

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

In re:  
Claim of Donald Elam

052-E  
TIRC No. 2011.086-R  
(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. Both were thereafter convicted of murder and related charges on May 12, 1987.
- Mr. Elam alleges before this Commission that on March 19, 1986, Detective Patrick Mokry repeatedly hit him with a phonebook until he agreed to confess.
- The record before the Commission, however, contains no contemporaneous corroborating evidence of Mr. Elam's allegations because Mr. Elam did not raise his present claims of torture at any time prior submission of his claim. Instead, Mr. Elam previously raised other shifting allegations of coercion that contradict his current claims in dispositive aspects. Moreover, Mr. Elam's conviction was supported by ample other independent evidence beyond his confession.
- In interviews with Commission staff, however, the Cavaughns' daughter and granddaughter expressed reservations regarding the guilt of Mr. Elam and Mr. Bryant.
- Nevertheless, after evaluating the record and weighing the facts before the Commission is constrained to conclude there is insufficient evidence of torture to merit judicial review. The Commission therefore dismisses Mr. Elam's claim.

**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. 95<sup>th</sup> Street on Chicago's South Side. Her husband, Lee Cavanaugh, was severely beaten and stabbed multiple times, but survived the attack.<sup>1</sup>

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

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 on the third-floor hallway floor.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> Officers entered the Cavanaugh's apartment and found Ms. Cavanaugh lying on the floor in a bedroom.<sup>5</sup> Ms. Cavanaugh was handcuffed, clothed only in a long black coat, and had a two-pronged kitchen knife protruding from her rectum.<sup>6</sup> Officers noted the apartment had been ransacked and there was blood throughout.<sup>7</sup>
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.<sup>8</sup> Mr. Rowls then called his uncle, Ronald Simpson, who instructed him to call the police and also came to the apartment.<sup>9</sup> Upon arrival, Mr. Simpson found Mr. Cavanaugh sitting on the third-floor landing with his hands tied behind his back.<sup>10</sup> Mr. Simpson retrieved a knife and freed Mr. Cavanaugh.<sup>11</sup> Two downstairs neighbors informed police they heard "things being thrown to the floor of the 3<sup>rd</sup> floor north apartment" and "heard people running up and down the stairs," but added nothing further.<sup>12</sup>
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.<sup>13</sup> Police had arrested Larry McKinley in connection with that incident, but found "there was insufficient evidence to prosecute him for that crime."<sup>14</sup> Investigating officers learned, however, that Larry McKinley was also known as Larry Elam, and had a brother named Donald Elam.<sup>15</sup> 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.<sup>16</sup>

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<sup>2</sup> Ex. 1, Feb. 7, 1986 Rep. from A. Schultz and P. Kelly.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Ex. 2, Feb. 16, 1986 Rep. from G. Karl. at p. 6

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

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at pp. 6-7.

<sup>13</sup> 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.

<sup>14</sup> *Id.* at 3.

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

<sup>16</sup> *Id.* (the request was placed on February 9, 1986.)

5. On February 13, 1986, Donald Elam was arrested in connection with an unrelated armed robbery.<sup>17</sup> A search of Mr. Elam uncovered a pager later traced as belonging to Imogene Cavanaugh.<sup>18</sup> 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.<sup>19</sup>

#### **B. Interrogation of Elam**

6. Area Two detectives thereafter obtained a court order permitting them to retrieve Mr. Elam from the Cook County Jail.<sup>20</sup> Mr. Elam was picked up by Detectives Patrick Mokry, George Karl, and Kevin Glynn from the Cook County Jail on the morning of March 19, 1986, and transported to Area Two for questioning.<sup>21</sup> Detective Karl later testified that Elam was picked up around 10:00-10:15 a.m. and arrived at Area Two around 10:45 a.m.—after which detectives interviewed Mr. Elam in an interrogation room.<sup>22</sup> Detectives informed Mr. Elam that the pager found in his possession had been traced to Ms. Cavanaugh, and that Mr. Elam's fingerprint had been found in the Cavanaugh's apartment.<sup>23</sup> Police reports reflect that between approximately 10:50 a.m. and 11:20 a.m., Mr. Elam admitted to being present in the Cavanaugh's apartment and stabbing both victims.<sup>24</sup>
7. According to police reports, 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.<sup>25</sup> 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.<sup>26</sup> Mr. Elam emptied the woman's purse on the floor, and handcuffed her and took her to her apartment—where her husband was home.<sup>27</sup> Mr. Bryant tied the man's hands and feet with a telephone cord.<sup>28</sup> Mr. Elam and Mr. Bryant then demanded guns and money.<sup>29</sup> 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 dashboard.<sup>30</sup> Mr. Elam informed detectives he then had to force his way back into the apartment because the chain latch had been engaged.<sup>31</sup> After doing so, he saw Mr. Bryant having sex with the woman in one of the bedrooms, but declined to participate.<sup>32</sup> Mr. Elam then saw Mr. Bryant begin to stab the husband, who had been placed in another

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<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*; see also Ex. 4, Court Order dated March 17, 1986.

<sup>21</sup> *Id.*

<sup>22</sup> Ex. 5, Testimony of Det. Karl, May 4, 1987 at Tr. 45-50.

<sup>23</sup> Ex. 3 at pp. 4-6.

<sup>24</sup> See, e.g., Ex. 3 at 4.

<sup>25</sup> *Id.* at 5.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

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

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

bedroom.<sup>33</sup> Mr. Elam retrieved two knives from the kitchen, and then stabbed the woman in the neck and rectum in a separate bedroom.<sup>34</sup> He then joined Bryant in stabbing the man.<sup>35</sup> Elam and Bryant then took money, a stereo, calculators, and the gun, and left the apartment.<sup>36</sup>

8. Detectives thereafter notified the States Attorney's Office, which sent Assistant State's Attorney Patrick McNerney to Area Two.<sup>37</sup> Mr. McNerney testified that he arrived around 11:45 a.m., and thereafter spoke to Elam—along with Detectives Mokry and Karl—beginning at approximately 12:45 p.m.<sup>38</sup> Contemporaneous notes taken by Detective Mokry during this interview reflect Mr. Elam relayed a similar narrative.<sup>39</sup> Mr. Elam then gave a court-reported statement to Mr. McNerney from 2:05 to 2:25 p.m., in which he confessed to participating in the murder/home invasion.<sup>40</sup>
9. In his court-reported statement, Mr. Elam explained that he and Mr. Bryant were headed to steal a car from the Beverly Hills Shopping Center on the evening of February 7, 1986, when they noticed a woman walking home.<sup>41</sup> Mr. Elam and Mr. Bryant thereafter followed the woman to her apartment building, and approached her in the vestibule of that building.<sup>42</sup> Mr. Elam asked if she had any money, and dumped the contents of her black purse on the ground.<sup>43</sup> Mr. Elam then handcuffed the woman behind her back, and Mr. Bryant held a pocketknife to her throat and walked her upstairs to her apartment.<sup>44</sup> They entered the apartment and encountered the woman's husband, whom Mr. Bryant tied up with a telephone cord.<sup>45</sup> Mr. Elam asked where the husband's money was kept, and went to a bedroom to look on the dresser.<sup>46</sup> Mr. Bryant joined him and ultimately found money.<sup>47</sup> Mr. Elam then asked where the man's gun was stored, and was directed to his car outside—where Mr. Elam found a .38 Smith and Wesson.<sup>48</sup> Mr. Elam then pried his way back into the apartment because the chain on the door had been set.<sup>49</sup> Mr. Elam observed Mr. Bryant having sex with the woman in a back room of the apartment.<sup>50</sup> Mr. Elam went into the other bedroom and spoke with the man, after which Mr. Bryant joined him and ultimately began to stab the man with his pocket knife.<sup>51</sup> Mr. Elam then

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

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

<sup>38</sup> Ex. 6, Tr. of May 4, 1987 Testimony of P. McNerney, at pp. 105-107

<sup>39</sup> Ex. 7, Mar. 19, 1986 Rep. by G. Karl and P. Mokry, at pp. 4-6.

<sup>40</sup> Ex. 8, Statement of Donald Elam, March 19, 1986, 2:05 p.m.

<sup>41</sup> *Id.* at 3.

<sup>42</sup> *Id.* at 3-4.

<sup>43</sup> *Id.* at 5.

<sup>44</sup> *Id.* at 5-6.

<sup>45</sup> *Id.* at 7.

<sup>46</sup> *Id.* at 8.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 8-9.

<sup>49</sup> *Id.* at 9.

<sup>50</sup> *Id.* at 9-10.

<sup>51</sup> *Id.* at 10-11.

went into the other bedroom to speak with the woman.<sup>52</sup> Mr. Bryant thereafter signaled to Mr. Elam that they should kill the man and woman.<sup>53</sup> Mr. Elam went to the kitchen to obtain two knives, and gave one to Mr. Bryant and kept a two-pronged knife for himself.<sup>54</sup> Mr. Elam also put a cooking glove on his right hand.<sup>55</sup> Thereafter, Mr. Elam returned to the bedroom the woman was in and stabbed her, and Mr. Bryant went to the other bedroom and stabbed the man in the throat.<sup>56</sup> Mr. Elam and Mr. Bryant then took computers, a gun, marijuana, a beeper, and some money, and left the apartment.<sup>57</sup> In his statement, Elam also affirmed that the police had treated him “okay,” that Mr. McNerney had treated him “well,” that no threats or promises were made, and that Mr. Elam was permitted to eat and drink during the interrogation.<sup>58</sup>

10. Police thereafter obtained a court order to retrieve Mr. Bryant from the Cook County jail—where he was detained on an unrelated charge—and brought him to Area Two.<sup>59</sup> Mr. Bryant was then interviewed and ultimately provided a court-reported confession implicating himself in the Cavanaugh crimes.<sup>60</sup>
11. Both Mr. Bryant and Mr. Elam’s confessions were accompanied by color photographs taken by the court reporter, Janet Lupa, and signed by ASA McNerney, Ms. Lupa, and Mr. Bryant and Mr. Elam, respectively.<sup>61</sup> Mr. Elam’s photograph portrays him sitting in a chair with a can of Coke on a table next to him.<sup>62</sup> Mr. Bryant is smiling broadly.<sup>63</sup>
12. Later that evening, Mr. Bryant and Mr. Elam were taken to Little Company of Mary Hospital, where a lineup was viewed by Lee Cavanaugh—who was recovering at the hospital.<sup>64</sup> Mr. Cavanaugh viewed the lineup twice, and ultimately made a “tentative[]” identification of Mr. Bryant and Mr. Elam as the perpetrators.<sup>65</sup> Mr. Bryant and Mr. Elam were arrested thereafter and charged with murder, attempted murder, criminal sexual assault, armed robbery, burglary, and home invasion.

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 12.

<sup>54</sup> *Id.* at 13.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 12-15.

<sup>57</sup> *Id.* at 16.

<sup>58</sup> *Id.* at 18.

<sup>59</sup> Ex. 9, May 19, 1986 Court Order.

<sup>60</sup> Ex. 10, Statement of Michael Bryant, March 19, 1986, 4:00 p.m.

<sup>61</sup> Exs. 11 (Mr. Bryant) and 12 (Mr. Elam).

<sup>62</sup> Ex. 12.

<sup>63</sup> Ex. 11.

<sup>64</sup> Ex. 3 at 6.

<sup>65</sup> *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. 13, Tr. of May 4, 1987 Testimony of P. McNerney at 127; Ex. 14, Photograph of lineup with identification. Notably, however, a three-page excerpt of Mr. Bryant’s 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. 15, Mar. 10, 1987 Report.

### C. Trial and Appeal

13. Mr. Elam's counsel filed three motions to suppress. The first sought to suppress Mr. Elam's statements and fingerprints because police lacked probable cause to arrest and interrogate Mr. Elam.<sup>66</sup> The second sought to suppress Mr. Elam's statements and identification because Mr. Elam was interrogated without counsel previously appointed in a pending matter.<sup>67</sup> The third sought to suppress Mr. Elam's statements because Mr. Elam was in pain caused by handcuffs during his interrogation.<sup>68</sup> In a supplement to the motion, Mr. Elam also asserted he was high on marijuana at the time of his interrogation, was not given his *Miranda* rights by the interviewing detectives, and was threatened by detectives that he would not be allowed back to the jail for his pending court hearing the next day in another unrelated case unless he gave a statement.<sup>69</sup> Neither motion referenced torture or stated that Mr. Elam had been hit by detectives during the interrogation.
14. Mr. Elam thereafter testified at his motion to suppress hearing, and reiterated his claim that his handcuffs were too tight.<sup>70</sup> Mr. Elam testified that this had aggravated a scar on his wrist, and that he was high on marijuana at the time of the interrogation and afraid of detectives.<sup>71</sup> Mr. Elam also testified, however, that the handcuffs were removed after he arrived at Area Two on March 19, 1986—and that he was not handcuffed when speaking with police or Mr. McNerney.<sup>72</sup> Mr. Elam further testified that he was treated “fairly decent” and that “nobody hit [him] or anything.”<sup>73</sup>
15. Mr. Elam also testified at his trial. During that testimony, Mr. Elam first placed himself at the scene of the Cavanaugh crime and described how it unfolded. Mr. Elam was then asked about his March 19, 1986 interrogation. Mr. Elam testified that he first spoke with detectives because “[t]hey told me if I wouldn't tell them that I had did the murder, they was going to give it to me anyway.”<sup>74</sup> Mr. Elam then testified that the detectives “told me if I didn't tell them they were going to keep me overnight and beat me until I told them I did the murder.”<sup>75</sup> This prompted Mr. Elam to tell detectives “what they wanted to hear”—after he was provided facts about the case.<sup>76</sup> On cross-examination, Mr. Elam repeated that he was told by police to make the statements that appeared in his court-

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<sup>66</sup> Ex. 16, Aug. 6, 1986 Mot. to Quash Arrest and Suppress Statement. This Motion was later supplemented with an allegation that Mr. Elam was represented by other counsel, and therefore had a right to that counsel's presence during his interrogation. *See* Ex. 18.

<sup>67</sup> Ex. 17, May 4, 1987 Mot. to Suppress.

<sup>68</sup> Ex. 19, Aug. 6, 1986 Mot. to Suppress Statement.

<sup>69</sup> Ex. 20, May 4, 1987 Amendment to Mot. to Suppress Statement.

<sup>70</sup> Ex. 21, Tr. of May 5, 1987 Testimony of Mr. Elam, at 218-21.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 228.

<sup>73</sup> *Id.* at 230-31.

<sup>74</sup> Ex. 22, Tr. of May 11, 1987 Testimony of Mr. Elam, at 1406-07.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 1408.

reported statement.<sup>77</sup> Mr. Elam admitted, however, that he had been “treated well the whole time” during his interrogation.<sup>78</sup>

16. Notably, however, Mr. Elam’s trial testimony differs in many respects from his court-reported confession. Mr. Elam testified at trial that he was high on cocaine and marijuana at the time of the crime, that he and Mr. Bryant had targeted the apartment building because it was where drugs were sold, that Mr. Bryant knew the woman who the pair assaulted, that he found cocaine and marijuana in a jacket pocket in the apartment, that he retrieved the stolen money from a closet (rather than Mr. Bryant retrieving the money from a dresser), that Mr. Bryant retrieved a glove and knife from the kitchen (not Mr. Elam), and that he ran away and left when Mr. Bryant began stabbing the man.
17. On May 12, 1987, Mr. Elam was found guilty of the murder and aggravated criminal sexual assault of Imogene Cavanaugh, the attempted murder of her husband Lee Cavanaugh, home invasion, and burglary. On June 2, 1987, Mr. Elam was sentenced to natural life for the murder. He was also given concurrent sentences of 30 years for the home invasion, attempted murder, armed robbery, and aggravated criminal sexual assault, and 15 years for the residential burglary.
18. On the day he was sentenced, Mr. Elam filed a motion for new trial, which argued that Mr. Elam’s statement was involuntarily given.<sup>79</sup> That motion did not mention torture or coercion. The court denied the motion.
19. Before the formation of the Commission, Mr. Elam appealed his conviction on numerous grounds, but never raised the issue of torture in his pleadings. Only one of Elam’s post-conviction filings discuss the treatment he received at Area Two. In a 2009 petition for relief, Elam described being “scared” and “paranoid” because of his marijuana use just prior to being transferred to Area Two, but does not mention being struck over the head or otherwise threatened, abused, or coerced.<sup>80</sup> All of Mr. Elam’s appellate and post-conviction motions have been denied or dismissed.

#### **D. TIRC Claim and Investigation**

20. In July 2011, Elam signed a TIRC complaint form alleging he “was hit on the top of my head with a (phone book) as many times as 10 to 20 times until I confess to the crime of (murder).”<sup>81</sup> Mr. Elam listed his attorney, Charles Lauer, as a party who could support his claim, but also stated “but I don’t know if I remember reporting such incident to my trial attorney and he might not be of much help understanding the fact the sol[d] me to the state in court.”<sup>82</sup>

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<sup>77</sup> See, e.g., *id.* at 1417-1418.

<sup>78</sup> *Id.* at 1431-32.

<sup>79</sup> Ex. 23, Motion for a New Trial, June 2, 1987.

<sup>80</sup> Ex. 24, Petition for Relief from a Void Judgment (May 18, 2009).

<sup>81</sup> Ex. 25, TIRC Form to File Claim of Torture (July 31, 2011) (Parenthesis in original).

<sup>82</sup> *Id.*

21. On March 18, 2014, Commission staff interviewed Mr. Elam.<sup>83</sup> Mr. Elam stated that Detective Mokry hit him an unknown number of times from behind with a stack of bound papers several inches thick. Mr. Elam told staff he had no memory of testifying at his motion to suppress hearing or saying at that time that he had not been hit. He did remember testifying at trial. Mr. Elam said he informed Mr. Lauer of the beating, and he gave Commission staff permission to speak with Mr. Lauer about attorney-client conversations concerning his torture allegations. However, he predicted not everyone would be truthful when they knew that they were wrong, and encouraged Commission staff not to waste their time talking to Mr. Lauer. Mr. Elam also said he had not raised physical abuse in any of his post-conviction or habeas petitions because they were all written by other people. He confirmed he never complained to the Chicago Police Department about any physical abuse. Mr. Elam stated he was slow and naïve to the ways of the justice system.<sup>84</sup>
22. Commission staff thereafter interviewed Mr. Lauer, who did not remember any allegations of torture by police concerning Mr. Elam. He did qualify that the case was approximately 30 years old and he might not remember every detail about the case. He did remember Mr. Elam as being borderline mentally handicapped, and had memory of Mr. Elam being tricked by detectives to confess due to this mental handicap rather than being beaten until he signed a confession.
23. The Commission also interviewed Janet Lupa, who reported Mr. Elam's confession and took Mr. Elam's post-confession photo. Ms. Lupa did not recall Mr. Elam, and did not recall the circumstances surrounding his confession.
24. 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.<sup>85</sup> Mr. McNerney testified that he interviewed Mr. Elam after arriving at Area Two on March 19, 1986.<sup>86</sup> Mr. McNerney testified that Mr. Elam was not handcuffed during his interview or court-reported confession.<sup>87</sup> Mr. McNerney further testified that Mr. Elam did not mention that he had been hit, beaten, tortured, or otherwise mistreated by detectives.<sup>88</sup>
25. After sending statutorily required victim-notification letters of the Commission's inquiry, Commission staff received a telephone call from the Cavanuagh'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's 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

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<sup>83</sup> A recording of this interview resides in the Commission's files.

<sup>84</sup> Mr. Elam's counsel submits to the Commission that Mr. Elam has an IQ of 70, which is equivalent to a third grader.

<sup>85</sup> See generally Ex. 26, Tr. of P. McNerney Dep. (March 8, 2017).

<sup>86</sup> *Id.* at 31:11-17.

<sup>87</sup> *Id.* at 40:8-21; 51:6-8.

<sup>88</sup> *Id.* at 45:15-47:7.



money.<sup>89</sup> 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.

26. 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.
27. 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, but she 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.
28. 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 Mr. Elam's file had been destroyed.
29. 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).

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<sup>89</sup> Notably, Mr. Cavanaugh's rap sheet shows a history of gambling-related charges. *See* Ex. 27.

- b. **Det. George Karl:** Detective Karl served under Cmdr. Jon Burge at Area Two, and was accused of physical abuse by one prior TIRC claimant.<sup>90</sup>

### 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. Elam’s claim is undermined by the lack of any contemporaneous corroborating evidence. There is no evidence in the record before the Commission that Mr. Elam raised his present claim of torture at any time prior to submitting his claim to the Commission. There is no mention of detectives hitting Mr. Elam with a roll of papers or phone book in any pretrial motions, the pretrial record, the trial record, or any appellate or post-conviction proceedings before the Commission. While Mr. Elam contends he told his lawyer, Charles Lauer, about this alleged torture, Mr. Lauer does not recall any such conversation. The record further does not evidence that Mr. Elam sought medical attention for injuries related to the alleged abuse. Additionally, Mr. Elam testified at his motion to suppress hearing and at his trial, and did not mention the present allegations. He did testify at his trial that detectives threatened to beat him (an allegation he had not mentioned during his suppression testimony), but he did not allege actual physical beatings. To the contrary, Mr. Elam testified at his motion to suppress hearing that he was not hit by detectives, and testified on both occasions that the detectives had treated him well. This paucity of corroborating evidence, coupled with Mr. Elam’s conflicting testimony, undermines the Commission’s confidence in Mr. Elam’s allegations—which provide the only basis for his claim.
- B. Mr. Elam’s claim is further undermined by his affirmative allegations that his confession was coerced on other grounds in pre- and post-trial motions and related testimony. Mr. Elam’s pre-trial motions asserted that his confession was involuntary due to pain caused by his handcuffs and the fact that he was high when taken from Cook County Jail to Area Two on March 19, 1986. Mr. Elam then testified during his trial that detectives had threatened to beat him. The fact that he made these allegations demonstrates he was aware back in 1987 of his ability to raise the claim he is presently pursuing, but did not do so—which undermines the credibility of his present claim. Further, while Mr. Elam’s prior allegations raise the possibility that his confession was coerced, their evolution undercuts the Commission’s ability to credit their content. For example, Mr. Elam claimed in pre-trial motions practice that his handcuffs caused him pain, but then testified during his motion to suppress hearing that he was not handcuffed during interviews by police or his interactions with Mr. McNerney. Mr. Elam also testified during his motion to suppress hearing that detectives threatened to keep him overnight and make him miss a

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<sup>90</sup> See *In re Claim of Vincent Wade* (2011.009-W).

court date the next day, but then testified at trial that detectives had threatened to keep him overnight and beat him.

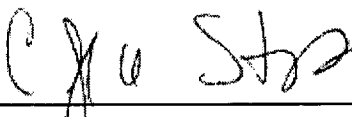
- C. Mr. Elam's claim is also undermined by the fact that police had ample other evidence besides his confession tying him to the crime. Mr. Elam testified at trial that he was at the scene of the crime and participated in the events that unfolded. Police also uncovered a fingerprint inside the Cavanaugh apartment that matched Mr. Elam's,<sup>91</sup> as well as recovered Ms. Cavanaugh's pager from Mr. Elam's person on February 13, 1986. Detectives also traced the sale of the Cavanaugh's belongings to Mr. Elam. This plethora of other evidence suggests detectives did not necessarily need to entice a confession to secure a conviction.
- 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. Elam's claims of torture.<sup>92</sup> Instead, these sentiments may vaguely bear on the merits of Mr. Elam's conviction, which can, in turn, render them circumstantially relevant to a torture claim.<sup>93</sup>

After weighing the foregoing facts, the Commission is constrained to conclude there is insufficient evidence of torture to merit judicial review. Allegations of torture raised 25 years after the fact raise significant issues of claimant credibility, and the factual record before the Commission contains no evidence to corroborate Mr. Elam's claims—and significant evidence that contradicts or undermines them. While the Commission does not take lightly the sentiments of the Cavanaugh family members, the Commission finds these sentiments 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. Elam's claim and instructs its Executive Director to notify Mr. Elam of the dismissal and his right to judicial review under the Illinois Administrative Review Law.

Dated: May 17, 2017

  
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Cheryl Starks  
Chair  
Illinois Torture Inquiry and  
Relief Commission

<sup>91</sup> Mr. Elam's counsel takes issue with the reliability of this fingerprint match, which was introduced during Mr. Elam's trial. The Commission, however, finds no basis in the factual record upon which to discount this evidence entirely.

<sup>92</sup> 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."

<sup>93</sup> 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).