. Bryant.⁵⁸ Mr. Elam then went to a bedroom to search for money, and Mr. Bryant later joined him to show him the location that had been identified by the husband.⁵⁹ Mr. Elam then went to look in the Cavanaugh's car for a pistol.⁶⁰ Mr. Bryant placed the chain on the door after Mr. Elam left, and proceeded to drink wine and speak with Mr. Cavanaugh.⁶¹ Mr. Elam returned by breaking the door frame and forcing his way back into the apartment.⁶² Mr. Elam then directed Mr. Bryant to put the Cavanaughs in separate bedrooms.⁶³ Mr. Elam went into the bedroom with Ms. Cavanaugh, and Mr. Bryant went to the other bedroom to continue talking with Mr. Cavanaugh—during which time he reported hearing a sexual moan from the other bedroom.⁶⁴ Mr. Elam then left the second bedroom and directed Mr. Bryant to kill Mr. Cavanaugh.⁶⁵ Mr. Bryant took a pocket knife from Mr. Elam and stabbed Mr. Cavanaugh once.⁶⁶ Mr. Bryant then saw Mr. Elam return from the kitchen with a butcher's knife, and stab Mr. Cavanaugh in his rectum.⁶⁷ Mr. Bryant went back to the front of the apartment, and observed Mr. Elam later appear with a bookbag that he said contained two computer calculators, an

⁴⁹ Ex. 11, Tr. of May 4, 1987 Testimony of P. McNerney at p. 134.

⁵⁰ Ex. 12, March 19, 1986 Statement of M. Bryant.

⁵¹ *Id.* at 3.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 3-4.

⁵⁵ *Id.* at 4.

⁵⁶ *Id.* at 4-5.

⁵⁷ *Id.* at 5.

⁵⁸ *Id.* at 6.

⁵⁹ *Id.* at 6-7.

⁶⁰ *Id.* at 7.

⁶¹ *Id.* at 7-8.

⁶² *Id.* at 8.

⁶³ *Id.* at 8-9.

⁶⁴ *Id.* at 9.

⁶⁵ *Id.*

⁶⁶ *Id.* at 9-10.

⁶⁷ *Id.* at 10-11.

answering machine, a beeper, and some jewelry.⁶⁸ Later that night, Mr. Bryant asked Mr. Elam what he had done to the woman, and was told that Mr. Elam had killed her.⁶⁹ Mr. Elam also told Mr. Bryant he had stabbed the man in his throat and his rectum.⁷⁰ Mr. Bryant concluded his court-reported confession by affirming that police treated him “okay,” ASA McNerney treated him “well,” he was not threatened or promised anything, and that he was allowed to eat, drink, use the washroom, and smoke cigarettes.⁷¹

11. Both Mr. Bryant and Mr. Elam’s confessions were accompanied by color photographs taken by a court reporter, Janet Lupa, and signed by ASA McNerney, Ms. Lupa, and Mr. Bryant and Mr. Elam, respectively.⁷² Mr. Bryant’s photograph was taken at 5:50 p.m., and portrays him with a broad smile and a can of Coke sitting on a table next to him.⁷³
12. Later that evening, Mr. Bryant and Mr. Elam were taken to Little Company of Mary Hospital, where a lineup was viewed by Mr. Cavanaugh—who was recovering at the hospital.⁷⁴ Mr. Cavanaugh viewed the lineup twice, and ultimately made a “tentative[]” identification of Mr. Bryant and Mr. Elam as the perpetrators.⁷⁵ Mr. Bryant and Mr. Elam were arrested thereafter and charged with murder, attempted murder, criminal sexual assault, armed robbery, burglary, and home invasion.

C. Trial and Appeal

13. Mr. Bryant’s counsel, John Lanahan, filed three pre-trial motions: (1) A motion to quash Mr. Bryant’s arrest and suppress his subsequent statements based on a lack of probable cause supporting the court order permitting the retrieval of Mr. Bryant on March 19, 1986; (2) A motion to suppress Mr. Bryant’s statements and line-up identification on the basis that Mr. Bryant was represented by counsel in relation to a prior charge when taken from the Cook County Jail on March 19, 1986, and therefore the resulting interrogation and identification violated Mr. Bryant’s constitutional right to counsel; and (3) a motion to suppress the lineup identification because the identification procedure was inherently suggestive and unreliable.⁷⁶ These motions did not mention torture or indicate that Mr. Bryant’s statement was coerced, and the transcript of the associated pretrial proceedings contains no reference to torture or coercion in relation to Mr. Bryant.

⁶⁸ *Id.* at 11.

⁶⁹ *Id.* at 12.

⁷⁰ *Id.*

⁷¹ *Id.* at 13.

⁷² Exs. 13 (Mr. Bryant) and 14 (Mr. Elam).

⁷³ Ex. 13.

⁷⁴ Ex. 3 at 6.

⁷⁵ *Id.* Mr. McNerney later testified that Mr. Cavanaugh viewed the lineup twice, and after each time said “I think it’s Number 3 and Number 5”—which corresponded to Mr. Bryant and Mr. Elam. *See* Ex. 15, Tr. of May 4, 1987 Testimony of P. McNerney, at 127; Ex. 16, Photograph of lineup with identification. Notably, however, a three-page excerpt of the public defender’s investigative file (which was appended to a post-trial motion) details a conversation between the public defender’s investigator and Mr. Cavanaugh during which Mr. Cavanaugh states that he was only able to identify one perpetrator who was short, stocky, dark, and heavy—which does not match the description of either Mr. Bryant or Mr. Elam. *See* Ex. 17, Mar. 10, 1987 Report.

⁷⁶ Exs. 18-20.

14. Mr. Bryant and Mr. Elam's cases were tried separately to different juries. Mr. Bryant's trial began on May 7, 1987. The first witness was Dia Rawls, who testified regarding his interactions with Mr. Cavanaugh on February 7, 1986. The second witness was Mr. Cavanaugh, who testified regarding the crime. The third witness was Everett Andre Smith, who testified that Mr. Bryant and Mr. Elam sold him a stereo on February 12, 1986, that was later found to belong to the Cavanaugh's. The fourth witness was Officer Phillip Kelly, who testified regarding his observations upon responding to the crime scene on February 7, 1986 and finding Ms. Cavanaugh. The fifth witness was Tae An, the assistant medical examiner, who testified that Ms. Cavanaugh died of stab wounds to her neck and rectum. The sixth witness was Detective Barry Costello, who testified that he arrested both Mr. Bryant and Mr. Elam on February 13, 1986 in relation to another crime—during which he discovered the pager that was registered to Ms. Cavanaugh. The seventh witness was Detective Stephen Brownfield, who testified that he retrieved Mr. Bryant from jail on March 19, 1986 and brought him to Area Two. The eighth witness was Officer Raynard Ricks, who testified that he lifted a fingerprint (which later was found to match known prints of Mr. Elam) from a glass mirror tile in the Cavanaugh's dining room/kitchen area and retrieved other evidence from the scene and Little Company of Mary Hospital.⁷⁷ The ninth witness was Dr. Robert Gasior, who testified regarding Mr. Cavanaugh's stab wounds. The tenth witness was Theatrice Patterson, who testified that he had performed analysis on fingerprints recovered from the crime scene, and found a match for Mr. Elam—but also found a second fingerprint that could not be matched to anyone present at the crime scene. The eleventh witness was Mr. McNerney, who published Mr. Bryant's statement to the jury and testified about his investigation. The defense then called Detective Patrick Mokry, who testified that Mr. Cavanaugh had not made a positive identification during the lineup. The defense thereafter called Floyd Turner, who testified that he spoke with Mr. Cavanaugh and was told he could only identify one person in the lineup that was short, stocky, and dark. Mr. Bryant did not testify, and no witness mentioned torture or coercion.⁷⁸ Mr. Bryant's attorney also never mentioned torture or coercion in any records of pre-trial or trial proceedings.
15. On May 12, 1987, Bryant was found guilty of the murder of Imogene Cavanaugh, the attempted murder of Lee Cavanaugh, two counts of armed robbery, home invasion, and residential burglary. The jury could not reach a verdict on the aggravated criminal sexual assault charge, which was later dismissed in light of the jury's other verdicts. The jury thereafter did not find aggravating factors to support the death penalty. On June 2, 1987, Bryant was therefore sentenced to: (1) 80 years imprisonment for the murder; (2) a consecutive sentence of 30 years for the attempted murder; (3) 30-year concurrent terms for the home invasion and armed robbery; and, (4) a 15-year concurrent sentence for the residential burglary.
16. On the day he was sentenced, Mr. Bryant's attorney also argued a motion for new trial.⁷⁹ That motion sought a new trial on the basis that: (1) detectives lacked probable cause to

⁷⁷ Notably, Mr. Ricks testified that he had taken pictures of the crime scene while it was in "disarray" on February 7, 1986. The pictures included in the police file provided to the Commission, however, only show the crime scene after it had been cleaned up.

⁷⁸ Portions of the trial transcript provided by the Cook County Circuit Clerk were missing or illegible.

⁷⁹ Ex. 21, Tr. of June 2, 1987 Argument.

transport Mr. Bryant to Area 2 on March 19, 1986; (2) Mr. Bryant was represented by counsel in relation to pending charges at the time of his March 19, 1986 interrogation, and could not be interrogated without that counsel present or waiving his right to have that counsel present; and, (3) the court violated a Motion *in Limine* as to “other crimes” by admitting certain testimony from Andre Smith. Mr. Bryant’s counsel also included *Batson*-related issues.⁸⁰ No reference was made to torture or coercion. The judge orally denied Mr. Bryant’s motion after argument concluded.⁸¹

17. Mr. Bryant thereafter appealed his conviction on numerous grounds, but never raised the issue of torture or coercion. Mr. Bryant filed a direct appeal, sought leave to appeal to the Illinois Supreme Court, and filed numerous post-conviction and habeas corpus petitions throughout the 1990s and 2000s. All were denied or dismissed.

D. Bryant’s TIRC Complaint

18. On September 15, 2013, Mr. Bryant submitted a TIRC complaint form.⁸² In that form, Mr. Bryant stated that a “lead” detective “grab[bed] me around the neck and said I was going to make and sign a confession, and when I stated go suck buttermilk, he then struck me to the left side of my head with what looked like a book with duct tape wrapped around it. And I told him again to go suck buttermilk and he hit me again.”⁸³ Bryant’s claim form noted that Detectives Morgan and Brownfield were also in the room at the time.⁸⁴ Bryant listed his public defender, John Lanahan, as an individual who could support his claim, and noted that “[t]here are no documents” that could support his claim.⁸⁵
19. On April 14, 2015, Commission staff interviewed Mr. Bryant via videoconference.⁸⁶ Mr. Bryant relayed that he was picked up around 8:30 or 9 a.m. on March 19, 1986. At around noon that day, Mr. Bryant recalled he was handcuffed to a wall in an Area 2 interrogation room and hit on the left side of his head with a duct-tape-wrapped book by a Detective Mokry. Detective Morgan held Mr. Bryant’s left hand to prevent Mr. Bryant from protecting himself. This occurred in the presence of Detective Brownfield, who was standing by the door. Mr. Bryant recalled his confession was then taken by the detectives and recorded by a court reporter. Mr. Bryant claimed he did not see any Assistant State’s Attorney until a lineup was conducted later that evening, when Mr. Bryant told the ASA about the abuse by detectives. Mr. Bryant recalled, however, that Detective Brownfield thereafter shook his head at the ASA as if to deny it happened. The ASA said he would look into it, but Mr. Bryant heard nothing further. Mr. Bryant also recalled telling a guard after he was returned to the Cook County jail, but was instructed to tell his attorney instead. Mr. Bryant told Commission staff that he then informed his public defender, John Lanahan, about the incident, but was advised it would be his word against the

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Ex 22, Sept. 15, 2013, TIRC Claim Form.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ An audio recording of this interview is available in the Commission’s files.

detectives and would therefore not be worth filing a motion to suppress. Mr. Bryant relayed that he had tried to get another attorney through Catholic Charities, but the judge denied his motion.⁸⁷ Mr. Bryant also noted that he sent letters over the years to various organizations, including the Innocence Project and Northwestern Center on Wrongful Convictions, allegedly detailing the torture. Mr. Bryant said he did not raise torture or coercion during the course of any appeals or post-trial proceedings because he was advised by appellate counsel that he could not do so after Mr. Lanahan failed to raise the issue during trial.

20. After interviewing Mr. Bryant and securing an attorney-client waiver, Commission staff interviewed Mr. Lanahan, who recalled representing Mr. Bryant. Mr. Lanahan recalled that the crime scene and facts of the case were grisly. His defense strategy was to point the finger at Mr. Elam as the perpetrator to avoid the death penalty for Mr. Bryant. Because this was a capital case, Mr. Lanahan was certain he would have discussed with Mr. Bryant the circumstances surrounding his statement and would have raised any allegations of abuse, torture, or mistreatment in a pretrial motion, if his client had informed him of those facts. Mr. Lanahan stated that he did not recall Mr. Bryant raising this issue at any time, and that he did not tell Mr. Bryant there was no point in raising the issue at a suppression hearing.
21. Commission staff additionally interviewed Moses Collins, who assisted Mr. Lanahan in trying Mr. Bryant's case. Mr. Collins did not recall Mr. Bryant mentioning that his confession was not freely given and voluntary. Mr. Collins indicated, however, that he would not necessarily have mentioned allegations of torture in a pretrial motion—especially where there was no other evidence to substantiate his allegations—because it was his practice not to permit his clients to testify at a suppression hearing. Mr. Collins recalled, however, that he had raised allegations of torture in one, unrelated case and permitted his client to testify in support of those allegations.
22. The Commission also interviewed Janet Lupa, who reported Mr. Bryant's confession and took Mr. Bryant's post-confession photo. Ms. Lupa did not recall Mr. Bryant or Mr. Elam, and did not recall the circumstances surrounding their respective confessions.
23. The Commission thereafter deposed former ASA McNerney. Mr. McNerney recalled both Mr. Bryant and Mr. Elam, as well as generally recalled the events of March 19, 1986.⁸⁸ Mr. McNerney testified that he interviewed Mr. Elam after arriving at Area Two on March 19, 1986.⁸⁹ After eliciting a court-reported confession from Mr. Elam, Mr. McNerney interviewed Mr. Bryant.⁹⁰ Mr. McNerney testified that Mr. Bryant was affable, talkative, and prone to smiling during their encounter.⁹¹ Mr. McNerney further testified that he first interviewed Mr. Bryant with Detective Madigan, during which Mr.

⁸⁷ Mr. Bryant's counsel thereafter contacted Catholic Charities to determine if there was a record of Mr. Bryant's attempt to change counsel prior to his trial, but was informed that Catholic Charities did not maintain any records relating to Mr. Bryant.

⁸⁸ See generally Ex. 23, Tr. of P. McNerney Dep. (Mar. 8, 2017).

⁸⁹ *Id.* at 31:11-17.

⁹⁰ *Id.* at 54:6-22.

⁹¹ *Id.* at 55:19-56:2.

Bryant tried to minimize his participation in the Cavanaugh crime.⁹² Mr. McNerney then elicited a court-reported confession from Mr. Bryant.⁹³ Mr. McNerney testified that Mr. Bryant was not handcuffed during either interview, and did not indicate he had been mistreated, beaten, or tortured.⁹⁴ Mr. McNerney further testified that he did not see an object wrapped in duct tape or a stack of papers at Area Two on March 19, 1986.⁹⁵ Mr. McNerney also testified that he recalled that evening's lineup, but did not recall Mr. Bryant telling him during that lineup that his confession was not voluntary or that he was hit during the course of the day's interrogations.⁹⁶

24. After sending statutorily required victim-notification letters of the Commission's inquiry, Commission staff received a telephone call from the Cavanaugh's daughter, Anita. Unsolicited, Anita expressed her sentiment that the wrong people were put in prison for the Cavanaugh crime. She recalled thinking there was more to the story. Anita recalled that her parents' third-floor windows had been shot out shortly before the crime. She also relayed that prior to the crime, she and her mother were approached by two tall, well-dressed men who said her father owed them money and asked her mother for money.⁹⁷ Anita surmised the crime might have been instead motivated by substantial debts her father, a gambler, owed at the time of the crime. She also recalled being told that a female witness who lived on the first floor told police she had seen two tall, plainclothes police officers handcuffing her mother in the building lobby on the night in question—but that witness had abruptly moved out before Anita could speak with her. Anita also recalled that she thereafter mentioned this fact to a police investigator who had previously interviewed this first-floor witness, but the investigator was dismissive of her concerns and told her that the case was closed. Anita moved away from Chicago because after the case was closed, she was once run off the road and was separately approached in a threatening manner by plainclothes police officers. Anita noted that her aunt (now deceased) believed police had apprehended the wrong individuals, and her sister shared her belief that the crime likely had something to do with her father's debts.
25. Commission staff also interviewed Anita Cavanaugh's daughter, Alicia, who was six years old at the time of the crime. Alicia repeated her mother's recollection of two tall, well-dressed men attempting to collect debts from her grandmother, which she estimated took place 1.5 weeks before the crime. Alicia further remembered that a neighbor had reported to police that two tall, plainclothes police officers had handcuffed her grandmother in the apartment's vestibule on February 7, 1986—but that neighbor had moved out abruptly. Alicia also recalled that she had heard her grandfather was a gambler and owed money that people continued to try and collect after the crime. She recalled seeing her grandfather "cut up dope," and that he would take her to lounges and would step away for an extended period of time.

⁹² *Id.* at 61:18-65:7.

⁹³ *Id.* at 68:6-69:11.

⁹⁴ *Id.* at 61:18-21; 70:7-9; 66:4-67:7.

⁹⁵ *Id.* at 85:24-87:2.

⁹⁶ *Id.* at 75:7-78:11.

⁹⁷ Notably, Mr. Cavanaugh's rap sheet shows a history of gambling-related charges. *See* Ex. 24.

26. The Commission thereafter identified from police reports two female neighbors who had spoken to police in the aftermath of the Cavanaugh crime. One of these individuals is deceased. Commission staff thereafter attempted to contact the other female neighbor to see if she had moved out quickly following the Cavanaugh crime. This individual, however, refused to speak with a Commission investigator. Counsel to the Commission then attempted to serve her with a deposition subpoena, but two rounds of personal service attempts and attempted service via certified mail were unsuccessful. The Commission was therefore unable to interview this former neighbor.
27. The Commission also received—through Mr. Bryant’s counsel—an April 2013 letter from Mr. Bryant to the Northwestern Center on Wrongful Convictions seeking the Center’s assistance.⁹⁸ In that letter, Mr. Bryant details similar allegations to those set forth in his Commission interview. Mr. Bryant also notes that he suffered a brain aneurism on February 6, 2009 as a result of the head blows received from detectives during his interrogation in 1986. Mr. Bryant noted that after he recovered, he told his doctor that he had been hit in the head on March 19, 1986.
28. The Commission thereafter received—again through counsel—Mr. Bryant’s medical records relating to his 2009 hospital stay. These records did not reference Mr. Bryant being hit in the head during his March 19, 1986 interrogation.
29. The Commission also subpoenaed, received, and reviewed records from the Cook County Circuit Court Clerk and the Chicago Police Department. The Commission attempted to subpoena records from the Public Defender’s office, but was informed that neither Mr. Bryant’s nor Mr. Elam’s file could be found.
30. The Commission also reviewed the history of allegations against the detectives involved and found the following:
 - a. **Det. Patrick Mokry:** Detective Mokry served under Cmdr. Jon Burge at Area Two, and was subpoenaed as part of the Special Prosecutor’s work between 2002 and 2006. Detective Mokry was mentioned in relation to “bagged and beaten” allegations in *People v. Hinton*, 302 Ill. App. 3d 614, 617 (1998).
 - b. **Det. Raymond Madigan:** Detective Madigan served under Cmdr. Jon Burge at Area Two, and was subpoenaed as part of the Special Prosecutor’s work—which identified Detective Madigan as potentially involved in the LeRoy Orange matter. Detective Madigan has been accused of physical abuse in various court cases. *See, e.g., People v. Holmes*, 198 Ill. App. 3d 766, 776 (1989) (alleging severe beating by Det. Madigan)⁹⁹; *People v. Riley*, 230 Ill. App. 3d 1013, 1017 (1992) (alleging physical abuse by Det. Madigan); *Caine v. Burge*, No. 11C 8996, 2012 WL 2458640 (N.D. Ill. June 27, 2012) (alleging physical abuse by Det. Madigan and settled for \$10 million¹⁰⁰); *Patterson v. Burge*, 03-CV-4433, Third Amended

⁹⁸ Ex. 25, Apr. 2013 Ltr.

⁹⁹ Lonza Holmes’ survivors were awarded non-financial reparations by the City of Chicago. *See Case Disposition of the Independent Third-Party Administrator*, Matter No. 28405.72, October 24, 2015.

¹⁰⁰ Meisner, Jason, “City OKs \$10 million payment over coerced confession,” *Chicago Tribune*, July 25, 2013.

Complaint at 9, 10 (alleging physical abuse of Aaron Patterson and Caine by Madigan and settled for \$5 million¹⁰¹); *Andrews v. Burge*, 08-CV-5874, Ruling denying motion to dismiss at 3, (mentioning allegation of physical abuse – suit settled for \$1.8 million¹⁰²); *Fauntleroy v. Burge*, 11-CV-118, First Amended Complaint at 11 (alleging physical torture of David Fauntleroy by Madigan, settled for \$1.8 million¹⁰³). Another criminal defendant, Clarence Trotter, was awarded reparations by the City of Chicago for his alleged physical abuse that he claimed involved Madigan.¹⁰⁴

- c. **Det. Steven Brownfield:** Detective Brownfield served under Cmdr. Jon Burge at Area Two, and was subpoenaed to testify as part of the Special Prosecutor’s work. In response, Brownfield invoked his Fifth Amendment right against self-incrimination.¹⁰⁵ Detective Brownfield has also been accused of physical abuse in various court cases. *See, e.g., People v. Ornelas*, 2012 IL App (1st)¹⁰⁶, No. 102100-U (2012) (alleging physical abuse by Det. Brownfield); *People v. Smith*, 2013 IL App (1st) 113193-U (2013) (alleging threats by Det. Brownfield)¹⁰⁷.

III. ANALYSIS

“‘Claim of torture’ means a claim on behalf of a living person convicted of a felony in Illinois asserting that the person was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is *some credible evidence* related to allegations of torture occurring within a county of more than 3,000,000 inhabitants. 775 ILCS 40/5 (1) (emphasis added). The Commission’s legislative directive is to review each claim to determine whether there is sufficient evidence of torture to merit judicial review.

- A. Mr. Bryant’s claim is undermined by the lack of any contemporaneous corroborating evidence. There is no evidence in the record before the Commission that Mr. Bryant, or anyone acting on his behalf, raised his claim of torture prior to April 2013. There is no mention of torture or coercion in Mr. Bryant’s pretrial motions, the pretrial record, the trial record, or any appellate filings or proceedings before the Commission. While Mr. Bryant contends he told his former public defender, John Lanahan, that he was hit with a duct-taped book while in police custody, Mr. Lanahan did not recall any such allegation and assured Commission staff that he would have raised this issue in pretrial motions practice if he had been told. While Mr. Collins was not as categorical, Mr. Bryant did not say he had mentioned the issue to Mr. Collins—and Mr. Collins did not remember it

¹⁰¹ “Settlements to Alleged Burge Victims,” *Chicago Tribune*, September 6, 2013, 2013 WLNR 22186393. In a deposition in the Patterson civil case, Madigan invoked his Fifth Amendment right against self-incrimination. *See Patterson v. Burge*, 03-C-4433, Deposition of Raymond Madigan, (Sept. 15, 2004).

¹⁰² Chicago City Counsel Order 2013-147, March 13, 2013.

¹⁰³ Chicago City Counsel Order of July 25, 2012.

¹⁰⁴ *Case Disposition* of the Office of the Third Party Administrator, Matter No. 28405.37, October 24, 2015.

¹⁰⁵ *In re: Special Grand Jury of Cook County*, ROP of October 27, 2004.

¹⁰⁶ The Commission in 2013 determined there was insufficient evidence of Ornelas’ claims to refer the matter to court for further judicial review.

¹⁰⁷ The Commission in 2013 determined there was sufficient evidence of torture of Smith and referred the case to Cook County Circuit Court for further judicial review. Mr. Smith’s post-conviction case is still pending.

being mentioned. Additionally, Mr. McNerney testified that he was never told by Mr. Bryant that he was hit with a duct-taped book or beaten by detectives in any way. Further, the record does not evidence that Mr. Bryant sought medical attention for injuries related to the alleged abuse. Accordingly, the Commission is without any evidence beyond Mr. Bryant's allegations to support his claim.¹⁰⁸

- B. In addition to the lack of any contemporaneous corroborating evidence, Mr. Bryant's claim is factually inconsistent with the record before the Commission. Mr. Bryant claims that he was picked up by detectives at 8:30 or 9 a.m. on March 19, 1986, and beaten over a period of hours at Area Two. Records show, however, that he arrived at Area Two at approximately 1:30 p.m., and signed a court-reported confession at 4:15 p.m. Mr. Bryant further claimed during his TIRC interview that he was hit by Detective Mokry while his left hand was held by Detective Madigan—and that Detective Brownfield observed these events. Contemporaneous police records, however, reflect that only Detectives Madigan and Karl interrogated Mr. Bryant—which began at 1:45 p.m.—and that only Detective Madigan observed his court-reported confession. Records further show that Detective Mokry was in another interview room observing the court-reported statement of Mr. Elam from at least 2:05-2:25 p.m. Further, Mr. McNerney testified during the suppression hearing that he had his first conversation with Mr. Bryant at approximately 2:30 p.m. Mr. McNerney then testified in his deposition that he did not believe any detectives entered the interrogation room with Mr. Bryant between the time that interview concluded and the court-reported confession began at 4 p.m.¹⁰⁹ In addition to being inconsistent with Mr. Bryant's claim, this chain of events suggests any torture would have had to have occurred within a maximum window of 35 minutes if Detective Mokry were the aggressor or one hour if Mr. Bryant is mistaken as to his aggressor. This timing appears unlikely to the Commission. Additionally, Mr. Bryant claims he did not see Mr. McNerney until the lineup on the evening of March 19, 1986, but a court-reported confession indicates Mr. McNerney elicited his confession while at Area Two earlier that afternoon. These inconsistencies undermine the Commission's confidence in Mr. Bryant's allegations, which are the only evidence of his claim.
- C. Mr. Bryant's claim is supported, however, by the fact that his confession was the primary evidence used to secure his conviction. The only other independent evidence was introduced by Andre Smith, whose testimony was at times disjointed, potentially inconsistent with prior recitations of the same facts to police, and unbelievable—and has been contested by Mr. Bryant in subsequent motions for post-conviction relief. This suggests police had a motive to elicit a potentially false confession.
- D. The unusual sentiments of Alicia and Anita Cavanaugh caused further investigation by Commission, but ultimately do not bear directly on the veracity of Mr. Bryant's claims of

¹⁰⁸ Of note, Mr. Bryant also did not submit his claim until September 2013, or approximately two years after Mr. Elam submitted a very similar claim to the Commission.

¹⁰⁹ Ex. 23 at 67:8-23.

torture.¹¹⁰ Instead, these sentiments may vaguely bear on the merits of Mr. Bryant's conviction, which can, in turn, render them circumstantially relevant to a torture claim.¹¹¹

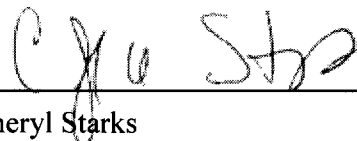
- E. Mr. Bryant's claim is also supported by the fact that at least Detectives Madigan and Brownfield have been accused by other claimants before the Commission and litigants as having participated in physical abuse.

After weighing the foregoing facts, the Commission concludes there is insufficient evidence of torture to merit judicial review. Allegations of torture raised 27 years after the fact raise significant issues of claimant credibility, and the factual record before the Commission contains no evidence to corroborate Mr. Bryant's claims. Mr. Bryant's claims further deviate from the factual record in dispositive aspects, and appear unbelievable when compared to the factual record. While the Commission does not take lightly the lack of evidence beyond Mr. Bryant's confession, the sentiments of the Cavanaugh family members, or the history of the detectives potentially present for Mr. Bryant's interrogation, the Commission finds these factors insufficient to justify a recommendation for judicial review.

IV. CONCLUSION

The Commission finds that there is insufficient credible evidence of torture in this claim. Accordingly, the Commission dismisses Mr. Bryant's claim and instructs its Executive Director to notify Mr. Bryant of the dismissal and his right to judicial review under the Illinois Administrative Review Law.

Dated: May 17, 2017



Cheryl Starks
Chair
Illinois Torture Inquiry and Relief
Commission

¹¹⁰ Alicia and Anita's comments may be relevant to the claimants' guilt or innocence, and will be forwarded to Mr. Bryant's counsel as required by the TIRC Act. *See* 775 ILCS 40/45(d): "Evidence favorable to the convicted person disclosed through formal inquiry or Commission proceedings shall be disclosed to the convicted person and the convicted person's counsel, if the convicted person has counsel."

¹¹¹ *See, e.g., Hill v. City of Chicago*, No. 06-C-6772 (N.D. Ill. May 24, 2011) (Evidence suggestive of innocence is relevant to whether a confession was coerced) (J. St. Eve).